

## **The complaint**

Ms L complains about Royal & Sun Alliance Insurance Limited's decision to decline a claim made under her home insurance policy for subsidence-related damage to her extension.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, focussing on the key issues.

Ms L had a home insurance policy underwritten by RSA which covered her home and its contents, amongst other things.

She made a claim after discovering damage to the extension, which was built in 2014, shortly before she bought the property.

RSA appointed loss adjusters in January 2023. They undertook preliminary investigations and commissioned a survey, which was carried out in March 2023.

In June 2023, they told Ms L the claim was declined. They said the foundations for the extension were inadequate.

In short, the depth of the foundations was less than the depth required by building regulations and guidance, taking into account the soil type and the proximity of trees.

Ms L wasn't happy with this and made a complaint to RSA. They maintained their position and pointed again to the policy terms, which include an exclusion from cover for any damage caused by poor design or faulty workmanship.

Ms L then brought her complaint to us. Our investigator looked into it and upheld the complaint.

She said RSA weren't entitled to rely on that exclusion and should reconsider the claim under the remaining terms of the policy. She also thought they should pay Ms L £100 in compensation for her trouble and upset.

RSA disagreed and asked for a final decision from an ombudsman.

## **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.

### *The scope of this decision*

Ms L has more recently mentioned to us that she's struggling to find affordable home insurance now, having been told by her broker that her policy with RSA wouldn't be renewed.

Ms L is aware we can't consider that as part of this case, as it wasn't something she raised with RSA as part of her complaint to them (or with the broker).

I understand she may now have raised that issue specifically as a new complaint, so if she wishes to refer that to us, we'll deal with it separately.

### *The extension's foundations*

In short, I agree with our investigator's view on the question of whether RSA can decline the claim on the basis that the foundations were poorly designed or built.

At first, RSA referred Ms L to buildings guidance which doesn't apply in her part of the UK, which wasn't helpful. They later quoted regulations and guidance which *did* apply, in 2014 – when the extension was built.

The foundations are 800mm in depth. The regulations and guidance to which RSA referred suggest foundations should be 1400mm in depth where the soil is of a certain type and there is significant vegetation nearby.

The regulations and guidance are always open to a degree of interpretation. In looking at this kind of case, we would also consider any evidence the policyholder has to show that the building was compliant with the regulations and guidance at the time and/or was designed and built well.

In this case, Ms L has provided a certificate of completion from the local authority. This shows that the building of the extension was signed off as meeting the relevant requirements.

Ms L has also pointed out that the survey she had carried before she bought the house didn't raise any issues regarding the extension, though in truth this is less persuasive than the local authority's signing off of the building work.

We would also consider whether the insurer has shown that the damage is in fact due to the failure to meet building regulations and/or guidance.

If not, it wouldn't be fair to decline a claim where the damage is either effectively caused by something other than the poor design or workmanship and/or the insurer hasn't demonstrated that the poor design or build is the reason for the damage.

In this case, RSA have an expert report which shows the type of soil, the proximity of trees to the building, and the fact that some tree roots are in evidence at the foot of the extension

to a depth of around 1300mm.

Whilst there may be *some* roots at that depth, I'm not sure that RSA have provided sufficient evidence to show that they are the cause of the damage to the extension.

I say that primarily because Ms L has provided a copy of an expert report she herself commissioned to identify the cause(s) of the issues. The report is written by a suitably qualified expert, and is comprehensive, evidence-based, logical, and persuasive.

The report concludes that the damage is most likely due to two causes.

One, movement in the ground bearing slab that forms the floor of the extension. The report describes this movement as "settlement" of the slab relative to the external wall of the house. And says this may be due to poorly compacted supporting subsoils and/or clay shrinkage (possibly related to the nearby trees).

And two, shrinkage and movement in the strapping to the existing gable house wall. This appears to be causing the damage to the upper walls and ceilings of the extension. There may also be water ingress damage due to issues with the flashings where a pre-existing downpipe passes through the roof of the new extension.

