

## **The complaint**

Ms S and Mr T are unhappy with Royal & Sun Alliance Insurance Limited's (RSA) handling of a claim they made under their home insurance policy.

## **What happened**

There have been various business or individuals involved in the claim and complaint acting as agents or representatives of either Ms S and Mr T or RSA. For simplicity, I'll only refer to Ms and Mr T or RSA by name throughout my decision – even when referring to evidence or arguments put forward by their agents or representatives.

Ms S and Mr T made a claim to RSA for suspected subsidence damage to their property in 2018. RSA appointed a loss adjuster, and it was determined that the property had suffered from subsidence damage due to clay shrinkage caused by a nearby tree. A dispute arose as to whether RSA also needed to test the drainage system. When this dispute couldn't be resolved, Ms S and Mr T brought a complaint about this, and the delays to the progression of the claim it was causing, to the Financial Ombudsman Service.

Since the conclusion of that previous complaint, Ms S and Mr T have remained unhappy with RSA's refusal to accept that the discovered damage to the drainage system is linked to the subsidence and so should be covered under their claim. They'd also like RSA to cover the cost of the professional fees they've incurred throughout their claim, and to pay for a third-party engineer to draw up a schedule of repairs and to manage to the remedial works to their home.

RSA accepts that it ought to have carried out drainage investigations sooner than it did. It has also acknowledged that damage to the drainage pipes would likely be a symptom of the subsidence and so has agreed to cover the cost of the drainage works, and associated costs, as part of the claim. RSA has offered £500 compensation for the distress and inconvenience Ms S and Mr T suffered because of its poor handling of the drainage issue, since the conclusion of the earlier complaint.

RSA hasn't agreed to appoint a third-party engineer to design or oversee repairs. RSA says its loss adjuster/subsidence expert have been appointed to complete this work, and so it would not look to duplicate costs. Should Ms S and Mr T not want RSA's loss adjuster to design or oversee the works, RSA said it could instead settle the claim by cash settlement, allowing them to appoint their own contractors or experts. RSA also said that Ms S and Mr T's representative has not changed the course of the claim and so it would not look to cover their costs either.

An investigator considered Ms S and Mr T's complaint but didn't think it should be upheld. He said the compensation RSA had paid was enough to fairly reflect the distress and inconvenience it had caused since the earlier complaint. He didn't think RSA needed to appoint a third-party engineer or cover Ms S and Mr T's professional costs, as it was acting in line with the terms of the policy by appointing contractors to design and oversee the works or offering a cash settlement should Ms S and Mr T not be happy with this. He also said he hadn't seen any reports from Ms S and Mr T's representative which had changed the course of the claim.

Ms S and Mr T didn't accept the investigator's opinion. So, as no agreement had been reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to the investigator, so I issued a provisional decision to give the parties the opportunity to respond to my provisional thoughts, before I reached a final decision. Here's what I said:

***"What I've provisionally decided – and why***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I'm intending to reach a different outcome to the investigator and to direct RSA to reimburse Ms S and Mr T's professional fees, up to the point RSA accepted it needed to cover the drainage repairs and associated costs. I'll explain why.*

*It's no longer in dispute that RSA ought to have inspected the drainage at Ms S and Mr T's property sooner than it did, nor that damage to the drainage is most likely linked to the same episode of subsidence covered under their claim. The issues which remain in dispute are whether RSA ought reasonably to cover the professional fees Ms S and Mr T have incurred, and whether it should allow (and fund) their representative or a new third-party engineer, to design and oversee the remedial works. I'll address each point separately.*

**Professional fees**

*Ms S and Mr T have been represented in their claim and complaint by a consultant surveyor/engineer they appointed. They want RSA to cover the costs they've incurred for this.*

*Ms S and Mr T's policy states that RSA will not cover fees the policyholder might incur in the preparation of their claim. I also note that RSA has been clear since the early stages of the claim, that it wouldn't agree to pay Ms S and Mr T's professional fees.*

*In its final response letter, RSA further explained that it would not look to duplicate the cost of appointing its own subsidence experts, by also covering the cost of Ms S and Mr T's professional fees, unless their expert had changed the course of the claim.*

*I don't think that's a fundamentally unfair position for RSA to take. But unlike RSA, and the investigator, I'm minded to decide that Ms S and Mr T's expert has changed the course of the claim.*

*I say this because it's clear that Ms S and Mr T's representative was the primary driving force behind their insistence that the drainage needed to be inspected as part of the claim. And following RSA's inspection, and its subsequent decision that the damage discovered wasn't linked to the subsidence claim, it was Ms S and Mr T's expert who instructed their own drainage report – all of which ultimately appears to be the basis for RSA eventually deciding to accept that the damage is likely a symptom of the subsidence and so offering to cover it.*

