

## **complaint**

Mrs D, represented by her daughter and live-in carer, Ms D, has complained about her home insurer Royal & Sun Alliance Insurance Plc in relation to its settlement offer made to resolve snagging issues related to insured repairs it undertook, and about the underfloor heating system it replaced.

## **background**

Mrs D originally complained to this service around May 2016. That complaint ultimately came to me for a decision to be made. On agreement of the parties, our consideration of how RSA had handled the claim extended to the point the repairs, bar any snagging, had completed in around December 2016. My final decision issued around April 2017 focused on the claim handling issues; I awarded compensation for upset as well as to reimburse some out of pocket expenses Mrs D had incurred.

Around the time the repairs completed in 2016, Mrs D had become concerned about the underfloor heating in her bathroom. RSA had re-laid or replaced this in August 2016 following concerns that been raised about the work it had completed on the installation earlier in the claim. In April 2018 RSA assessed the system and, in a site visit in June 2018, it reviewed the issue, including completing thermal image testing. RSA told Mrs D that the heating system was sound and it would do nothing else unless she provided a report. RSA did not provide a final response on this issue.

Meanwhile, Mrs D had remained concerned that the claim, in respect of other outstanding work, had still not been completed. What was outstanding was discussed during 2017. In a final response issued in May 2018, RSA said it had reviewed matters from April 2017 onwards. Having done so it noted that its contractor had recently offered £500 compensation. RSA said it felt that offer was fair and didn't offer anything more.

The parties continued to discuss the outstanding elements of the claim. RSA said it was agreeable to doing the work – but when Mrs D asked it to wait and do the work the following year, as her health in the winter months is often poor, it didn't think that was reasonable. It thought a cash settlement would be fair.

In a final response in October 2018 RSA explained that it would add 4% to what it felt was a fair cost for completing the outstanding works (this did not include the underfloor heating) – this would allow Mrs D some flexibility in finding a contractor. It said it would also pay for 14 nights hotel stay, at a rate of £80 per night for bed and breakfast plus £10 per day as a disturbance allowance.

Mrs D felt the settlement offered was not enough to complete the works and she felt this put too much pressure on her. She wanted RSA to agree to do the work, in the summer, and give her plenty of notice of when this would definitely happen so she could find somewhere to stay. In that respect she said her needs were complex. In February 2019, when RSA wasn't minded to change its mind, Mrs D made a further complaint to us.

RSA said it didn't think we could look at how it had handled the claim prior to May 2018. It also said Mrs D's concern about the underfloor heating, in its view, fell outside the scope of this complaint – because the issue had been dealt with by it in previous final responses, and since these had been issued, Mrs D hadn't made another complaint to it.

Our investigator explained that he couldn't review matters as they related to anything dealt with in the May 2018 final response letter, or the underfloor heating. But he felt RSA did need to do more to resolve the claim as he noted Mrs D is vulnerable. So he thought RSA should be looking to complete the work for her whilst providing accommodation which takes into account her medical needs and allows for her daughter, who cares for her, to stay.

RSA didn't feel it should have to do anything more. Mrs D still felt she'd been treated unfairly. The complaint was passed for an ombudsman's decision.

By chance Mrs D's complaint came to me. I noted her concerns about the underfloor heating and that, contrary to what RSA had told us, this element of Mrs D's current complaint had not been dealt with by it in any of its final responses. I also noted Mrs D had complained to RSA about this issue. Therefore, I told both parties I would consider Mrs D's concerns about the underfloor heating as part of this complaint. I then completed a provisional decision on the complaint as a whole which was issued to both parties.

In short, I felt that RSA did not need to do anything more regarding the underfloor heating, but that it should complete some snagging work, whilst providing alternative accommodation for Mrs D and Ms D. I also said it should pay a further £250 compensation. Neither Mrs D, represented by Ms D, nor RSA were happy with my findings. I've set out my provisional findings below, along with the parties' responses and my final considerations.

### **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 said provisionally:

#### *"underfloor heating*

*It's accepted that in 2016 RSA replaced the system it had either installed or re-laid earlier in the claim. A different brand of system was used. Mrs D is unhappy about the change in brand and because she says the system does not work properly. RSA says there's no difference in functionality between the brands, and it ultimately concluded that the system is working properly.*

*Since 2016 RSA has inspected the system twice.*

*Notes made following its test in April 2018 conclude: "it was working and the reasons for the hot and cold spots could be numerous – the pipework for it could not have been "power flushed" and there might have been some debris when it was laid."*

*In July 2018 thermal imaging of the pipes was undertaken and temperature readings of the floor surface were taken. The expert at the time explained that the type of system in question does not fail sporadically in different isolated places because it is a cable strung through meshing – it either heats up or it doesn't. Temperature checks on the floor surface showed only a difference of five degrees centigrade between what Mrs D said were hot and cold areas. The expert confirmed there was no difference in functionality between the brands of system – not unless the model of the previous brand Mrs D had had been too powerful.*

