

## The complaint

Ms M complains as executor of the estate of the late Mrs M about the way that Royal & Sun Alliance Insurance Plc (RSA) dealt with the estate's home insurance claim for water damage.

## What happened

Mrs M passed away in December 2018. In February 2019 Ms M was visiting her late mother's house when she discovered that a pipe had burst in the loft, causing considerable damage throughout. She made a claim to RSA, on behalf of her late mother's estate. It reviewed the matter and noted that there was a breach of an unoccupancy condition. But as it hadn't made this clear to Ms M, it decided it would cover the claim. It appointed a drying company (R) to carry out strip out and drying. This took longer than it should, due to excessive strip outs and the failure to do a proper asbestos survey before starting the strip outs. Ms M was also dissatisfied with the loss adjusters, who she says failed to deal with the contractors and with the contractors themselves who she said carried out poor workmanship, used the toilets without running water and wrote offensive graffiti on the mirror. She further said that the insurance the property had with a damp/dry rot specialist company was invalidated by the property not being dried out properly.

RSA replied to Ms M's complaint in a final response letter of 29 April 2020. It agreed that there were unacceptable delays in the drying process, which had to be restarted, and that the presence of asbestos was identified too late. It also accepted that it delayed in accepting the claim due to its enquiries about occupancy. It made a £500 ex gratia payment to the estate. It agreed to cover some of Ms M's expenditure but wouldn't cover the additional solicitors' costs she said the estate had incurred. It further pointed out an extract from our website that this service couldn't award compensation for distress and inconvenience to executors.

Ms M was dissatisfied with RSA's response, she felt the it hadn't reviewed her complaints properly. With regard to compensation, she didn't believe this was enough and pointed out that there was no such information on our website.

As of February 2021 Ms M has informed us that the claim has been settled by the estate accepting a cash payment for diminution of value in lieu of carrying out any further repairs.

On review by our investigator he reiterated that we have no power to award compensation for distress and inconvenience to executors. He noted that RSA had paid some costs including alternative accommodation, garden maintenance, travel and council costs. With regard to the solicitors' costs Ms M said the estate had incurred he said he thought that RSA would be willing to review this if she provided specific evidence.

Again Ms M didn't accept that we couldn't award her compensation for distress and inconvenience, pointing out that we didn't say this on our website and that it wasn't advised to her when she lodged her complaint. She expected a full investigation of her complaints to be carried out. She had also asked RSA if, in principle, it would consider payment of the solicitors' additional costs and that it had referred her back to this service. So she wanted a

direction that it consider those further costs. She also pointed out that due to delay in the sale of the property the estate had had additional insurance premiums to pay.

The matter has been referred to me for further consideration.

### **What I've decided – and why**

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

I should firstly set out what I can do within my powers under the dispute resolution rules. Ms M is eligible to make a complaint, as executor and personal representative of her late mother's estate. The beneficiary under the insurance policy is the estate. This means that, however much the case might merit it, I can't make an award for distress and inconvenience to Ms M. It appears that RSA was looking at an old edition of our website when it mentioned this to Ms M. But it is still the case. RSA has made an ex gratia payment of £500 to the estate but only this service can decide matters of jurisdiction. Whilst this may not have been mentioned when Ms M lodged her complaint, as I've said Ms M is eligible to make a complaint and matters affecting the estate may still be in issue

Secondly, this service acts as an alternative dispute resolution service. Our function is to resolve disputes informally between the parties. If agreement can't be reached then I can consider making an award, but as I've said this can't include compensation for distress and inconvenience. And, as a settlement has been reached between the parties, apart from the issue of the insurance premiums and legal costs there are no directions I can make in respect of the running of the case or financial losses. So, my view is that apart from recognising Ms M's major issues of complaint there is nothing to be gained from carrying out further investigations.

Thirdly, technically I can only consider matters up until the final response letter of 29 April 2020. Any matters that arose after that should be put to RSA as a new complaint. Having said that, as I've noted, this matter has been settled and Ms M should bear that in mind if she contends there are any further financial losses. And obviously we still can't award compensation for distress and inconvenience.

As a final preliminary point. Ms M complains about the way that her complaint was dealt with by RSA, particularly that it took longer than eight weeks to provide its response. And that the response was wholly inadequate. Generally, complaints handling by a business isn't a regulated activity so I can't consider that issue further.

Ms M's complaints relate to what she describes as issues of incompetence, negligence (for buildings and contents), neglect, malpractice, misrepresentation, health and safety non-compliance/breach, unprofessionalism, lack of respect and loss of trust. The main examples of this are:

#### *delay*

The loss was first reported in February 2019. RSA has said it would expect repairs in such a case to take nine to ten months, which means it should have been completed by December 2019. There were delays after that because of the Covid situation, but the repairs shouldn't have taken long enough for that to be an issue. There were major faults with the drying, the strip out was excessive and the property had no heating in place. Ms M says that RSA's surveyor wasn't a surveyor (although I should point out that the term "surveyor" is not reserved for chartered surveyors). She pointed out that he didn't supervise this properly meaning that the drying certificate wasn't valid and the drying had to be started over again.

Also R failed to ensure the dehumidifiers were working correctly. I think that's a fair assessment and RSA has admitted its liability here.

#### *asbestos*

The property was stripped out without a full asbestos survey being done. Subsequently when testing was done, it was found that asbestos material had been disturbed. Again this held up the drying. This was a breach of health and safety rules. RSA has agreed this was a serious matter and that its contractors were at fault.

#### *woodwork guarantee*

There was cover in place in respect of wood-rotting fungi, timber boring insects and damp-proof course. This cover was prejudiced by the failure to dry out. I accept that this was the case. However the settlement was accepted by Ms M and based on the diminution in value so there is no further action I can take here.

#### *using toilets and writing offensive graffiti*

Ms M says the contractors failed to arrange for a portaloos and used the toilets without running water. They also drew an offensive drawing on the bathroom mirror. This hasn't been mentioned by RSA but I nevertheless believe it happened and was upsetting to Ms M.

The above matters are not an exhaustive list but nevertheless in my view represent the main points. No doubt if Ms M had been the policyholder and was living in the property, a higher award of compensation for distress and inconvenience could have been made. But as I can't make such an award it has to be left that those are my findings

#### *insurance premiums*

Ms M has pointed out that the estate continued to pay insurance premiums after the March 2020 renewal. And as the property was intended to be sold before then, the premiums were wasted. RSA has said that the repairs should have been completed by December 2019. However I don't think it likely that the property would have been sold by the March renewal, so the premiums would have been incurred anyway. If Ms M wants to raise the issue post April 2020 she should take this up with RSA.

#### *legal costs*

Ms M asserts that the estate incurred legal costs due to the delays. Our investigator said that he believes RSA would be willing to consider these issues if exact details could be supplied. These would have to relate to costs incurred because of the delays, not because of the insurance claim or administering the estate. Ms M has approached RSA to ask if in principle it would be prepared to consider this and it has said it won't take any action pending this service's decision on the matter. So I think it should consider the issue of excess legal costs if Ms M supplies it with exact details of the wasted costs. It should provide its decision in this respect within 28 days of Ms M supplying that information.

### **My final decision**

I uphold the complaint in part and require Royal & Sun Alliance Insurance Plc, within 28 days of receipt from Ms M of exact details of the estate's legal costs wasted because of the delays, to consider payment of those costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M as executor of the estate of Mrs M to accept or reject my decision before 25 August 2021.

Ray Lawley  
**Ombudsman**