*Based on the above, I'm persuaded that without the appointment of their representative, Ms S and Mr T would not have received a fair settlement offer, as the drainage issue would most likely not have been properly investigated or accepted. Therefore, unless the responses to my provisional decision lead me to change my current thinking, I'll be upholding this element of Ms S and Mr T's complaint and directing RSA to cover the professional costs they've incurred for the use of their representative.*

*When directing a business to reimburse money to a consumer, I'd also typically direct it to add interest to the amount, to compensate the consumer for being without those funds as a result of something the business did wrong. But in this case, I don't think that would be fair or reasonable.*

*I say this because RSA has been clear from the point the representative was appointed that it wouldn't be covering their fees, and Ms S and Mr T knowingly continued to retain the services of their representative on that basis. So, had RSA not mishandled the drainage issue, I wouldn't be awarding Ms S and Mr T any of the professional fees back. In these particular circumstances, I think directing RSA to reimburse the professional fees is sufficient to fairly put things right, without the addition of interest.*

*I'm also only intending to direct RSA to cover the representative's costs up until the point it agreed to cover the drainage issue. I'll explain why in more detail in the below subsection.*

#### *Design and management of the remedial works*

*Ms S and Mr T want RSA to continue to pay for their expert to support them until conclusion of the claim, or to appoint a separate third-party engineer, to design and oversee the remedial works required to their property. This is because they've lost faith in RSA's agent to design and deliver an adequate repair scheme, given the problems they've experienced around the drainage issues.*

*I've thought carefully about this, but I'm not minded to direct RSA to cover Ms S and Mr T's ongoing professional costs, nor to appoint a third-party engineer.*

*I say this because, while I accept that RSA's agent has caused issues and delays in its handling of the drainage issue, I've not seen anything to suggest that it isn't sufficiently qualified or that it's unable to design and deliver an appropriate remedial work scheme.*

*Ms S and Mr T's policy is also clear that RSA can decide how to settle claims, including by appointing its own experts to design and complete repairs. So, I don't think it is acting unfairly by offering to do so. And should Ms S and Mr T not wish to accept this, RSA has confirmed that it can instead settle the claim by cash settlement – which I think is a fair and reasonable alternative offer.*

*I can appreciate Ms S and Mr T would like to retain the support of their representative to ensure that any remedial scheme is fit for purpose. But I don't think it would be fair for me to direct RSA to pay for this when it will already be paying its own expert to carry out the same work.*

*To be clear, I would expect any remedial scheme designed on behalf of RSA to deliver a lasting and effective repair to the damage covered under the claim. Should Ms S and Mr T decide to retain the services of their expert, at their cost, and should they have concerns about the proposed repair scheme, Ms S and Mr T are free to raise a new complaint about that with RSA at that time. And like with this complaint, should it prove that their representative has a material influence on the outcome of that hypothetical future complaint, then it's possible our service would decide that RSA should reimburse their costs at that point. Although, of course, I'm unable to make any actual determination on the outcome of a hypothetical future complaint.*

*But as things stand, I'm satisfied that RSA's offer to have its expert design and carry out repairs, or to alternatively calculate a cash settlement, is a fair and reasonable way to progress Ms S and Mr T's claim. So, I'm not minded to decide that RSA needs to do anything more than it has already offered to do.*

#### *Distress and inconvenience*

*Ms S and Mr T have already had a previous complaint about the progress of this claim considered by this service. In this provisional decision, I've only considered matters from the conclusion of the previous complaint to the point of RSA's final response letter.*

*In addition to the distress and frustration caused by the delays resulting from RSA's handling of the drainage issue since the conclusion of the previous complaint, Ms S and Mr T are also unhappy they needed to fund their own drainage report when RSA refused to share more than a redacted copy of its own report with them.*

*As explained, it's no longer in dispute that RSA ought to have investigated the drainage issues sooner, and that it ought to have accepted the drainage damage was linked to the subsidence which is the subject of the claim. And while I've not seen the communications around the redacted drainage report, I can appreciate it would have been frustrating to have to arrange and fund a further report in order to get the issues with their drainage covered. RSA has accepted that its failings here caused avoidable delays and has offered Ms S and Mr T £500 compensation in addition to covering the drainage issues and associated costs.*

*Taking into account the period of time I'm considering, the length of the avoidable delays and the impact Ms S and Mr T have suffered as a result of RSA's failings, I'm satisfied that £500 is sufficient to fairly compensate them."*

I asked both sides to provide any further comments or evidence they wanted me to consider within two weeks.

RSA responded to confirm it accepted my provisional decision, and had nothing further it wanted to add.

