

complaint

Miss R has complained that Royal & Sun Alliance Insurance Plc (RSA) has carried out substandard works to reinstate the kitchen in her flat, following an escape of water from the property above. References in this decision to RSA include its agents including claims managers, loss adjusters and contractors.

background

I issued a provisional decision on this complaint on 4 September 2018. A copy of that is attached and forms part of this decision. Briefly, I upheld the complaint in part and required RSA to:

- extend the period for which it paid Miss R and her fiancé disturbance allowance, to include the time from the point the kitchen ceiling was removed;
- source three appropriately qualified independent surveyors – one of which Miss R would then select (unless there is already agreement between the parties on the work that needs rectifying);
- ask a different contractor to those previously involved to quote to carry out the remedial work identified by the new surveyor – or if Miss R prefers, pay a sum equal to that quote to her, so that she can assume responsibility for arranging the work;
- make a total payment of £400 (including the £250 already offered) for the distress and inconvenience Miss R suffered.

I didn't uphold the complaint in its entirety, and my reasoning in the attached provisional decision explains why.

Miss R responded to the provisional decision on 24 September 2018 indicating that she would be prepared to accept it in order to move forward. But she wanted confirmation on what timescales were in place for RSA to:

- provide the list of 3 independent surveyors
- respond to the report provided by the independent surveyor
- source a contractor, and (if required) complete the works
- pay the sum for distress and inconvenience
- pay the additional disturbance payment

RSA didn't respond to the provisional decision. As the deadline for responses has now passed, it falls on me to make my final decision on this complaint.

my findings

I've reconsidered all the available evidence and arguments from the outset, to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account Miss R's comments in response to my provisional decision.

I see no reason to depart from the conclusions I reached in the provisional decision, particularly as neither party has made any further points about the extent to which I was proposing to uphold the complaint. Miss R's comments have been restricted to the timescale for RSA to comply with the decision.

With the exception of the distress and inconvenience and disturbance payments, I'm unable to be prescriptive on when matters must be settled – as inevitably this could take some time and I'm not able to foresee any issues that might arise.

However, RSA should be well aware of its obligations to comply with an ombudsman's decision in a timely manner. Parliament didn't give this service legal powers to enforce a decision, but I would remind the parties that Miss R would be able to take RSA to court on the basis of the decision I've issued, if it isn't progressing through the steps I set out above.

We can also liaise with RSA on Miss R's behalf if she considers it's delaying compliance with the decision. We can also if necessary report matters to the regulator, the Financial Conduct Authority. So I would encourage Miss R to make contact with us in the first instance if she has concerns that RSA is taking too long to comply with the decision.

On the matter of the distress and inconvenience and disturbance payments, I expect these to be calculated and paid to Miss R within 28 days of RSA's receipt of her acceptance of this decision.

my final decision

I uphold this complaint and require Royal & Sun Alliance Insurance Plc to take the steps summarised at the start of the 'background' section above to pay compensation to Miss R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 November 2018.

Gideon Moore
ombudsman

PROVISIONAL DECISION of 4 September 2018

complaint

Miss R has complained that Royal & Sun Alliance Insurance Plc (RSA) has carried out substandard works to reinstate the kitchen in her flat, following an escape of water from the property above. References in this decision to RSA include its agents including claims managers, loss adjusters and contractors.

background

Miss R is the policyholder and lives with her fiancé. She reported the claim in early June 2016. RSA's claims manager appointed a specialist restoration company to inspect the damage, which it did and reported back two days later. But repair work couldn't begin until Miss R's neighbour had stopped the leak, which happened the following week.

A contractor was then needed to remove parts of the kitchen to access and test for asbestos in the ceiling. The claims manager found a suitable contractor in the last week of June, but they weren't able to start until 1 July. They reported back to the restoration company five days later, which made a note that Miss R's fiancé had asked if they should be moved to alternative accommodation. At that stage the claims manager didn't consider this was necessary, as although there was reduced space, all the kitchen facilities were available.

However at 2 subsequent weekly inspection points, Miss R's kitchen was found not to be drying out as expected. The claims manager took the decision to strip out the kitchen base units. This was scheduled to take place one further week later (at the end of July), with alternative accommodation required because the wall-mounted boiler had to be removed.

