

complaint

Mrs J complains as attorney for Mrs D. She is unhappy with the way that Royal & Sun Alliance Insurance Plc (RSA) has dealt with Mrs D's claim for subsidence damage to her property.

background

Mrs J made a claim to RSA in 2014 following the discovery of cracking to Mrs D's property. RSA has no record of that but it is agreed the claim was registered in March 2015. Mrs J arranged for an initial survey which recommended a structural engineer's report. Then a full inspection and tests were carried out. This recommended that the drains should be repaired and attributed at least part of the damage to leaking underground water. RSA carried out monitoring and some parts of the drain were repaired under the accidental damage cover. After the monitoring finished, RSA advised that the property was stable. It proposed substantial superstructure (above ground) repairs. However parts of the damage like the floor slab coming away from the walls and some historic damage weren't included in the scope for repairs as RSA said they weren't covered. Mrs J asked if RSA was willing to offer cash settlement instead of doing the repairs. It said it would, subject to Mrs J being satisfied this was appropriate.

After referral to this service Mrs J had a structural engineer produce a report. I'll refer to him as "Mr B". He disputed RSA's findings and said in particular that the floor slab damage was caused by subsidence and that the property would need to be underpinned. On referral to this service our investigator felt that Mrs J's engineer's report was to be preferred and proposed that RSA proceed in line with that report. She further proposed that RSA pay compensation of £500 for the way the claim had been handled. RSA accepted the proposed compensation but its engineer disputed the findings of Mrs J's engineer. It suggested an independent engineer be appointed. But the terms of that couldn't be agreed and the matter was passed to me for consideration.

After reviewing the case I asked if RSA could produce evidence that the cause of the detachment of the floor slab wasn't the same cause of the subsidence to the rest of the property. No inspection of the soil under the floor slab had been made, so RSA agreed to carry this out. This became a problem because the internal ground floor has thermoplastic tiles on it, which contain asbestos. RSA was going to arrange removal of these but at the time of writing that has proved too difficult to arrange. I then agreed to reconsider the matter as we thought the continual delays weren't helping either Mrs J or Mrs D.

I issued a provisional decision. In it I said that RSA should carry out the repairs as it proposed in its reports (or at Mrs J's option on Mrs D's behalf pay a cash settlement). It should include the floor slab and the conservatory in its repairs. Both parties responded to my provisional decision. I shall deal with their objections/comments in my findings.

my findings

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

As a preliminary point I would observe that this matter was brought to this service by Mrs J because the parties couldn't agree on the terms of any repair, or on the appointment of a further structural engineer. The matter was put on hold for number of months because I

wanted to see evidence from RSA by way of tests regarding its refusal to include the floor slab in its scope of repair. Because those tests simply weren't able to be carried out (and I think RSA has had plenty of time to arrange them) I agreed, after consultation with the investigator that I would make a final decision. I don't think it benefits either party for this matter to drag on. I don't intend to order any further investigations or reports.

In my provisional decision I said:

"engineer's findings

Mr B's report was highly critical of RSA's report. But having considered both reports I think the essential differences are:

- 1 The likely cause of the subsidence and whether the property is stable.*
- 2 Whether the cracking is moderate or severe (as all cracks are to be repaired this distinction isn't so important).*
- 4 The overall type of soil.*
- 3 Whether the damage to the floor slab is caused by the subsidence (and therefore covered)*
- 5 Whether the conservatory can be taken down and reused.*
- 6 Whether underpinning is necessary.*
- 7 Whether historic damage needs to be repaired.*

Mr B clearly makes some very persuasive points albeit he is rather confrontational. He is a structural engineer whereas the person who inspected on behalf of RSA doesn't appear to be. But RSA has had his report confirmed by a structural engineer. Mr B didn't carry out any independent tests so I think from a level of expertise both sides are in a similar position. I do have to bear in mind that no doubt the most robust way to repair the property would include underpinning it. It would also be preferable to repair any historical damage. But in both those cases RSA doesn't have to carry out that work unless it's necessary to carry out a lasting and effective repair."

I reiterate that RSA's report has been confirmed by a structural engineer. Whilst I appreciate that Mr B may be more experienced and has local knowledge, his criticisms are based on reviews of RSA's reports and tests, he hasn't had any tests of his own carried out.

1 likely cause

In my provisional decision I said:

"The likely cause of the subsidence was said by RSA to be consolidation of the underlying soil. As I understand consolidation to mean settlement of the building (and not usually covered) I'm not clear what this means. But RSA did say that drainage repairs were needed, and these took place under the accidental damage cover in the policy. As the property has since been monitored and found to be stable RSA says the likely cause was defective drainage. Mr B disputes both possible causes of damage. He refers to the drainage system of the area having changed in the past, causing rises in groundwater kevel but hasn't detailed what the cause is in this case. Because of the fact that the property has remained stable since the drain repair, it does seem likely that the drains were the cause of the subsidence."

