DRN-5599501

The complaint

Ms K has complained about her home insurer, Royal & Sun Alliance Insurance Limited (RSA) regarding a claim she made when there was a water leak at her home.

What happened

Ms K made a claim on 3 November 2022. RSA operatives first visited Ms K's home on 7 November 2022. Drying equipment was installed by RSA in December 2022 and removed in January 2023. In March 2023 Ms K became aware that RSA's works at her home had caused her and her son to be exposed to asbestos. Ms K complained and RSA answered that complaint in a final response letter of 16 May 2023.

The wall containing the asbestos was removed in June 2023 and arrangements began to be made to reinstate the home. However, RSA's contractor, with whom Ms K had been discussing and organising repairs, decided on 19 July 2023 that it was not prepared to continue with the work. In August RSA found another contractor to take on the work. Ms K was relieved but remained unhappy about what had happened and complained. RSA issued a final response in answer to her complaint on 5 September 2023. RSA did not uphold that complaint – it said it had been reasonable for the contractor to cease its involvement and the insurance policy would not cover the cost of uninsured work.

Ms K complained to the Financial Ombudsman Service. When matters could not be resolved by our Investigator, Ms K's complaint was referred to me for an Ombudsman's consideration. Considering the claim period up until RSA's May final response letter, I felt RSA had failed Ms K with how it had handled the claim in 2022 – with its key failing being the installation of drying equipment when it knew tests for asbestos materials were outstanding. I was satisfied that this had caused a risk to Ms K and her son, which could easily have been avoided. I said RSA should pay Ms K £5,000 compensation.

Ms K wasn't wholly happy with that outcome. She also noted my decision had not commented on her complaint about RSA's contractor ceasing its involvement in July 2023.

RSA agreed it had failed Ms K in 2022. It paid the £5,000 compensation recommended.

I was also mindful in my provisional decision though that Ms K was worried about her and her son's future health. I made a recommendation to try and account for that and my suggestion resulted in RSA asking for leave to agree with Ms K to appoint a joint independent expert as part of the process of my deciding this complaint, with that expert being tasked to determine the likely risk caused to Ms K and her son on account of its actions. I felt that determining any risk and what that might mean in medical terms for Ms K and her son would enable me to ultimately award a fair, reasonable and appropriate remedy in this somewhat unusual situation.

An agreement was reached between the parties for two experts to be appointed. The first expert would be an expert in asbestos, tasked with determining the nature of the asbestos and the extent of any risk it might present. The second would then comment, from a medical perspective, regarding what might then be required for Ms K and her son moving forward.

The asbestos expert was agreed and arranged between the parties (three options were put forward by RSA and Ms K chose one of them to appoint). I'll refer to him as Mr D, an asbestos consultant for more than 20 years, certified by the British Occupational Hygiene Society. I was involved to facilitate that appointment. When some disputes arose between the parties about the content of the detail provided to Mr D, provided in order for him to make his findings, I reviewed the instruction letter and the issues raised. I then confirmed the relevant background information and evidence required for Mr D's consideration.

Mr D has now completed his final report. In short he concluded that the risk to Ms K and her son was very low.

RSA and Ms K were given a chance to provide any comment on Mr D's report. RSA said it felt this showed there was now no reason to progress with the second expert. Ms K implied she was unhappy with the findings but had expected nothing more – she said she now looked forward to the appointment of the second expert who she expected to "stress-check" Mr D's findings.

Having received and reviewed the expert report and the further comments from both parties, I felt I needed to issue a further provisional decision. In my further provisional findings, I said there seemed no need for any additional expert evidence to be sought – that the detail available satisfied me that whilst RSA had failed Ms K, and her son, it seemed most likely that those failures had not had any lasting impact on their health. Regarding delays to the claim in summer 2023, I said it seemed to me that any caused had not been on account of any failure by RSA. I confirmed that my decision was only taking into account activity up to RSA's 5 September 2023 final response letter.

RSA said it accepted my further provisional findings. Ms K said she'd no comment to make.

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.

My further provisional findings were:

"Responses from the parties to my provisional decision

Whilst I note from Ms K that she hasn't chosen to comment on Mr D's report at this time, this was the moment for her to provide her views. It was never intended that the second expert would offer some kind of cross check or second opinion to that of the first (Mr D). And RSA, in reply, has suggested the second expert is no longer required. So the agreement previously reached between the parties has, in my view, broken down – there isn't a consensus between them for the basis for the second stage of the process and RSA, based on its understanding of the agreement, doesn't feel the appointment of a second expert, at this time, is necessary. With that agreement then having broken down, I need to assess the complaint based on the evidence which is available.

