complaint

Mr W is unhappy with his home insurer Royal & Sun Alliance Insurance Plc (RSA) because it has declined his claim made for damage to his sewage receptacle.

background

Mr W made a claim to RSA. He told it that part of his septic tank had collapsed. RSA appointed a loss adjuster and Mr W provided a report along with photos that showed the nature of the 'tank' and gave an opinion on what had caused the damage to it.

The loss adjuster appointed a drainage company and there were two visits to assess the tank. The drainage company wrote a report. It referred to the 'tank' as a 'cesspit'. It said its construction had likely been poor and work done in 2008, along with the general poor construction, had likely caused the collapse to occur over time.

Mr W said the report was filled with inaccuracies and assumptions. He challenged it but felt appropriate responses to his concerns were never given. RSA had another specialist review the claim. He explained that the receptacle was being described as a cesspit because it was akin to a soakaway. He went on to discuss again the perceived poor design and opinion that damage had occurred over time and it was still felt these concerns defeated RSA's liability for the claim.

Mr W complained. RSA said Mr W hadn't chosen to take the extended accidental cover which was optional on his policy. It also said that damage caused over time wasn't covered. It further said that digging out the bottom of the pit in 2008 had likely caused the collapse – meaning the claim would fail even if the optional cover had been selected. However, it accepted that it hadn't handled things well and indicated that it agreed the initial report was somewhat flawed. It said it would pay £250 compensation and pay Mr W's expert's fees. Mr W remained unhappy and so complained to this service.

Our investigator noted the policy exclusions in respect of gradual damage and poor design. She said she thought RSA's decline of the claim had been fair. She also thought that RSA's compensation and payment of fees made up for the losses caused by its failure to handle the claim appropriately and in a reasonable time.

Mr W asked for an ombudsman to review his complaint. I did so and issued a provisional decision. I felt RSA should pay Mr W £600 compensation but it disagreed. It said it had already compensated Mr W sufficiently by offering him £250 and also paying for his expert who had then shielded Mr W from most of the pressure of pursuing his claim. I've taken RSA's comments into account but they don't change my mind. I've set out my final findings below, which incorporate those I set out provisionally.

my findings

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

what the policy will cover

The policy covers certain events and has a wider optional extension for any general accidental damage. I say '*general*' in this context because one of the specific events covered is accidental damage to underground tanks.

RSA has satisfied me that Mr W didn't opt to extend his policy to cover general accidental damage. The only event the policy gives cover for that might respond to the damage Mr W has reported is that for accidental damage to underground tanks. However, the sewage receptacle at Mr W's home is not, in my view, an underground tank. I've heard Mr W's arguments about why he thinks it *isn't a 'cesspit'*. But they don't persuade me that it *is a tank*. You could have a receptacle that is neither one nor the other. And it may well be that is what Mr W has here. It certainly isn't, in my view, a tank.

A tank would most properly be described as an item formed elsewhere to hold liquid and brought to the site for use. Further it will normally be made of metal or occasionally plastic. The key thing is it is a self-contained sealed structure. And insurers will chose to offer accidental damage cover for such because while the term 'accidental damage' is quite wide, the nature and construction of a tank means claims in these respects will be relatively limited. Conversely, an insurer will not usually want to offer cover for something that is highly likely to suffer damage that could be described as accidental, such as a brick-lined pit.

Now, if Mr W had the more general cover then RSA would have to respond. And consideration of the cause of the damage, and whether reliance on the relevant exclusions had been applied fairly, would come into play. But based on the cover available, and given that RSA had chosen to offer that cover on a limited basis only, Mr W's claim fails.

I appreciate that this will be very disappointing to Mr W after all of this time and all of the effort and arguments that have abounded. And in this respect I think RSA failed him.

policy wording

I have considered the points Mr W has raised about the policy wording not being clear but much of this falls away as a consequence of the damage failing to meet the definition of an event covered by the policy. I suspect though that Mr W may say that as the phrase "*underground tank*" is not defined its meaning is unclear and so should reasonably be extended to cover his receptacle. However, I think the word "*tank*" has quite a specific meaning that doesn't reasonably need defining further, and I've explained this above. So I don't think the policy wording in this respect is unclear.

claim handling

This, in my view, should have been a simple claim declined at the outset as soon as the loss adjuster had considered the report submitted by Mr W. The loss adjuster always has access to the policy wording and, in fact, it is its job to consider whether the policy responds to the claim made.

The first consideration of any loss adjuster should be whether the events covered by the policy, along with any optional extras that may have been taken, are likely to cover the loss that has been notified. Sometimes such might entail a visit to the property to view the damage, but here a clear report had been provided at the very outset by Mr W.

The report clearly documents the nature of the receptacle and includes photos that made its form of construction even more apparent. I can't see any good reason why the loss adjuster felt the need to attend the property and/or appoint the drainage company. There was no need to move on to consideration of the cause of damage because the nature of the receptacle and the absence of the general accidental damage cover from the schedule meant the claim failed. So everything that happened from the loss adjuster's visit to the property and appointment of the drainage company onwards, was all unnecessary. All of the arguments about the accuracy or otherwise of the company's report, the debates about what had caused

the damage, all of the site visits which Mr W had to attend, along with all of the stress and inconvenience that accompanied those enquires. All of it could've been avoided.

While Mr W did appoint a professional, that appointment was really made to obtain technical advice and consideration. Mr W's expert did handle the technical arguments and correspondence but Mr W was still very much involved in trying to push the claim forwards, making various calls and chases to the loss adjuster and writing various emails. He also details that use of the garden is being restricted. Further, Mr W still attended meetings and the first loss adjuster's visit took place, as did the first visit by RSA's initial drainage company, in the period *before* RSA's payment of professional fees for Mr W's expert began. This was all distress and inconvenience that would have been avoided if RSA's loss adjuster hadn't made a fundamental mistake about the cover. So I'm not convinced that Mr W was shielded in the way RSA suggested and I'm not persuaded that its payment of his professional fees can fairly be given any weight against the level of compensation due.

Even to the end of its process RSA didn't make much of the lack of policy cover. Whilst it mentioned it in its final response, it kept its focus on why the nature of the damage meant it had no liability. The only good reason I can think of for it having done this was so as to not highlight the glaring failure it had made. I realise that Mr W will be disappointed by my reliance on the lack of cover to not uphold his complaint but I can't sweep this issue under the carpet in the same way RSA has sought to. Nor can I fairly make it uphold the claim merely because it has failed him in this way. That would be punitive and I can only make awards that a) put a policyholder back into the positon they should have been but for the failure – in this case that means having no cover for the loss, and/or b) compensates them for the distress and inconvenience caused by that failure.

Here I think Mr W suffered a lot because RSA didn't assess this claim properly at the outset. I know it has paid or offered £250 in this respect but I'm satisfied that fair and reasonable compensation totals £600 (a payment of a further £350 if the £250 has already been paid).

my final decision

I uphold this complaint in part. I require Royal & Sun Alliance Insurance Plc to pay Mr W a total of £600 compensation (the professional fee payment being entirely separate and irrelevant for the purpose of this award). This or any part of it remaining to be paid following a previous payment must be paid within 28 days of the date on which we advise Mr W has accepted my final decision (if he does).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 April 2018.

Fiona Robinson
ombudsman