Miss R says this work began about 10 days behind schedule. Over a few days the kitchen units and wall plaster were removed, and dehumidifiers then installed. A drying certificate was issued by the restoration company on 31 August but this was unsigned, and Miss R says that this caused a further delay before the contractor visited them to discuss their new kitchen layout on 8 September.

Four days later Miss R emailed the contractor with their decision on the kitchen layout including flooring, oven, gas hob and extractor fan and sink fittings. She said that they'd spoken to the loss adjuster and the free-standing white goods would likely be replaced separately.

The kitchen refurbishment then started immediately. It took more than six weeks; slightly longer than the timescale for the single contractor working on it, as this included some delays from the plaster taking longer to dry, and confusion about the fitment of the new hob. The boiler was reinstalled and an inspection certificate signed off on 13 October.

Towards the end of the works on 11 October, Miss R's fiancé contacted RSA to complain that the workmanship was "terrible", and he had asked the loss adjuster to inspect it with no success. They were due to return from their alternative accommodation on 17 October. But they were concerned about crooked worktops and drawers, and having 40cm less cupboard space than previously. They'd been asked to pay if they wanted more cupboards.

Miss R's fiancé also believed the contractors had damaged the wallpaper and scratched the floor when moving furniture out of the kitchen. RSA seemed to agree the matters were of some concern, and sent a critical email to the loss adjuster making clear that they expected them to rectify the situation. The 'move in' date was put back to 29 October.

On 3 November Miss R encountered further problems with the gas hob making 'exploding' sounds, which the contractor initially thought was an air pocket – and thought would resolve itself. The local gas board attended on 6 November and its notes say that it "located and repaired escape at cooker". Miss R asked them to provide further information, and she passed on the following report from the gas board dated 21 November:

"Our Engineer Put a Gauge test on the Installation and found that there was a 6 millibar drop. He traced the escape to the Gas Hob, where he found a loose connection which he tightened."

Miss R and her fiancé formalised their complaint on 8 November. This and subsequent correspondence set out the following additional concerns:

- being out of their property for 12 weeks because the contractor only sent one fitter to install the kitchen
- the contractor not removing the oven to check the supply pipe for a gas fault
- incorrectly cut cornicing and offcuts used to construct cupboards leaving 'holes'
- the boiler switch fitted upside down, with wiring that appeared to be unsafe
- the extractor fan not working
- white goods not being removed from the kitchen and becoming dirty during the work
- delay in starting the refurbishment after the drying certificate was issued
- the week's delay during October before the loss adjuster came to inspect the faults
- seven hours spent on the phone to the loss adjuster chasing for disturbance payments, and several more hours in calls to all parties involved
- the ceiling not being covered after the asbestos was removed, meaning they spent several days cleaning up dust which had been blown by the dehumidifier
- the accommodation organiser being slow at processing hotel bookings, meaning they had to move four times in a week and were left with last minute (unseen) choices

Miss R and her fiancé believed the contractor was unwilling to rectify matters and had simply waived the charge it was intending to make for supplementary lighting in compensation. By early January 2017 they found the boiler needed continual re-pressuring and they felt it must have been damaged by the leak. But the contractor provided a copy of the boiler test certificate and didn't consider there was a fault.

RSA responded to Miss R's complaint on 13 February 2017. In summary, it said:

- In respect of the length of the claim, there were a few issues that could have been done more quickly, but most were dealt with in a satisfactory manner.
- It was still waiting to see a full report on the repair to the gas hob from the gas board.
- There had been some confusion over whether the wet kitchen units were to be reused, which was why they'd initially been left in a bedroom and then removed.
- White goods shouldn't have been left in the property while works were carried out.

- The company who manufactured the kitchen would need to deal with the faulty fan.
- It had photos to prove some damage to Miss R's floors, walls and ceiling was already there before the work started
- It wasn't compulsory to 'sheet up' the ceiling, and the asbestos removal was not rushed but carried out to Health & Safety Executive requirements.
- It accepted some of the reinstatement work was not up to standard, and Miss R could appoint her own contractor to rectify this (at RSA's expense) if she wanted to.
- £250 compensation was offered for the trouble and upset caused.