*Mrs D is concerned the findings of the second inspection are flawed for a number of reasons. She also doesn't think it's fair that the findings of the first inspection seem to have just been discounted out of hand.*

*I have to say, having seen the notes from the first inspection, I'm not persuaded by their findings. They suggest that hot and cold spots weren't actually checked for or found – merely that the inspector accepted such existed. And the comments in respect of the power flush seem to suggest the inspector was not aware of the type of underfloor heating system in place at Mrs D's home. So, whilst I'm not sure why RSA discounted the April findings – I think it was reasonable for it to revisit the matter by completing a further assessment.*

*In general terms, once an insurer has completed an inspection with the use of appropriate experts, unless alternative views are provided from a similarly qualified expert, this service won't interfere with the insurer's reasonable findings. Whilst I know Mrs D has been through a lot here, and I can understand why she is cautious, I'm not persuaded, based on her concerns about the test, I can reasonably require RSA to do more in respect of the underfloor heating. I'm not persuaded it's not working correctly, or that RSA's tests were likely flawed such that it reasonably must check the system again.*

*RSA did replace the system in 2016 with a different make. But that doesn't necessarily mean that RSA has not provided a like-for-like reinstatement. It is not the brand alone which determines whether items are alike – and depending on the item the 'brand' may not matter at all. I haven't seen any evidence that makes me think the system Mrs D had functioned differently to the one RSA installed in 2016. And in reading the expert report it seems the maximum power level recommended for both types of system for this type of room is as fitted by RSA in 2016. I can't reasonably fault it for having completed the work in that way.*

*With regret for any disappointment this causes Mrs D, I'm not going to require RSA to do any more in respect of the underfloor heating. The evidence I've seen satisfies me that RSA reached a reasonable conclusion in respect of the concerns Mrs D had drawn to its attention about the system.”*

Ms D maintained that there is some problem with the heating as it doesn't provide a consistent temperature across the floor. She said that whilst the technician's notes don't seem to reflect this, during the first test he did experience the cold spots. This is now the second system installed by RSA and they've both had the same problem. So Ms D feels it isn't unreasonable to think it might be by the same cause, which is likely how it was installed. Ms D maintained that the second test was flawed. Ms D said in this case the make is important as that dictated the style of thermostat, the current thermostat is complicated and has needed to be set by a heating engineer. Ms D noted that it was only when the heating was replaced for a second time that a different make was used, she'd like to know why this was changed.

RSA spoke to Ms D following the issuing of my provisional decision. It felt that Ms D would disagree with my decision in respect of the heating and said it was worried this will cause her to prevent it from completing the other repairs which I've mandated it must do (and which it disagrees with).

I appreciate my decision in respect of the heating is disappointing for Mrs D. Whilst I understand Ms D has concerns about the notes recorded and the testing that was undertaken, I can't ignore that documented expert evidence and assume instead that Ms D is correct that the heating is not functioning and needs replacing. It's unfortunate the

thermostat is not of a style that suits Mrs D's needs – but that doesn't mean the system as a whole is not like the one in place before. The thermostat is digital rather than manual but it doesn't seem to be something that would automatically require the aid of a professional to set, so I think it's reasonably similar to that Mrs D had before. There might be many reasons why a different make was used for replacement – the simplest might be availability of stock. But this isn't a question I need to ask RSA to answer as it doesn't alter my view about Mrs D's concerns about the system that is now in place.

I know RSA has concerns about how this claim will progress following the issue of my decision on Mrs D's complaint. I've detailed these further on and provided some responses. I wouldn't expect that a disagreement in respect of one aspect of my findings would impact a reasonable person's view about other issues I have found in their favour on. Nevertheless, if Mrs D disagrees with any aspect of my decision, it is up to her if she accepts the decision or not. If she accepts it (this can't be done in part or with any caveats attached) within the deadline given then RSA will be bound by it – but it still might be the case, if Mrs D's actions prevented it from complying with my decision, that those actions might amount to frustration. But I can't advise the parties about their legal rights, other than to say this service doesn't enforce its decisions, that is the role of the courts.