I also note here that Ms K noted that my provisional decision didn't comment on her concerns about RSA's contractor ceasing work in July 2023. Ms K did complain about this previously and I apologise to both parties for not including a review of this complaint point in my provisional decision. I'll take the opportunity, within this further provisional decision, to consider this aspect of Ms K's complaint.

Asbestos

My starting point here is that RSA failed Ms K. It left her in a property with an unresolved asbestos risk, where asbestos material had been disturbed and where drying equipment was then also installed. RSA accepts it failed Ms K in this respect. It has also paid £5,000 compensation as a result – to account for the upset caused by its failures. With that 'upset' including the worry caused to Ms K by this exposure.

What was not known when I issued those provisional findings was whether RSA should be doing anything else moving forward to reduce and/or manage any on-going risk to the health of Ms K and her son, which its failures had likely caused. That was because there was no expert opinion available on the asbestos risk to which Ms K and her son had been exposed. An assessment of that risk has now been completed by Mr D.

Having reviewed Mr D's report, I'm now satisfied that there is most likely no ongoing risk for RSA to reduce and/or manage. So I'm not currently minded to make RSA do anything more. I've explained my views in this respect below.

I've noted above that I facilitated the provision of Mr D's involvement, including ensuring he had the necessary detail available to him on which to base his findings. So I'm satisfied that the selection process was fair and that both parties had the chance to have their view of the important relevant matters put forward to Mr D for his consideration. I'm not minded to think, at this stage, that there was any failing in fairness in the appointment or that there is any good reason to question Mr D's findings on principle. I've then considered what he's said as I would any expert report provided to this Service – do his comments make sense and do I find his opinion compelling?

I can see from the report produced that Mr D took into account the background to this situation – the most key fact of which being that Ms K and her son were exposed to asbestos material for around five months. His findings flow from that and, in that regard they make sense. I note Mr D has examined the situation in hand here in the context of what is generally known and accepted about asbestos. And that comparison has led to him finding that, whilst RSA undoubtedly failed Ms K in the way the asbestos material at her property was handled, that failure has likely not impacted her or her son's future health. I think that what Mr D says in these respects also makes sense and is compelling.

The report puts into context the type of asbestos material being considered here. Mr D explains that there are many forms of asbestos material – some of which are more hazardous to health than others. He explains that the type Ms K and her son were exposed to was the least harmful. He said:

"A fallacy that has prevailed over the years is that "a single asbestos fibre can kill" this statement is misleading and yet is proliferated to this day. In reality asbestos illnesses usually result from significant exposure…"

From the detail within the rest of his report it is clear that he does not think Ms K and her son have suffered "significant exposure" on account of RSA's failures. The parties have copies of the report. So I won't set out the rest of its findings in detail here. But there was one comment in particular which I found compelling in the circumstances here – Mr D explains that only operatives dealing with what are viewed as particularly dangerous forms of asbestos, require mandated health checks.

Mr D explained that the asbestos material in question can be removed without licence – to remove more dangerous forms of asbestos, an operative would require a licence. He also explained that other laws relating to asbestos removal do not require non-licensed

operatives to undergo health checks. The law only requires licensed operatives, so those working with the more dangerous material day in and day out, to have regular checks. I think that supports Mr D's conclusion that Ms K and her son, exposed needlessly for around five months, to the least harmful form of asbestos material, are unlikely to have suffered a long term effect on their health.

In essence, Mr D is saying that as the law only sees fit to mandate health checks for licensed operatives, it would seem unnecessary to say Ms K and her son would need health checks. And I think that is a reasonable conclusion. I am not an asbestos or medical expert. But I don't need to be to follow the logic of this comparison.

Ms K was exposed, in terms of home insurance policy complaints, for an unusually long time – it is the longest I have seen in all of the many complaints I have considered. But Mr D's report satisfies me that, in terms of the likely risk posed by asbestos exposure – the timeframe is not that long at all. I think it's reasonable to say that, in asbestos terms, Ms K and her son did not suffer a "significant exposure" – because the type of asbestos was that which is considered least harmful and the period over which the exposure occurred was relatively short. With there being no "significant exposure" experienced meaning it is unlikely that Ms K or her son's health will be impacted.

As noted, RSA has already paid compensation for the upset caused to Ms K. From the evidence I have available, it seems its failures have most likely had no lasting impact on her (or her son's) health. As such I'm satisfied the compensation previously awarded by me, and already paid by RSA, fairly and reasonably resolves this complaint.

Contractor ceasing work in July 2023

I've seen comments from Ms K to RSA about this issue, and I've seen copy emails she's shared with us about activity which occurred around this time. I've also reviewed RSA's claim file notes from this period.