Miss R and her fiancé disagreed with much of RSA's response. They considered they'd already given enough evidence from the gas board of there being a serious fault with the hob. The asbestos removal company had told them the ceiling should have been covered, and they didn't feel they should have been at home when this work was carried out because they didn't want to cook in the presence of dust. They were concerned to know the results of tests carried out for contamination of their appliances such as the boiler.

The kitchen manufacturer apparently attended the property and said the extractor fan needed to be vented outside. A new hole for a pressure release pipe for the reinstalled boiler had also damaged Miss R's exterior wall. Miss R and her fiancé felt RSA should check the metadata on any photos of damage to verify the dates. They were seeking more compensation for the upset they suffered, including the excessive time spent on the phone.

It's clear that Miss R and RSA were not seeing eye-to-eye on these matters, and progress to rectify the outstanding issues became slow. In mid-March RSA liaised with the loss adjuster and arranged a further meeting at the property, which the contractor would also attend. A final report would then be drawn up which RSA would then act upon to complete the work to the required standard.

Miss R and her fiancé made clear that they didn't want any further involvement with RSA's claims manager and contractor, and were willing to select another company themselves. They were anticipating extensive work being needed to replace the wallboards, which might need the walls behind to be replastered. They said the loss adjuster had agreed parts of the kitchen would need replacing, and it may be cheaper to start again.

It doesn't appear Miss R and her fiancé have taken steps to appoint their own contractor. They provided a number of photographs to RSA on 24 March 2017 illustrating further problems with the kitchen:

- an electrical socket for the washing machine lying on the floor, and the trailing cables being tangled around the pipes to the sink
- a loose drawer handle
- a gap visible on the underside between two wall cupboards
- laminate flooring in the kitchen being cut short of the edge beading

RSA considered it had reached an impasse with Miss R and her fiancé but confirmed that its offer of £250 compensation still stood. It arranged to send this as a cheque. And it was prepared to consider an independent quote obtained by Miss R to rectify any issues that were materially wrong with the kitchen.

One of our investigators reviewed the evidence both parties had provided, including further photos from Miss R. In summary, he agreed with RSA that Miss R should choose a new contractor which RSA would pay for, given the issues that were evident.

He also thought a higher amount of should be paid to Miss R for the upset RSA's contractors had caused. However he firstly took into account that a significant amount (about £11,700) had already been paid to relocate her and her fiancé into alternative accommodation, plus £10 per person per day disturbance allowance. He considered a further payment of £400 was sufficient compensation for:

- delays in completing the work
- distress caused by the gas leak
- storage of wet kitchen units in the bedroom and white goods left in the kitchen
- damage caused to the floors and wallpaper
- poor finish to some of the fittings in the kitchen
- excessive time spent on the phone to RSA's contractors and agents

RSA didn't respond to the investigator's view. Miss R didn't agree with his proposals because they were finding it extremely difficult to source a contractor willing to 'touch someone else's bad workmanship'. They considered it would be easier and potentially cheaper to install a new kitchen from scratch.

She also felt that £400 was insufficient compensation given that they could have been seriously injured or killed by the gas leak. The only reason the amounts paid out for accommodation/disturbance were so high was because of RSA's delays, so that shouldn't be taken into account. And they've had to pay an excess of £250 on their claim, which RSA is unwilling to recover from the owner of the property above.

my findings

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

alternative accommodation and disturbance allowance

This service would normally expect the insurer to consider providing alternative accommodation, if the cooking and/or washing facilities were unavailable. This point was definitely reached when RSA decided the kitchen base units and boiler needed to be removed, and I can see that it offered alternative accommodation from that date.

I'm not in a position at this stage to say that alternative accommodation was required while the asbestos in the property was being looked into, as that wouldn't necessarily have been the case. I haven't had sight of the testing company's report, but I expect RSA to be able to demonstrate in response to this provisional decision that the appropriate precautions were taken. And I also expect it to be able to release details of any testing or certification given to confirm that there is no remaining risk from asbestos.