My provisional findings continued:

*“resolving outstanding repairs*

*Whilst I agree with RSA that some snagging is an inevitable part of most large loss claims – I think the use of the term here unfairly detracts from the magnitude of what needs resolving. The list of works RSA has produced as accepted, dated September 2018, shows that in every single room RSA initially did repairs in there is major work to be done. The kitchen floor tiles need the grout raking out and re-grouting to be done, the vinyl flooring in the utility needs lifting and replacing, floorboards on the landing and in the bedroom need replacing and, essentially, the bathroom suite needs removing, re-fixing and resealing. To me, that list is not synonymous with finishing off or 'snagging' work.*

*I take note of how long this claim has gone on for. I'm also conscious of Mrs D's age and health. I'm not persuaded that RSA, of late, has fully and fairly taken Mrs D's situation into account. Had it done, I'm sure it would have felt it was reasonable for the further disruption she was going to have to encounter, because it had not completed claim repairs properly, to be minimised as far as possible.*

*Here I think that reasonably means working with Mrs D by scheduling repairs at a time which suits her. I also think it means covering the cost of suitable alternative accommodation – even if that means paying more than it might usually do in the normal course of a claim.*

*RSA's offer for accommodation was based on £80 per night – but when I checked this appeared to be roughly the cost of a twin-room at local hotels. Mrs D and Ms D shouldn't have to share a room. In any event, given Mrs D's health and that this long-running claim is still causing disruption, I think it would be fair for RSA to offer Mrs D, should she so wish, a cost to allow her to stay with her daughter in accommodation more like her home. That might be a holiday let, or a serviced apartment, or similar. If there's nothing like that in Mrs D's area, or if she'd prefer a hotel, the cost allowed for by RSA should be for two interconnecting rooms. RSA might be able to use one of its partners to find something suitable – but Mrs D will need to work with RSA to ensure something suitable is found. If RSA wants to book it*

*direct – having agreed with Mrs D when repairs will take place and given it will be in control of those repairs – I'd agree that's reasonable.*

*RSA will also have to provide Mrs D with assistance in moving to and from the alternative accommodation. This to include Mrs D, Ms D and their necessary belongings – if medical support for Mrs D for this move is required, RSA should reasonably arrange this or cover any costs for it.*

*RSA believes the works will take two weeks. I think that sounds reasonable. Although there is a lot to do, barring any unforeseen issues, I think a properly co-ordinated programme of works could be completed in that time. I know work did not go to plan in the early stages of the claim but I know RSA is as keen as Mrs D and Ms D to bring this claim to an end. So I'm sure it will take care to closely manage this last stage of the reinstatement work to make sure that, if it can at all be avoided, it does not over-run. If anything unforeseen should occur and delays do arise, I'd expect RSA to manage that situation and deal reasonably with Mrs D to ensure her disruption continues to be minimised.*

*I know Ms D has concerns about moving Mrs D at all, and I think it's fair to say that nothing can reasonably occur now with the pandemic still in full swing. But the work clearly needs doing, and even if Mrs D's health were better, the work to be done would still likely require her leaving her home for a time. I understand Ms D's caution – when Mrs D left her home in 2015, she thought that would only be for a few weeks – but it turned into months. And months in wholly unsuitable accommodation. But I've set out instruction in respect of the accommodation and timing of the repairs and necessary move above. I trust that will sufficiently reassure Mrs D and Ms D, such that a way forwards for the final stage of this claim, to commence once the pandemic and Mrs D's health allows, can be agreed.*

*All that said, I need to comment on the list of works to be done. I see that there've been various concerns raised by Mrs D over the period since the repairs were mostly completed in 2016. It's possible, once the repair of the outstanding work begins, that other issues will arise that will need to be dealt with as part of that work. I think it's reasonable to say that RSA should amend the scope to account for anything like this, should it arise. However, I don't think it would be reasonable to say RSA should have to, without good cause, add any other unrelated items into the list for repair which Mrs D and Ms D might notice and raise concerns about before the agreed outstanding work is undertaken. I think it's fair to say that enough time has passed, since the initial repairs, for Mrs D and Ms D, before now, to have seen anything of concern likely related to the original repairs. If they do note other issues of concern, it would be for them to show reasonable evidence in this respect before RSA would need to take any action.”*

RSA said it had given us details previously to show how it had tried to settle things during 2017 onwards. It said that in 2018 it even agreed to fund a twin room at a hotel for Mrs D and Ms D. RSA said it accepts that Mrs D's needs have now changed but it said it's unclear what it could have done in 2018 to make things different. It worries I've left things too open, that repairs haven't been allowed to complete before now, that Mrs D may not now move out of the property but that repairs could be done room by room if needs be and I should give a more specific timeframe for both parties to work with.

Ms D said that whilst they felt that, in 2017, things would progress to repairs being completed, that changed when a member of staff changed roles. Ms D said they've now lost faith in RSA's ability to complete this work. Ms D said she is concerned that moving Mrs D now will present too big a risk for her health.

