

complaint

Mr W is unhappy with Royal & Sun Alliance Insurance Plc's ("RSA") handling of his home insurance claim for subsidence.

background

In summary, Mr W first noticed cracks in his home in 2010. RSA accepted his claim for subsidence and appointed a loss adjuster. It in turn asked its engineer and a tree expert to advise on the cause of the cracking.

It was soon apparent that Mr W's house was subsiding and it was thought that some local authority owned trees were responsible. Monitoring and soil samples were taken to confirm this.

The tree expert recommended that at least one, and possibly two, oak trees be removed. The local authority agreed to prune some of its trees but refused to remove the offending oak trees unless further evidence was provided to prove that they were the cause of the subsidence.

Throughout late 2011 and 2012, the tree expert continued to press the local authority and its insurer to remove the trees, although no progress was made. In late 2012, the loss adjuster concluded that the monitoring showed little further movement in Mr W's home and so decided to authorise cosmetic super-structure repairs.

In mid-2013, shortly after the repairs were completed, the cracks re-appeared. RSA's experts accepted that this had been caused by further subsidence. Following a site meeting between Mr W's solicitor, an engineer instructed by him and RSA's experts, monitoring of the whole building re-commenced. The monitoring that had been done before had been limited just to the rear sun lounge. RSA now accepted that there were cracks elsewhere, despite these having been pointed out by Mr W on previous occasions.

RSA's experts continued to progress removal of the trees with the local authority, although the monitoring was apparently not showing enough movement for it to prove its case for their removal. Mr W has since appointed his own tree expert who's disagreed with RSA's expert's interpretation of the monitoring.

Frustrated with the lack of progress, Mr W complained to RSA in early 2014. Mr W thinks that RSA's experts have done a poor job to date. He thinks that the property hasn't been properly monitored. He says that the tree expert's recommendations haven't been properly followed up and that RSA proceeded to conduct superficial repairs when it still wasn't clear that the property had fully stabilised. This has since been proven when the cracks re-appeared shortly after those works were finished. He thinks there have been long delays and that it was unacceptable that, by the time this complaint was made, 4 years had gone by without his home being fixed.

Mr W is in his mid-80s and he's told us that this claim has caused him considerable distress and inconvenience. He's involved his son, a solicitor, to assist him with bringing this complaint as it has got too much for him to deal with himself.

RSA issued its final response to this complaint in April 2014. It denied that its experts had done anything wrong. Our adjudicator considered all of the evidence and concluded that

RSA had handled Mr W's claim poorly. He thought that there had been delays and that these had both distressed and inconvenienced Mr W. He recommended that RSA pay Mr W £750 compensation as well as settling his engineer's fees. He didn't think that the solicitor's costs should be paid, although he did recommend to RSA that, given this was an on-going claim, it got on and tried to resolve it as soon as possible.

RSA agreed to pay the compensation and engineer's fees. Mr W remained unhappy with the outcome and asked for an ombudsman's review.

my findings

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

I have a great deal of sympathy with Mr W's situation. He's now been living with the subsidence to his home for over 5 years. This is unacceptable. I think that his complaint should be upheld. But this claim is ongoing and it's not for this service to dictate how the claim should be handled before a formal complaint is made about any decisions that may have been taken since. RSA responded to this complaint in April 2014 and it's what it did up until then that I can look at.

Although I can only award compensation for that period, I will expect RSA to progress this claim forthwith. If Mr W is still unhappy with the progress or with RSA's response to any further complaint he may choose to make, that complaint, if made to this service, should be fast-tracked.

Having looked at everything that went on over the first 4 years of this claim, I do think that RSA and its experts handled the claim poorly. The monitoring doesn't appear to have been done as comprehensively as it should have been, given that the cracking to Mr W's home was more extensive than RSA acknowledged. I don't think that there's sufficient evidence for me to conclude that the monitoring that was done was carried out incorrectly. I know that Mr W thinks it was but RSA did conclude that there was initial movement which then continued with the seasons and ultimately appeared to stabilise in 2012. What I do think is that the monitoring should have covered more of the house than it did.

Mr W appointed a tree expert after this complaint had been made. Whilst I can't consider that expert's fees as part of this complaint, I have found his report helpful. He seems to agree with RSA's expert that one or more of the oak trees are responsible for the subsidence. He's also helpfully provided his opinion, which I find persuasive, that the movement ceasing in 2012 was more likely than not because of how wet it was that year and not because the trees were no longer influencing the ground beneath Mr W's home.

What is clear is that the subsidence is ongoing. Whether it's with the benefit of hindsight or not, the super-structure repairs were carried out prematurely and I don't think that RSA has effectively implemented the recommendations of its own tree expert. In turn its efforts to follow up with the council have been fraught with delays. And all this time Mr W has had to live with the damage. He also hasn't had the option to sell his house and down-size as he says he might have wished to.

Having taken the effect that this had on him into account, I agree with our adjudicator's recommended compensation of £750. Given the lack of progress, I also think that it was necessary for Mr W to get his own engineer involved to try and move things on. I appreciate

that Mr W and his son want the fees incurred by his solicitor's firm paid, although I'm afraid that this isn't an award that I'm prepared to make. Mr W's son has understandably helped his father out with this claim but just because he's a solicitor doesn't mean that he should also have his time costs reimbursed. This service provides informal dispute resolution and it's only in exceptional circumstances that we award legal fees. I don't think that's appropriate here.

As I said above, I now expect this claim to be moved on with all due haste. I can't make an award directing exactly what should now be done as I haven't had the benefit of reasoned arguments and evidence from both sides. Mr W wants his own engineer and tree expert to take over from RSA's experts. There isn't a formal complaint before me for the period since April 2014, so I can't yet decide if that's necessary. If RSA now move to resolve this claim quickly, this shouldn't be required. But if it doesn't, that can of course still be considered.

In closing, I'd note that subsidence claims are, by their very nature, complicated. Insurers are required to provide their customer with an effective and lasting repair. Whilst it might have looked like the movement of Mr W's home had ceased in 2012, it clearly hadn't. The repairs done in 2013 were neither effective nor lasting. Insurers will not in every case of subsidence be required to put in place an engineered solution to prevent further damage. Often all that will be required is the removal of some trees, as was recommended here.

But, given the local authority hasn't agreed, that hasn't happened. If the local authority still isn't prepared to remove the trees and they are still thought to be responsible, I think the time has probably now come for an engineered solution to be formally considered. I hope that it won't be necessary for this service to get involved again in a second complaint, although if that is required, I shall expect to see that RSA has taken a much more active role in ensuring that its experts have moved this claim on quickly. If they don't, all options will remain open to this service to require that RSA provide Mr W with what is now a long overdue solution to the problems with his house.

my final decision

It's my final decision to uphold this complaint. I require that Royal & Sun Alliance Insurance Plc must pay Mr W £750 compensation for the distress and inconvenience caused to him in the period up to April 2014. It must also pay his engineer's fees incurred up to that time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 November 2015.

James Kennard
ombudsman