DRN-5592909

The complaint

Mrs B complains that Royal & Sun Alliance Insurance Limited (RSA) unfairly declined a claim she made under her commercial property insurance policy.

Mrs B has been represented by third parties during the claims and complaints process. But, for ease, I'll refer to Mrs B throughout.

What happened

Mrs B had a commercial property insurance policy with RSA. In April 2023 she made a claim under her policy. She said the walls of the insured property were bowing due to a failing in the foundations. She provided an engineer's report dated January 2023, which said there were indications of subsidence. RSA appointed a loss adjuster who visited the site but thought the claim should be declined. They didn't think the damage was consistent with subsidence as defined by the terms of Mrs B's policy. They said lateral movement had been ongoing for a number of years. And this had been exacerbated by the recent replacement of some large shop front windows. The loss adjuster noted that repair work had been completed prior to their inspection, and this had prejudiced RSA's ability to confirm causation and liability.

Mrs B disagreed and complained. She said she'd prioritised the repairs because there was a health and safety risk to the residential property above the commercial property. And opening up the window space had revealed the extent of the subsidence. But RSA maintained its position. It acknowledged there had been some avoidable delays and apologised for those. But said it had no reason to doubt the loss adjuster's opinion that the damage was not subsidence. RSA noted that starting repair work before making a claim had stopped them from following their normal process of carrying out site investigations to determine the cause of the movement.

Our investigator didn't think RSA needed to take any action. He didn't think there was enough evidence to show that subsidence was occurring and caused the damage within the time RSA was providing cover. So, he didn't think RSA had been unfair in declining the claim. He noted the claim could have been progressed more quickly at times during the claims process, but RSA had acknowledged and apologised for that. And he thought that was reasonable in the circumstances.

As Mrs B didn't agree, her complaint has been passed to me to reach a 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.

Both parties have provided evidence in support of their position and I'd like to reassure them that I've read and considered everything on file. If I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it, it's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Mrs B's policy covers her for loss or damage. But only for damage caused by a number of listed events. One of which is subsidence. In any claim, the first burden of proof lies with the party making the claim. So, it's for Mrs B to show that the cause of the damage is something she's insured for.

Mrs B's policy defines subsidence as the "Downward movement of the site on which your buildings stand by a cause other than the weight of the buildings themselves". But her policy also lists circumstances that aren't covered by the policy. These include the following:

- Damage occurring as a result of the construction, demolition, structural alteration or structural repair of Buildings or any groundwork or excavation at the Premises.
- Damage arising from normal settlement or bedding down of new structures.
- Damage caused by or arising from faulty workmanship, design or materials.
- Damage commencing prior to the granting of cover under this Insurance.

Having carefully considered all the available information, I'm more persuaded by the evidence provided by RSA. That's not to say I discount the possibility that the damage was caused by subsidence, only that I think it was fair and reasonable for RSA to decline the claim based on the evidence that is available. I know this will come as a significant disappointment for Mrs B so let me explain why I've reached this conclusion.

The engineer's report provided by Mrs B makes one reference to subsidence, when the engineer said the fractured brickwork underneath the two new windows would indicate there has been subsidence. The rest of the report refers to settlement. For example, he says the brick piers to either side of the door have been subject to major settlement. And the structural engineer who also contributed to that report confirms that by saying the left-hand pillar has settled upon its foundation. Before going on to note that the brickwork has cracked in other places, "accommodating this settlement".

RSA's loss adjuster said that when their engineer visited the property, reinstatement works were well progressed, and it wasn't possible to inspect the damage. But based on what they could see, they didn't think the damage was consistent with subsidence. They thought it more likely the movement was the result of a lack of lateral restraint to the brick piers either side of the front door, exacerbated by the replacement of the large shop front windows. They used historical photos to show how the lateral movement has been gradual in nature and ongoing for a number of years.

The loss adjuster's engineer also commented on Mrs B's report and noted that the cracking below the windows, cited as indicative of subsidence, is evident in a photo from 2021, indicating the settlement of the brick piers has been ongoing for a number of years. He also notes that a cause for the alleged subsidence has not been provided and explained why the absence of an external factor in the cause of the movement does not meet the definition of subsidence in Mrs B's policy. And even if he did have to consider subsidence, he believes the exclusions (mentioned above) would preclude any cover for the damage being claimed.

In light of the above, I think RSA's decision to decline the claim was reasonable. Mrs B's policy does cover damage caused by subsidence, but only if it's a downward movement caused by factors other than the weight of the building itself. The loss adjuster's engineer thinks the damage was more likely caused by a lack of lateral restraint to the brick piers either side of the front door. And he's shown why this is likely to have been happening for a number of years. I don't think Mrs B's report provides sufficient evidence to dismiss that opinion. Aside from mentioning subsidence on one occasion, the other comments are around settlement and as the loss adjuster's engineer has said, they haven't suggested a cause for that settlement or alleged subsidence. So, on balance, I'm more persuaded by the view provided by RSA's loss adjuster.

Had RSA been able to carry out a full inspection of the damage and/or monitoring work, it might have been able to reach a more definitive view about what caused the damage. But the reinstatement work prevented that happening. And without further evidence to point one way or the other, I don't think it's unreasonable for RSA to decline the claim in all the circumstances.

Mrs B said she started work to repair the property because time was of the essence and there was a risk to the safety of the structure. I can understand why she did that. But the fact remains that she started work before she made her claim and largely completed the repair work before RSA's loss adjuster could inspect the property. That prevented RSA from carrying out what normally happens in claims of subsidence, namely a full site investigation, exploration to work out what's causing the movement and potentially a period of monitoring.

Mrs B has said the loss adjuster could have visited the property sooner than they did, and had they attended earlier, they could have seen the site before the repairs were completed. She said the date they attended was chosen by the loss adjuster. And in fact, they failed to attend on that date and came later. The evidence I've seen shows that the loss adjuster tried to call Mrs B two days after she first contacted RSA in April 2023 but couldn't get through. So, they sent a letter instead, asking her to call them. They then spoke to Mrs B about a week later and a site visit was arranged for 16 May. A note on the loss adjuster's file says that the reason for the delay was because Mrs B was unable to attend any earlier appointment and the delay was not due to them. The engineer's report of their site visit records the date of visit as 16 May. So, on balance and in light of the evidence I've seen, I don't think it would be fair to say there was an avoidable delay by the loss adjuster's in visiting the property.

In summary, I don't think Mrs B has done enough, on the balance of probabilities, to show that subsidence was the cause of the damage she's claiming for. And I think RSA has acted reasonably in declining Mrs B's claim for damage caused by subsidence.

RSA has accepted there were some avoidable delays in the claims process. And it's apologised for those delays. RSA took longer than it should have done to make a decision on Mrs B's claim but it did manage her expectations about the outcome before it formally notified her of its decision. And Mrs B's complaint is more focused on the decision RSA reached rather than the time it took to reach it. So, on balance, I think an apology is a fair and reasonable way of putting things right in that regard.

My final decision

Royal & Sun Alliance Insurance Limited has already apologised to Mrs B for the avoidable delays it identified. For the reasons set out above, I don't think it needs to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 25 September 2025.

Richard Walker
Ombudsman