

The complaint

Mr W complains about Royal & Sun Alliance Insurance Limited's (RSA) handling and decline of a claim made under his home insurance policy.

Where I've referred to RSA, this also includes any actions or communication by agents acting on their behalf.

What happened

Mr W had an extension built in 2015, and in 2022 cracking was discovered. Mr W tried to mitigate this by removing a Eucalyptus tree in his garden. But ultimately, Mr W later contacted RSA to make a subsidence claim under his home insurance policy.

RSA carried out investigations into the cause of subsidence, but the claim was subsequently declined. RSA said the foundations were too shallow and referred to an exclusion in Mr W's policy for faulty design and workmanship.

Mr W disagreed and raised a complaint with RSA. He said the extension had been signed off by building control, so he says the foundations were adequate. Ultimately RSA's claim decision remained the same, but they recognised there had been poor claim handling and paid £750 compensation.

As Mr W remained unhappy, he approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. She said that the foundations were built in excess of the building regulations applicable at the time, and she didn't think it was fair for RSA to rely on the National House-Building Council's (NHBC) standards to conclude the foundations were inadequate.

Therefore, the investigator recommended RSA reconsider the claim and provide a new claim decision. But the investigator also said the £750 compensation already offered was fair for RSA's poor handling of Mr W's claim, so she didn't recommend it be increased.

RSA didn't agree and the case was passed to me for a final decision.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

I’m issuing a provisional decision. I’ve reached a different outcome to our investigator so I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Firstly, I should explain that I recognise Mr W says he used a reputable builder and was issued with a completion certificate by building control following construction. And I recognise that as far as Mr W believed, his extension was built in line with the relevant requirements for the time.

However, my role here isn’t to decide whether the completion certificate has been correctly issued or not. Instead, it’s to consider whether RSA has fairly applied the exclusion in line with the terms of Mr W’s policy when declining the claim. Whilst a completion certificate may have been issued, and Mr W may have been unaware and relied on this and using a reputable builder, this doesn’t automatically mean RSA need to deal with the claim – if they’ve evidenced the exclusion that they seek to rely on has been correctly applied.

Whilst I appreciate it’ll come as a disappointment to Mr W, I think RSA has shown the exclusion applies here. So, unless anything changes as a result of the responses to my provisional decision, I won’t be directing RSA to do anything further. I’ll explain why.

RSA has relied on the following subsidence exclusion in Mr W’s policy to decline his claim:

“Loss or damage caused by or from poor or faulty design, workmanship, or materials.”

There is also a separate general exclusion which applies to all sections of the policy:

“DEFECTIVE CONSTRUCTION OR DESIGN

Any loss, damage, liability, cost or expense of any kind caused by or resulting from poor or faulty design, workmanship or materials.”

RSA has relied on this exclusion as they say the foundations are inadequate and didn’t comply with the applicable guidance at the time of construction. RSA says that the foundations should have been to a depth of 2,500mm but were only at a depth of 1,150mm. RSA says that if the foundations depth had been sufficient and in line with the guidance, then the subsidence wouldn’t have occurred.

The building regulations and approved documents from the time of construction outline various points of guidance and standards for consideration in relation to foundations. This includes outlining:

“Ground movement

A2. The building shall be constructed so that ground movement caused by:

- (a) Swelling, shrinkage or freezing of the subsoil; or*
- (b) Land-slip or subsidence (other than subsidence arising from shrinkage), in so far as the risk can be reasonably foreseen, will not impair the stability of any part of the building.”*

And:

“The design should be based on identification of the hazards to which the structure is likely to be subjected and assessment of the risks. The selection of relevant critical situations for design should be made reflecting the conditions that can reasonably be foreseen during future use.”

The extension foundations were built onto clay soil with high shrinkage potential, so this was one of the hazards that needed to be taken into account during foundation design.

The building regulations approved documents also outline:

“In clay soils subject to volume change on drying (‘shrinkable clays’, with Modified Plasticity Index greater than or equal to 10%), strip foundations should be taken to a depth where anticipated ground movements will not impair the stability of any part of the building taking due consideration of the influence of vegetation and trees on the ground. The depth to the underside of foundations on clay soils should not be less than 0.75m on low shrinkage clay soils, 0.9m on medium shrinkage clay soils and 1.0m on high shrinkage clay soils, although these depths may need to be increased in order to transfer the loading onto satisfactory ground, or where there are trees nearby.”

So, in line with this, the foundations would need to be to a minimum of 1,000mm for the type of soil, and were actually 1,150mm, so deeper than this. However, it wasn’t just the type of soil that was a hazard that needed to be accounted for. In line with the final part of the above, it goes on to say depths may need to be increased where there are trees nearby, which is another hazard that would need to be taken into account.

