DRN-4544771

The complaint

Mrs F and Mr F complain about Royal & Sun Alliance Insurance Limited ("RSA") and the way their claim for damage to their property caused by a blocked drain was handled.

What happened

The events that transpired during the claim are well known to both parties. So, due to this and the length of time the claim was ongoing alongside the complexities of the complaint, I won't be providing a chronological timeline of what has happened thus far.

But in brief, Mrs F and Mr F held a home insurance policy, underwritten by RSA, when a blocked drain caused water damage to their property. So, they made a claim on this policy.

But Mrs F and Mr F were unhappy with the way RSA handled their claim. So, they raised a complaint. Their issues included, and were not limited to, RSA's failure to reimburse them the total amount they paid to their own builder, who I'll refer to as "B", to complete the repair work they felt was necessary. They were also unhappy with RSA's contractors' failure to clear the blockage, as well as the reports compiled by two separate loss adjustors which they felt failed to include a reasonable scope of works. So, Mrs F and Mr F wanted RSA to cover the costs they had incurred in repairing the damage caused by the blockage in full, plus compensation for the inconvenience they'd been caused during the claim process.

RSA responded to the complaint and upheld it. They accepted the failures in the customer service they provided, and the delays Mrs F and Mr F experienced during the claim. They also accept their own contractor, who I'll refer to as "C", failed to unblock the drain satisfactorily. So, they agreed to cover the costs Mrs F and Mr F incurred regarding the drain itself. And they paid Mrs F and Mr F £500 to recognise their service failures. But they thought they were fair to rely on the scope of works compiled by their loss adjustor, who I'll refer to as "S", and so, they didn't think they needed to cover any further costs Mrs F and Mr F paid directly to B. Mrs F and Mr F were unhappy with this response, so they referred their complaint to us.

Our investigator looked into the complaint initially and didn't uphold it. They thought RSA were fair to rely on the reports compiled by S when calculating their settlement offer to Mrs F and Mr F. And they thought the £500 compensatory payment was a fair one to recognise their service failures. So, they didn't think RSA needed to do anything more.

Mrs F and Mr F didn't agree. And they provided several, extensive comments explaining why.

These included, and are not limited to, their continued belief that the report they obtained from a surveyor, who I'll refer to as "X", as well as a structural engineer and B themselves made it clear replastering was required to complete a lasting repair. So, they thought the costs of this, and any consequential costs, should be paid. And despite this, they maintained their position that RSA had originally told them to seek a quote for the works from B, with what they felt was a promise that these costs would be paid as long as they were reasonable. They thought the costs they were seeking were reasonable, so they thought the

full amount should be paid.

Our investigator returned to RSA for further information, and during this process the reports RSA relied on were sent to Mrs F and Mr F. They provided further comments on these reports, and why they thought RSA were unfair to rely on them, and they asked our investigator to reconsider their original view in light of this.

Our investigator considered all of the points raised. And having done so, their view remained unchanged. While they noted RSA's experts report disputed the flooring which has since been rectified, they didn't think one error invalidated the rest of the report the expert, who I'll refer to as "P", compiled. And having considered this report against that of S and the drying company, who I'll refer to as "D", they didn't think they could say RSA were unfair when relying on these regarding the plastering and the additional costs B had been paid. So, they didn't think RSA needed to do anything more.

Mrs F and Mr F continued to disagree. They felt the evidence they had supplied supported their position that their costs should be paid out in full and that the reports and opinions RSA had relied upon were either incorrect, or unreasonable. As Mrs F and Mr F didn't agree, the complaint was passed to me for a decision.

I issued a provisional decision on 8 December 2023, where I explained my intention to uphold the complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, it's my intention to uphold the complaint. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Mrs F and Mr F have complained about how RSA handled and responded to their complaint and want any compensation to reflect the impact this had. But complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way RSA handled Mrs F and Mr F's complaint hasn't been considered as part of my decision.

I also want to set out very clearly that it's not my role to re-underwrite the claim. Nor is it my role to act as a loss adjustor, as I don't have the expertise to do so. Because of this, I won't be speculating on what I think should be repaired as part of the claim and most importantly, how much I think this should cost. Instead, it is my role, and the role of our service, to consider the actions RSA have taken to decide whether they were fair and reasonable. And when doing so, we consider the expert testimony and reports available thinking about the weight RSA placed on these, and their reasoning for that. I will not be speculating on whether I think an expert's testimony was wrong, as they are the expert in their relevant fields.