Mrs J disputes my view of the likely cause and says that RSA's loss adjuster agreed that the cause of damage wasn't the drains. Mr B reiterates that the cause is changes in ground level

due to variation of moisture content in the soils. I can only say what my view is from having read all the evidence. This is that the property appears to be stable and that, the drains having been repaired were the likely cause of the subsidence. I haven't seen anything to show RSA disagreed with that view.

Both Mrs J and Mr B say that the monitoring carried out by RSA was inadequate. But Mr B hasn't said that the tests were wrong and, as I've said didn't carry out any further such tests. Level monitoring was carried over three seasons. The property was found to be stable. Mrs J has been advised about other sorts of tests including crack monitoring. To determine the stability of a property level monitoring is currently considered the best form of monitoring. I think the monitoring carried out by RSA was adequate.

2 severity of the cracking

In my provisional decision I said:

"RSA says the cracking is moderate, according to the Building Research (BRE) Digest classification. Mrs J's engineer says it should be classified as severe. I can't resolve the arguments here – I would think both parties are partly right. But as RSA's proposals include superstructure repairs, and the severity of cracking when the property is stable has no impact on the argument as to whether to underpin or not, it doesn't really matter."

Neither party has made any point about this so I won't comment further.

3 the overall type of the soil

In my provisional decision I said:

"Mr B criticises RSA strongly for its classification of the type of soil. Again RSA disputes this. But both are agreed as to the makeup of soil from the samples, and that it is a type of clay soil, vulnerable to the sort of subsidence alleged. So I don't really think the dispute over classification is relevant."

Mr B has made some comments about this, but I still have the view that this dispute is irrelevant.

4 whether the damage to the floor slab is caused by the subsidence

In my provisional decision I said:

"If it is, it's covered. If it's not due to the same cause at the same time, it's not covered, at least in this claim. Mrs J's engineer has explained that the damage to the floor slab can happen at the same time as the damage to the walls, RSA has explained that the walls are structurally detached from the floor, so movement in the walls wouldn't affect the floor. It also referred to the common problem with floor slabs built in the 1960's and 1970s (it later said also the 1950s) during the mass building programme at the time. The property was built in 1953. I don't think it can be assumed that the floor slab has moved due to an independent cause. And as I've set out above, no inspection has been made of the underlying soil, and efforts to arrange this have proved to be too difficult."

As RSA has had several months to arrange the inspection of the underlying soil (or could have done it as part of its original inspections), I don't propose to allow it any longer to carry

out such inspection. I think, in the absence of evidence proving otherwise, that RSA should deal with repairs to the floor slab. This is likely to involve removal of all the floor tiles containing asbestos.”

RSA still says it isn't liable to carry out slab repairs. It says it tried to arrange further internal investigations but Mrs J refused. I asked if it would carry out further testing about eight months before this decision. Our investigator chased matters up a number of times but there was very little information coming back. Mrs J says there was a disagreement over where to drill further boreholes and over the thermoplastic tiles. It may well be that following my provisional decision Mrs J hasn't permitted RSA to return. But I reiterate that it has had a number of months to do this and/or give a comprehensive explanation why it couldn't. In the absence of that my view remains – RSA must carry out floor slab repairs as I'm not persuaded that the floor slab has moved due to an independent cause.

As I've set out above I won't be requiring further tests. If Mrs J accepts my decision RSA will have to address the floor slab repairs.

5 whether the conservatory can be taken down and reused

RSA said that “With regard to the conservatory consideration will be given to rebuilding the conservatory on new appropriate foundations. The reuse of the upvc framework will only be considered if this is viable, otherwise the framework will be renewed.”

I said in my provisional decision that I thought that was reasonable. Mrs J and Mr B would like me to direct RSA to carry out this work. I don't think, until the framework is taken down, that it can be determined whether it can be reused. So I think that RSA's position on this is reasonable.

6 whether underpinning is necessary

In my provisional decision I said:

“Here the parties strongly disagree. Mrs J's engineer says that it is the only way to carry out an effective repair. He doubts the results of RSA's monitoring. RSA says the property is stable, the substantial superstructure repairs will be suitable. It will provide a certificate of structural adequacy after these have been done.

I think it reasonable to accept that, if the property has remained stable, underpinning won't be needed. As I've said this may well be the most robust solution. But RSA doesn't have to carry out preventative work under the terms of the policy unless it can't do an effective repair without them. So I don't propose to direct RSA to carry out underpinning.”

Mrs J says they are prepared to concede that underpinning may not be necessary if an effective repair is undertaken. She doubts this because of a nearby property that had repairs undertaken, only for the subsidence to return. Mr B says that a certificate of structural adequacy must be signed by an engineer, not a company or it won't be accepted for insurance purposes.

I haven't seen anything to persuade me that underpinning is necessary. Mr B is seeing a problem that isn't there. If RSA carries out the repairs through its contractors it will need to ensure they are effective and that any certificate is adequate for insurance purposes.