I know Ms K had been in discussions with the contractor ("J") about getting the works done. I know she spoke with J, as well as RSA and another agent of its about work she wanted doing which was not covered by her insurance policy. Ms K has explained that the main 'additions' were for J to fit a new sink and taps, new kitchen units and a new stopcock, instead of refitting the old ones. Ms K understood RSA was happy for these changes to take place and she was seeking agreement from J to do that work, understanding she may have to pay a sum to facilitate that. I can see from the emails Ms K shared with us that she thought these switches would be simple and, if anything, make it easier for J to offer a warranty for its work – because it would be fitting new items.

On 19 July 2023 Ms K was informed that J had decided not to complete the reinstatement work at her home. RSA's agent managing its contracts later explained that J had been unhappy to proceed given the uninsured works. Ms K couldn't understand that – I accept that, from her perspective, the arrangements had seemed to be going smoothly and it made little sense to her that her reasonable requests would have caused a problem.

In RSA's final response of 5 September 2023 it said it cannot force its suppliers to take on work outside of that covered by the policy. RSA acknowledged that J pulling out of the reinstatement contract had caused delays – but it felt its reasons for ceasing work were reasonable, so it felt the delay was unavoidable. It didn't think there was any reason such as bias for the decision J made. It reiterated it would not cover the cost of uninsured work.

I understand that this has been an incredibly difficult time for Ms K. I appreciate that, having got through the period of the claim blighted by the asbestos issue, and with the claim moving on to the reinstatement phase, Ms K, in July 2023 was looking forward to her home being repaired. I also understand then, when that suddenly changed and she was told, late on the evening of 19 July 2023, that J was pulling out, that she was devastated, frustrated and confused. And I can also see why – given how Ms K has explained the 'additional' work she wanted to be done – she couldn't accept the reason given for the decision J had made.

With all of that noted, I do think its most likely J chose to extricate itself from the contract to reinstate Ms K's home because it felt the mix of insured and uninsured work was just making the issue too complicated for it. For example, Ms K had picked a new stopcock. She was paying for this item because it was not something covered by the policy. But she was asking J to fit it. And she was asking J to comment on whether she was looking to buy the right item. From Ms K's perspective that was a simple enquiry. But, from my removed perspective I can understand that would have given J some concerns. In essence the lines started to blur between its liability to RSA as its client for the insured works and its responsibility to Ms K for any uninsured work – it became complicated. I can also see from the emails that J became worried about the flow of the work because, seemingly, some work was to be done by a contractor employed by Ms K – which would mean J would have to plan its work to fit in around that contractor.

I've picked above just a couple of examples which I think show that, for J, the requests Ms K was making were not as straightforward as she believed. I'm not persuaded it was unfair for J to change its mind about completing work at Ms K's home. I'm also satisfied that it's not reasonable to blame RSA for J not progressing with the work or for the pause in the claim which resulted. RSA was not bound to complete uninsured works, so I can't reasonably blame it for its contractor not being prepared to remain involved once it felt the uninsured work was making the claim reinstatement too complicated.

It's unfortunate that J said it would not continue with the claim, but I'm satisfied it had good reason for doing so. Further, I'm satisfied that its action is not something I can reasonably criticise RSA for and I'm satisfied that any delay in the claim which resulted was not caused by any failure of RSA.

<u>After 5 September 2023</u>

I'm aware that after RSA issued its final response letter of 5 September 2023, it wasn't possible for another contractor to complete the reinstatement work. As such, a cash settlement was offered to Ms K and subsequently paid. This was to cover the outstanding claim related work. I'm aware that Ms K accepted that sum because she felt she had to, not because she agreed it was correct. I am not considering anything which happened after RSA's 5 September 2023 final response letter.

<u>In summary</u>

I've found that RSA failed Ms K regarding its handling of the asbestos element of her claim. In my provisional decision, I awarded, and RSA subsequently paid, £5,000 compensation in that respect. I'm not minded to require it to do anything more.

Regarding the contractor's decision in July 2023, I've not found any failing by RSA. I'm not minded to make any award against RSA in this respect."

I've reviewed my findings issued on this complaint. I note RSA has accepted them and Ms K has confirmed she has no comment to make. In light of all that, I've seen nothing which might reasonably give me cause to change my further provisional findings (as quoted above). As such I can confirm that those further provisional findings are now those of this, my final decision.

My final decision

For the reasons set out above, I uphold this complaint. However, also for the reasons set out above, I'm not requiring Royal & Sun Alliance Insurance Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 1 July 2025.

Fiona Robinson
Ombudsman