I also want to make it clear that our service is an alternative to the courts. And because of these, we do not make legal rulings or determinations. So, while we can consider legal acts and legislation when considering RSA's actions, ultimately any decision I make centres around the fairness and reasonableness of RSA's decisions, and the service they provided when making these.

So, although I note Mrs F made representations centring around breach of contract,

negligence, and estoppel, I won't be commenting on RSA's actions in relation to these. Should Mrs F and Mr F want to pursue these representations further, they would need to pursue this through the relevant legal channels.

And finally, while I recognise Mrs F and Mr F have made reference to other decisions our service has made, a crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted in any way by any decision made on a different complaint, no matter how similar Mrs F and Mr F feel their situation is.

For clarity, and ease, my decision focuses on the main areas of dispute. If I haven't commented on a specific point raised by Mrs F and Mr F, or RSA, I want to reassure them this doesn't mean it hasn't been considered. But I want to ensure my decision focuses on the crux of Mrs F and Mr F's issues, in line with our services tone and approach.

I've carefully reviewed the terms and conditions of the policy Mrs F and Mr F held. And these explain that "Where repairs are carried out, the amount we'll pay will be either the cost of the work if it was carried out by our nominated contractor, or the cost of the work based on the most competitive estimate or tender you got from your nominated contractors. We'll pay whichever's the lowest amount".

So, I'd expect the amount RSA paid to fall in line with this. And this is where I think the main dispute lies, as RSA have disputed the costs B charged Mrs F and Mr F, as they didn't feel all the work was required to repair the damage caused by the insurable event.

I understand Mrs F and Mr F feel RSA promised to cover the costs they incurred using B on a phone call with RSA, before B were instructed. I've listened to this call, and while I do think RSA suggests Mrs F and Mr F should seek their own contractor to complete the work, I do think it was made reasonably clear that any quote Mrs F and Mr F obtained would be compared against the scope of works produced by S. And, that if it was more than S' scope of works, then the costs would need to be justified. I don't think RSA made a promise to Mrs F and Mr F in this call that all, and any, costs would be indemnified and paid.

Following this call, I've seen Mrs F and Mr F submitted the quote they obtained. And due to the difference between this quote, and the initial scope of works compiled by S, another loss adjustor from S was appointed to review B's quote against the damage at Mrs F and Mr F's property. I think RSA acted fairly and reasonably when taking this action, and it followed what Mrs F and Mr F were told verbally.

And I can see following this, S disputed part of the works B were quoting for as they didn't feel they were required to repair the damage caused by the insurable event. So, at this point, RSA had two separate reports and scopes of work from S, plus a report and certificate from D, which suggests the replastering and consequential costs of this weren't required as part of the repair works. And as B were the builder completing the works and so, profiting from them, I think RSA were fair to rely on S' scope at this point. And, as S' scope of works quoted for the cost a nominated contractor of RSA's would charge, I think RSA were acting within the terms of the policy when only offering to pay Mrs F and Mr F this amount.

I also note, from Mrs F and Mr F's own testimony in a letter to RSA, that they were given the chance to allow RSA and their nominated contractor to complete the repairs at this point. While I do recognise why Mrs F and Mr F didn't want to take this option considering they'd entered into a contract they felt was binding with B, I do think this was Mrs F and Mr F's own decision to make. And I think they allowed B to continue with the work, knowing the costs of these works were in dispute and crucially, hadn't been approved. And I must note RSA weren't obligated to cover these costs without them being approved first.

But I note Mrs F and Mr F then obtained a report from X, an independent surveyor. And I appreciate X's report supported the work B were in the process of completing. So, I do recognise why Mrs F and Mr F would feel this should be relied upon.

But while I would expect RSA to consider the opinion of X, I don't think this means they had to follow the directions X suggested. This is because they still held two reports from S and a drying report and certificate from D. So, in this situation, I would expect them to take full consideration of all the evidence available to them. And I think they did so, referring all the reports to a technical consultant for their opinion. And I've seen this consultant's opinion, which I think is coherent and plausible, even though there was dispute about the experts' thoughts regarding the flooring.