In summary, the expert report commissioned by Ms L appears to cast doubt on whether the damage to the extension is wholly and/or primarily caused by the tree roots found at depths below the existing foundations. The report suggests the damage may be caused by settlement of the floor slab and/or issues with strapping between the extension and the main house wall.

And that being the case, I'm satisfied that on balance it's not fair or reasonable for RSA to decline the claim on the basis they did – that is, on the basis that the damage is caused by defective foundations to the extension.

So, I agree with our investigator that RSA should re-consider the claim, taking fully into account the report provided by Ms L's expert.

*What happens now?*

After our investigator gave her view on the case, Ms L asked why – given her findings – she hadn't simply asked RSA to pay the claim.

I completely understand why Mr L asked that question and I think it's only fair to clarify here what exactly I'm going to require RSA to do – and why.

I'm going to require RSA to re-consider the claim, bearing in mind all of the expert evidence, and the fact that they can't decline the claim on the basis that the foundations are defective (due to poor design or workmanship).

RSA *may* wish to carry out more investigations to clarify any points of contention between the experts and/or to resolve any remaining questions the experts may have raised. They will then need to re-consider the claim based on the remaining terms and conditions.

I am very much aware that there are provisions in the remaining terms of the policy around the settlement or bedding down of new structures (within certain time limits) and around damage caused by the movement of solid floor slabs. RSA will also wish to consider the likely causes of the damage to the upper walls and ceilings of the extension.

It's impossible for me to determine now how those terms will apply to Ms L's claim. That's because neither party has commented on them – or produced evidence to determine whether and how those terms might apply (or not) in this case.

So, it would be completely unfair for me to try to draw any conclusions about these matters, in the absence of any evidence or argument from either party.

It's also not for me to act as an alternative claims handler or loss assessor in this case, given that the claim will in effect be on-going and under investigation and/or consideration after this decision takes effect.

RSA will no doubt explain in full to Ms L any future decision they make on her claim after they re-consider it in line with the remaining terms of the policy. If she's unhappy with RSA's new claim decision, she'd be entitled to make another complaint to RSA – and then bring it to us if she remains unhappy with their response.

### *Expert report costs*

Ms L has commissioned expert reports on the causes of the movement in the extension (as mentioned above) and on the drains underneath and around the extension. She wants us to require RSA to reimburse her for the cost of those reports.

If, when they re-consider the claim, RSA change their position on Ms L's claim in any substantive way, based on the information and evidence in her expert reports, then I would expect them to consider reimbursing Ms L.

Again, it's not appropriate for me to order RSA to pay those costs now, given that the result of their re-consideration of the claim is as yet unknown.

But RSA should consider this issue when they conclude their consideration of the claim – and again, if Ms L is unhappy with their decision in this respect, she'd be entitled to make a new complaint.

### **Putting things right**

For the reasons set out above, I'm upholding Ms L's complaint. I don't think RSA acted fairly or reasonably in declining her claim on the basis that the foundations of her extension were defective in their design or build.

It follows that RSA must re-consider the claim in line with the remaining terms and conditions of the policy.

I also agree with our investigator that Ms L has experienced a degree of stress, upset and inconvenience as a result of RSA's error in declining her claim for the reasons given at the time.

And I agree that £100 is fair and reasonable compensation for Ms L's trouble and upset taking into account all the circumstances.

### **My final decision**

For the reasons set out above, I uphold Ms L's complaint.

Royal & Sun Alliance Insurance Limited must:

- re-consider Ms L's claim in line with the remaining terms and conditions of her policy (as set out above);
- once their re-consideration of the claim is complete, consider reimbursing Ms L for the cost of the expert reports she commissioned (on receipt of proof of payment); and
- pay Ms L £100 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 22 April 2025.

Neil Marshall  
**Ombudsman**