What does however seem clear is that Miss R and her fiancé were left with a lot of plasterboard dust after the kitchen ceiling was removed. Whilst it would be difficult to sheet up the ceiling during the removal process itself, I agree it would have been reasonable to expect it to be at least loosely covered with sheeting afterwards to prevent the majority of any further dust and dirt dropping down from the flat above. I say this particularly as this was a kitchen where food was being prepared and cooked. So I can

understand why they didn't want to cook meals at home, and I don't think RSA has made sufficient redress for this.

I think it would be fair for RSA to extend the period for which it's already paid Miss R and her fiancé disturbance allowance. This is to include the time from the point the kitchen ceiling was removed, given that RSA's contractor seems to have taken insufficient steps to alleviate the spread of dirt and dust at that time.

existing work to be rectified

Both parties seem to be in agreement in this case that the building contractor failed to carry out some of the works to the required standard. There may be some dispute as to how much of the work needs to be rectified. But Miss R is, understandably, unwilling to allow the same contractor or claims manager to carry out or organise the work in her kitchen. And she hasn't been able to find an independent contractor who is willing to get involved unless they're able to start from scratch with a new kitchen.

Having looked at the issues Miss R's identified, I'm not presently satisfied it would be necessary to replace the entire kitchen in order to rectify them. For instance, should it be mutually agreed and accepted between the parties that some of the base units, drawers and worktops are out of alignment, there may be means of changing this by way of the adjustable feet on those units. I consider that now needs to be explored. And it appears there are some unsightly gaps on the underside of cupboards and around boxed-in pipework, which require covering over or filling.

I agree with Miss R that some of the cornices on the wall units don't appear to have been put on straight – and in some cases it may be possible to refit the existing materials. Although Miss R's photos show the 'fixed' wiring behind the base units is not buried in the wall, I'm not aware it's required to be – and this may have been a feature of the original kitchen. But I expect RSA to be able to demonstrate that the way the wiring and socket has been left meets the appropriate building regulations.

It appears some of the problems have resulted from the boiler being refitted further to the right than its old location – so the boiler cupboard no longer lines up with the base unit, and a join in the wallboard is visible. I can see why Miss R would have preferred to have the boiler cupboard in its original position, but I can also see why the contractor would have thought it preferable to fit the boiler so that it blocked off as little of the wall and worktop space as possible. In my view this is an aesthetic difference that won't materially alter the function or overall enjoyment of the new kitchen.

As a result of the 'street view' photo Miss R has provided from 2015, it should be a straightforward matter to identify if the new hole drilled for the boiler pressure release pipe has damaged her exterior wall. If it has, the damage must be put right.

Other significant issues appear to be a hole in the interior wall next to the new extractor fan requiring filling, and possibly some dust or scratching on the fan housing (it isn't possible to say definitively from the photo provided). Finally, it appears one of the floor laminate sheets was cut too short and is standing proud of the skirting board.

There may be other less significant issues Miss R still wishes to raise. It isn't my intention to go through every one in this decision, as I'm not a qualified surveyor and performing the role of ombudsman doesn't require me to be. I'll summarise that I'm

satisfied further work is needed to rectify some issues, but it's unlikely in my view this will require the replacement of the whole kitchen.

Unless the previously proposed site meeting with the loss adjuster has taken place and already resulted in agreement between the parties on what issues require addressing, I consider RSA should source three appropriately qualified independent surveyors who aren't connected with it or through its loss adjuster. Miss R will then need to select one of the surveyors from the list provided by RSA.

The newly appointed surveyor should carry out a site investigation as well as considering the existing evidence, including the photos Miss R sent this service (which I am providing to RSA with this decision). Their report should confirm what issues are deemed to be significant as to require addressing further. I would expect and strongly encourage the parties to agree a way forward based on what the surveyor's report says, as this service is likely to put significant weight behind their recommendations.