As our investigator explained, this complaint focuses on activity in 2018. But I understand both parties' concerns that the long drawn out history of this claim suggests it isn't going to be easily resolved – with or without my findings. I can only urge the parties to work together to find a way forwards – the work does need doing and whilst it doesn't involve completely stripping back rooms, and whilst it isn't anything that has prevented Mrs D from living at the property these last few years, I maintain it is more than simple snagging. If the parties want to and can find a way of work progressing on a room by room basis – because doing that is less risk for and less disruption to Mrs D than moving out – then I'd see that as a reasonable way forward.

I can't provide specific timeframes – for me to do so for a vulnerable person whilst the country is still in unprecedented times would be wholly unfair. Unfortunately there are limits to the findings and awards I can make, and it would be wrong for me to assume to know what Mrs D's needs are. But I've given some guidance and ideas provisionally – I'll add to that by saying if Mrs D has mobility issues (as I understand that she does but not the extent or exact nature of those), ruling out accommodation that has stepped access would be a good start. I'm not saying it would be the right thing to do here, but I have seen situations, where it suits the policyholder, where the insurer covers the cost of a short stay in a care home or living assisted facility. I mention this to show there are a number of possibilities available depending on what Mrs D wants, and to urge RSA to be flexible in its approach. But Mrs D will need to think about what she wants to do – if she wants the work doing but can't stay in the house whilst it's done then she'll have to help RSA find a suitable place for her to go to. But if she really can't risk moving, or risk letting the work be done room by room whilst she's in residence, then RSA won't have to progress that work.

RSA has asked what it could have done differently in 2018. I commented provisionally that offering a twin room only for Mrs D and Ms D to share for a fortnight wasn't a reasonable offer of accommodation. Ms D has talked about a call that took place in 2018 she says she found it profoundly distressing, that Mrs D was listening and she felt unheard and cried. I haven't heard this call but I'm aware that RSA's representative ended it abruptly. And as I said provisionally, everything I had seen in assessing this complaint caused me to conclude that RSA, by late 2018, had stopped listening to Mrs D's, its policyholder's, needs. I remain of the view that RSA should have listened to Ms D and Mrs D at that time, offered more alternatives for accommodation (even though it didn't know exactly what Mrs D's needs were) and accommodated her request for work to be scheduled for the spring.

#### *claim handling*

I said provisionally:

*"I accept that this has been a long and drawn out claim for Mrs D. My previous decision and award show that it was not handled well by RSA initially. But I can't revisit that or look at how things were handled between then and the final response letter RSA issued in May 2018.*

*I think it's fair to say that in the period after the May 2018 letter Mrs D, as well as Ms D on her behalf, were very frustrated that some aspects of the reinstatement remained outstanding. I understand that Ms D was also concerned for Mrs D's health, and I accept that this made the claim somewhat more difficult to progress. I also see that there were discussions during this time about what work remained outstanding, and RSA completed its further investigations into the underfloor heating issue. So I think it's fair to say RSA, in the main, was trying to progress matters.*

*However, as I said above, I don't think RSA's ultimate response on the claim, as confirmed in its October 2018 final response letter, was fair or reasonable. At that point it seems it had stopped listening to the needs of its policyholder and decided that, instead of continuing to try and complete the repair contract it had entered into in 2015, it was time to just end it by settling for the outstanding work in cash. I accept this was frustrating and upsetting for Mrs D. I think £250 compensation is fairly and reasonably due."*

Ms D gave some further detail about things that had happened and caused upset. She said there's been a huge amount of physical and emotional stress caused to Mrs D. RSA said settling in cash remained a practical way forwards and was in line with the policy terms. It said it shouldn't have to pay compensation merely because our complaint process had been prolonged.

I understand that both parties are unhappy with my compensation award. But I remain satisfied by my view as stated provisionally, including the reasoning I gave for the award suggested. I'd remind RSA that where a contract for repair is entered into that cannot easily be set aside, even where a policy allows in the first instance for a cash settlement to be made by the insurer as an alternative to it undertaking repairs. I am going to require RSA to pay Mrs D a further £250 compensation.

*summary*

My findings above reflect that I understand this is a difficult and complex claim for all concerned. I've considered the submissions from both parties and given great thought to the remedy I suggested provisionally. I remain of the view that it is fair and reasonable in the circumstances. But, as is always the case, it will be for Mrs D to decide whether or not she wants to accept my decision.

**my final decision**

I uphold this complaint. I require Royal & Sun Alliance Insurance Plc to:

- Complete the outstanding work set out in the schedule dated September 2018, taking into account Mrs D's needs as explained above, including the provision, or covering the cost, of alternative accommodation and assistance with, or covering the cost of, moving to and from that location.
- Pay Mrs D a further £250 compensation

Under the rules of the Financial Ombudsman Service, I'm required to Mrs D to accept or reject my decision before 27 April 2021.

Fiona Robinson  
**ombudsman**