7 repair of historic damage

In my provisional decision I said:

“The policy started in 2011 and the damage reported as dating back to then. I think from the terms of the reports parts of the damage go back much further than that. RSA isn’t responsible for damage that occurred prior to its policy starting. But again it has to do an effective repair to damage that was caused within its policy term. So if this can’t be done without repairing the historic damage then RSA has to repair the historic damage as well. Mrs J’s engineer deals with the history of the property in his report. RSA says it can carry out the repairs to the subsidence covered under the policy without addressing the historic damage. Again, bearing in mind it will be producing a certificate of structural adequacy I think that’s reasonable”

Mrs J wants the historic damage to be specified. Mr B says there is no historic damage, it is all recent and should be repaired. From the written evidence I don’t think Mr B is right. RSA has issued reports and has issued a full scope of works saying what damage will be repaired. If RSA carries out the repairs it will be easier for it to separate out the damage.

I’m aware that as the repairs haven’t started, there is always the possibility that further issues will arise. Mrs J has asked, if she accepts a cash settlement, that RSA specify what the settlement covers. I think that’s reasonable but I won’t issue a specific direction as RSA will only have to do this if it pays a cash settlement.

further cracking

Mrs J wants the cracking to the hard standing and the paths to be addressed. RSA has previously said these aren’t connected to the subsidence. I don’t think that the evidence shows that these are part of the subsidence damage.

Mrs J also says further cracking has occurred before and after monitoring stopped in 2016. As I understand the property has been unoccupied since 2015, so some deterioration of the structure might not be altogether surprising especially if the property has been unheated. She refers to new cracking having occurred both before and after monitoring. But as I’ve said I think monitoring has been adequate and shows the property to be stable. Mr B hasn’t referred to any new cracking. Ultimately I have to base my view on what the experts say. I haven’t seen any expert evidence to show new cracking suggesting further movement.

compensation

In my provisional decision I said:

“I think it’s likely that RSA did get notice of this claim in 2014 but didn’t register it. Nevertheless Mrs J didn’t take any further action for a year (I know she had other concerns with Mrs D’s health). I don’t know why she was told to get her own survey though understand that RSA did pay for this. It’s clear that Ms J is meticulous in her detailing of events and she did have to do a lot of chasing and asking for explanations of proposed work. Mrs D had to leave the house in April 2015 to go into residential care. Mrs J made clear to RSA that she was anxious about the position. I also don’t think the issue with the floor slab was clearly explained. Compensation of £500 was proposed and I think that’s reasonable.”

Mrs J would like the compensation increased to reflect recent delays. I can only look at compensation up until the time of Mrs J's complaint to us, so won't increase it.

accommodation costs

In my provisional decision I said:

"Mrs D had to leave the home because the council had condemned it as unfit for human habitation but I don't think that the cracking alone caused that. Other issues were found. I know this was a very difficult time for Mrs D and her family but I can't fairly say that but for the subsidence claim (part of which reasonably involved monitoring the house over several months) Mrs D would have been able to stay. So I don't propose to make RSA pay for any alternative accommodation costs. I know it was proposed that Mrs D would return but again I can't hold RSA responsible for that not happening."

Mrs J would like me to reconsider this and direct a payment to be made in respect of some of those costs. I've had another look at this but my view of the matter, as I've set out above, still stands.

vermin

In my provisional decision I said:

"Mrs J says they made two claims to RSA for vermin infestation which were turned down. This isn't covered directly under the policy so for RSA to pay for this I would have to find that its action in failing to repair the property caused this. I can't in all fairness say that this is the case. The subsidence claim was always going to take a while and I don't doubt that if the home is unoccupied this increases the risk of this sort of damage. I've noted that when RSA's contractors came out to test the asbestos tiles, they noted evidence of infestation, and sealed up the cracks temporarily. This seems to have stopped it continuing. I don't propose to ask RSA to take any more action."

Neither party has made any relevant comment about this, so I won't comment any further.

increase in insurance premiums

In my provisional decision I said:

"This is an unfortunate result of there being an ongoing claim, and it's possible that the premiums may remain high after any repairs. I asked RSA for details of its premium increases. It appears that there was a large increase due to the property becoming unoccupied. But the increases since then reflect a normal loading which it applies to all its policyholders. And having reviewed those details I think that is fair."

Neither party has made any relevant comment about this, so I won't comment any further.

cost of engineer's report

Mrs B has incurred costs instructing a structural engineer. She points out that our investigator did propose that RSA should pay this. We would only normally direct payment for an expert report where that report has changed the insurer's decision. Here I don't think that is the case so I won't order it.

my final decision

I uphold the complaint in part and require Royal & Sun Alliance Insurance Plc to:

- settle the claim for subsidence by carrying out the necessary repairs it has proposed (or at Mrs J's option on Mrs D's behalf, offer a cash settlement) and include those needed to the floor slab and conservatory.
- pay Mrs J on behalf of Mrs D £500 for the distress and inconvenience caused by the handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J on behalf of Mrs D to accept or reject my decision before 1 July 2018.

Ray Lawley
ombudsman