If Miss R is unable to find a contractor to carry out the resulting work, the only alternative is for RSA to choose a different contractor to that which it used previously, and ask them to quote for the work. If Miss R agrees to use that contractor RSA is responsible for ensuring that the work is completed to the surveyor's specifications. Miss R may if she wishes accept a cash settlement for the sum the new contractor has quoted. But that would be in full and final settlement of this part of the complaint, and RSA would no longer be responsible for the quality of any further work Miss R organises based on the cash settlement.

further work Miss R has asked to be carried out

Miss R says the new extractor fan should be vented outside. But she provided a photo of her old kitchen, and it's not clear from this that the old extractor fan vented outside either. These fans can typically be set either to recirculate air, with a filter which is provided, or vent outside. I wouldn't expect the contractor to have installed outside venting if this wasn't part of Miss R's original kitchen. But the model of fan chosen should be capable of recirculating the air in the kitchen, and if that's not the case then it will need to be replaced at RSA's expense.

The dimensions of the new wall unit sets (which weren't of matching widths) were shown on the illustrations for the new kitchen, which Miss R originally agreed to. That's not to say it's unreasonable for the replacement kitchen to have broadly the same amount of cupboard space as the old one, if Miss R has overlooked this. Details were given of an additional wall unit that can be fitted to rectify this issue, which RSA must do at its expense if Miss R requires it.

I'm not in a position to comment on Miss R's boiler constantly needing re-pressurising. Despite the examples of poor workmanship seen elsewhere, I don't think it's necessarily more likely that the leak is in the vicinity of the boiler which has recently been attended to, as opposed to a failure elsewhere in the central heating system which could happen through age at any time. I think it would be reasonable here for Miss R to employ a heating engineer to trace the source of the leak. And if it's found to be in or around the boiler itself, that is a matter she would need to address with RSA at that time.

Miss R considers her flooring and wallpaper have been damaged by the contractors. Neither party has provided me with both 'before' and 'after' photos of these areas. RSA's

position is that the damage was already present – and in my view, Miss R hasn't provided sufficient evidence to counter this. It wouldn't be standard practice for the contractor to photograph all of the rooms in Miss R's property. So in my view only Miss R would be able to provide the necessary level of evidence to uphold this part of the complaint.

The only photo Miss R has provided is of a 'dust trail' on the wood floor following the removal of the kitchen ceiling. As it would be possible to clean and/or polish the floor, I'm not satisfied this shows evidence of permanent scratching caused by the contractors.

policy excess

It's a matter for RSA to decide whether it considers it has reasonable prospects of recovering sums (including Miss R's excess) from the property upstairs where the leak originated. If RSA doesn't consider the chances are good, or the cost of doing so outweighs the benefit, I can't require it do so. In that event Miss R is still required to pay her excess under the terms of the policy.

distress and inconvenience

The investigator already proposed a payment of £400 for the upset RSA caused. With the exception of the damage to the floor and wallpaper, which I'm not satisfied has currently been evidenced by Miss R, I agree with his reasoning.

I think it's important to point out that an escape of water of this magnitude would always have caused a great deal of upset and taken a long time to fix. But I do also understand that the contractor used only had one person working in Miss R's flat for much of the time. And a lack of co-ordination seems to have caused some delays (of a week to ten days) at several points during the work. I also think, given the evidence of how big the leak was, RSA could have anticipated sooner that a full strip out of the kitchen would be required.

Nevertheless it isn't always possible to completely plan in advance for issues such as the availability of firms, staff and equipment in Miss R's area at short notice. I agree with the investigator that it was equally in RSA's interests to complete the work as quickly as it reasonably could, because it was paying the costs of alternative accommodation and disturbance allowance (which I have now asked to be increased).

It will have distressed Miss R to learn gas had been escaping from the newly-completed fitting. I'm pleased to see that she was able to rectify it relatively quickly, but it shouldn't have been left in that state. Given the third party evidence Miss R has already provided of this to RSA, I think it should have apologised on behalf of its contractor for the quality of the work and their failure to rectify it at the first opportunity. I would ask RSA to apologise for this now.

I've already asked RSA to extend the period for which it pays Miss R and her fiancé the disturbance allowance, which could be a significant amount – and I think further reflects some of the unnecessary delays and inconvenience caused from dust and dirt in their home.

Having taken this into account, I consider the total payment of £400 the investigator proposed (including the £250 already offered) for the distress and inconvenience Miss R suffered, is fair and reasonable compensation in this case.

my provisional decision

I intend to uphold Miss R's complaint in part and require Royal & Sun Alliance Insurance Plc to provide compensation as set out above.

Gideon Moore
ombudsman