Ms S and Mr T responded setting out their reasons for disagreeing with my provisional decision. To summarise, they said:

- They'd like clarity on the reimbursement of their professional fees – i.e., from what point in their claim will these fees be reimbursed.
- They disagree that there's no evidence that RSA's subsidence expert doesn't have the appropriate skills to design and deliver an appropriate repair.
- There have been six separate work specifications drawn up all of which differ significantly and many of which appear to ignore an agreement reached between their representative and RSA.
- They'd happily accept a cash settlement, but they can't until there is a satisfactory, full costed, schedule of works on which it can be based.
- RSA should continue to cover their property, including subsidence cover, given they've refused to consider underpinning, and that the local authority has replanted another invasive tree in the same place as the one which caused these subsidence issues.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain the same. I'll explain why.

#### *Professional fees*

I explained in my provisional decision the reasons I was intending to direct RSA to reimburse the professional fees Ms S and Mr T had incurred. This was essentially because I'm persuaded that without the appointment of their expert, they would not have received a fair settlement to their claim, as the drainage issue would likely not have been discovered nor covered under the claim.

Based on this, I consider it fair to direct RSA to reimburse the fees they've incurred in appointing their expert, from the date they were appointed, until the date RSA conceded that the drainage issues should be covered under the claim, less any of these fees it has already reimbursed.

#### *Design and management of the remedial works*

In my provisional decision, I set out the reasons why I believed it was fair for RSA to utilise its expert to design and deliver the remedial works, or to offer a cash settlement should Ms S and Mr T be unwilling to use RSA's repairers. I maintain this is fair in the circumstances.

Ms S and Mr T have said RSA's experts have supplied multiple schedules, proposing different repair methods, at different times throughout their claim. They also say their expert agreed an amendment to the schedule with RSA, but RSA's expert hasn't made the amendment.

I haven't been provided with any of these differing schedules, nor any persuasive technical evidence to support that any, or all, of them are inadequate (aside from the evidence that drainage repairs should be included in the claim). Neither have I been provided with evidence to support that an amendment to the schedule was agreed between Ms S and Mr T's expert and RSA, but not made by RSA's expert. So, I'm not persuaded that it would be unfair to allow RSA's expert to design the remedial scheme.

I set out in my provisional decision what I consider to be a fair way forward. That is that RSA, via its experts, must produce a final schedule of works, which will deliver a lasting and effective repair to the claim related damage at Ms S and Mr T's property, and then either carry out those works through one of its network contractors, or pay a cash settlement. Should Ms S and Mr T be unhappy with RSA's final proposed schedule of works, they'll be free to raise those concerns as a new complaint.

That said, if RSA is in agreement with Ms S and Mr T, that an amendment to the latest schedule of works has already been agreed between RSA and Ms S and Mr T's expert, it should ensure that amendment is included in the final schedule of works produced by its expert.

Given the length of time this claim has been ongoing, I'd expect RSA to ensure that any final schedule of works is produced and/or shared with Ms S and Mr T promptly, following the conclusion of this complaint, so that fair settlement of their claim isn't delayed any further.

#### Continue insurance cover

In their response to my provisional decision, Ms S and Mr T have stated they want RSA to be instructed to continue providing them with insurance cover, which includes cover for subsidence damage. They actually referred to the company whose branding is on their policy, but RSA is the policy underwriter, and the business this complaint is against.

This is a new issue which hasn't been raised with, or responded to by, RSA as part of this complaint. So, I'm not able to make any finding on it as part of this decision.

That said, I'm not aware that RSA has sought to withdraw such cover. If it has, Ms S and Mr T should raise their concerns about this as a new complaint with RSA. Should they remain unhappy with RSA's response, they'll be free to refer that complaint to the Financial Ombudsman Service, subject to our normal rules and timescales.

#### Distress and inconvenience

Neither party made any further comments around the compensation award I said I was intending to make in my provisional decision. So, in the absence of anything more to consider, I maintain that £500 is sufficient to fairly compensate Ms S and Mr T for the distress and inconvenience they've suffered as a result of RSA's failings in this particular complaint.

## **My final decision**

For the reasons I've explained above, and in my provisional decision, I uphold Ms S and Mr T's complaint in part.

Royal & Sun Alliance Insurance Limited must:

- Reimburse the professional fees Ms S and Mr T have incurred for the support of their representative, up to the point it agreed to cover the drainage issues and associated costs.
- Produce and share a final schedule of works, then either complete the necessary repairs through a network contractor or, should Ms S and Mr T prefer, calculate and pay a cash settlement.
- Pay Ms S and Mr T £500 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S and Mr T to accept or reject my decision before 21 February 2025.

Adam Golding  
**Ombudsman**