Of relevance here, there was a Eucalyptus tree present (which Mr W cut back in October 2022 when trying to mitigate subsidence and cracking), 7m from the extension. Eucalyptus roots were found under the foundations when the claim was being investigated. Along with the soil type, the presence of the Eucalyptus tree (and any others) also needed to be taken into account in the foundation design.

The building regulations approved documents go on to list a number of standards that need to be taken into account to ensure building regulations are met. This includes, relevant to foundations, reference to the following:

“BS 8103-1:2011 Structural design of low-rise buildings – Part 1: Code of Practice for stability, site investigations, foundations, precast concrete floor and ground floor slabs for housing”

Within BS 8103-1:2011, it outlines:

*“Hazardous ground conditions requiring special consideration
...the following hazardous ground conditions are found then appropriate
actions need to be taken in progressing the design or a suitably qualified
person should be consulted.*

...

*j) On clay soils, the presence, introduction or recent removal of trees or heavy
vegetation 2)*

2) at the end of J) refers to a footnote which says:

*“Further guidance on precautions to take when building near trees can be
obtained from NHBC standards, Chapter 4.2: Building near trees (2); and
from BS 5837”*

*The NHBC standards which are referenced outline various information, guidance,
and calculation tables for foundations where there are shrinkable soils and trees
present, including for different types of trees. And of relevance, these outline that
Eucalyptus trees are high water demand, with a mature height of 18m. When this is
then taken into account in the calculation tables, with the type of soil alone requiring
a minimum foundation of 1m as a starting point, with the presence of the Eucalyptus
tree, the guidance outlined that the foundations should be at least 2.5m (or potentially
more and engineer designed).*

*So, whilst the foundations were slightly deeper than the 1,000mm needed for the
ground type alone, in line with the NHBC standards which is referred to via the
relevant guidance and standards that I've outlined above, the presence and proximity
of the Eucalyptus tree meant the foundations should have been significantly deeper
to account for this.*

*During the claim investigation, Eucalyptus roots were found at a depth of 1,500mm.
So, below the 1,150mm foundations in place. Had the foundations been 2,500mm (or
more) as recommended in the guidance, then they would have been much deeper
than the Eucalyptus roots were found, and likely not resulted in the consequential
movement and cracking.*

*With the above in mind, unless anything changes as a result of the responses to my
provisional decision, I'm not minded to conclude RSA has acted unfairly by applying
the exclusion outlined and declining the claim on this basis.*

*It isn't in dispute the claim wasn't handled in line with Mr W's reasonable
expectations and RSA paid £750 compensation for this. Communication was poor,
there were avoidable delays and there was a significant delay in the claim decision
and rationale actually being communicated to Mr W. However, I think the £750
compensation already paid by RSA for this is reasonable. So, unless anything
changes as a result of the responses to my provisional decision, I won't be directing
RSA to increase this.”*

So, I wasn't minded to uphold the complaint.

The responses to my provisional decision

RSA responded and said they had nothing further to add.

Mr W said he was disappointed the provisional decision differed to the outcome reached by the investigator. He also highlighted that he'd used a reputable builder and relied on that and building control sign-off and as far as he believed, the extension had been built to the correct requirements.

Mr W explained that he was previously planning on obtaining new expert reports and/or opinions on the construction but hadn't yet done so. He queried if the deadline for a response could be significantly extended so he could potentially obtain new expert information and/or evidence.

The investigator explained to Mr W that if it was a new expert report or evidence that hadn't yet been obtained, then it would need to be provided to RSA for consideration in the first instance, before we could consider that as a new separate case. The investigator provided a further shorter deadline for any further comments, but as Mr W didn't respond to this, I'm now moving ahead with my final decision.

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.

And I've thought carefully about the provisional decision I reached, based on all the information and evidence already provided by both parties. Having done so, my final decision remains the same as my provisional decision and for the same reasons.

I already recognised in my provisional decision that Mr W says he relied on a reputable builder and building control. But as outlined in my provisional decision, my consideration was whether RSA had fairly and correctly applied the exclusion. And my view on this remains the same as outlined in my provisional decision, that I think they have, and for the reasons I explained.

As explained by our investigator, if Mr W wishes to obtain new expert reports and/or evidence about the construction which potentially may (or may not) show RSA's conclusions about this and the cause of cracking are incorrect, this would need to be provided to RSA in the first instance for consideration. And Mr W may then be able to raise a new separate complaint after this if he remains unhappy with whatever decision RSA reaches on that new evidence and information. But my final decision here is based on all the current information already obtained and provided. And having taken the current information and evidence into account, I don't think RSA has unfairly declined the claim for the reasons outlined in my provisional decision.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 February 2025.

Callum Milne
Ombudsman