So, as this consultant's opinion was that the scopes put forward by S were fair subject to a slight increase for unexpected costs, I don't think I can say RSA were unfair to rely on this and pay a settlement that matched the experts. This is because I think another insurer would most likely have taken the same stance, in the same situation. So, I don't think I can say RSA should cover B's costs in full.

I understand Mrs F and Mr F won't agree with this. And I appreciate they will most likely feel that X's report, when placed alongside B's quote and a report they obtained from a structural engineer, is enough weight to support their position. But I read through the engineer's report they obtained and while I do recognise it follows Mrs F and Mr F's train of thought, the report also states, "we did not inspect/test for the presence of dampness, wet or dry rot" as well as "Here, although not our specialism, as the cause is not conclusive, we would recommend that the plaster to the affected rooms is removed". So, I think this admittance of the situation not being their speciality lessens the weighting of the report. And as I've explained, B stood to profit from the works carried out and so, I don't think I can say B's quote, or opinion, is entirely independent for the purposes of my decision.

So, I think that ultimately, RSA had two reports from S, a report from D and a report from a technical consultant stating B's costs were for work that weren't required as part of the claim. And as all these reports supported one position, I don't think I can say RSA's eventual position based on these was an unfair one, on the balance of probabilities.

But that being said, I do think it's accepted by RSA that C didn't initially unblock the drain as they should've. So, as RSA instructed C, RSA remain ultimately responsible for this failing. And it's already accepted that RSA delayed the claim and failed to provide Mrs F and Mr F with an adequate level of service. So, I do think RSA have acted unfairly in part and because of this, I've then thought about what they should do to put things right.

Putting things right

It's not disputed by RSA that C failed to unblock the drain as they should've. And, while RSA have reimbursed Mr F for the CCTV costs he paid, £1,224 for the drainage clearance and £75 compensation for the upset, I note B charged a further £1,362 for rebuilding the gully, pipes and drain that were damaged during the removal of the blockage itself.

The terms of the insurance policy explain that "If a drain or pipe is blocked and normal methods of removing it are unsuccessful, such as rodding or jetting between the main sewer and your home, we'll then pay the cost of breaking into and repairing the pipe". From what I've seen, I think the damage caused to the gully and the drain were necessary to remove the blockage and so, I think RSA should pay Mrs F and Mr F this amount.

I've then thought about the compensatory payment of £500 paid to Mrs F and Mr F to recognise the delays and failure in service. While I recognise this payment is significant, I

don't think it is enough to address the inconvenience and frustration Mrs F and Mr F would've felt throughout the entire claims process.

I think it's clear there have been delays in progressing the claim, and responding to Mrs F and Mr F. And when this is considered against the length of time Mrs F and Mr F's drain remained blocked, with water still impacting their home, I think the distress and inconvenience caused to Mrs F and Mr F warrants an additional payment.

Having considered all of the above, and the amount of time Mrs F and Mr F has had to spend engaging with RSA arranging inspections, visits, repayment of invoices etc, I think RSA should pay an additional £500 to Mrs F and Mr F, taking the total compensatory payment to £1,000. I think this total offer is a fair one, that falls in line with our services approach, as it recognises the impact the situation they found themselves in would impact them both emotionally and practically, considering RSA's admittance regarding their service failures.

Responses

Neither RSA nor Mrs F and Mr F accepted my provisional decision. RSA didn't think our service should consider the payment of the drainage invoice, and they didn't think there was justification to pay a further £500 compensation.

Mrs F and Mr F provided extensive comments in reply to the provisional decision, explaining reiterating why the felt RSA should pay their outstanding repair costs in full, plus further costs. I want to reassure Mrs F and Mr F I've considered the comments they've made in detail, but I don't intend to list them all here as they reiterated, and expanded on, points they've already made throughout the investigation process.

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.

Having done so, my initial decision remains the same. Again, I want to reassure Mrs F and Mr F, and RSA, I've considered all of the information and evidence put forward to me when reaching this conclusion, even if I haven't commented on them specifically.

Much of Mrs F and Mr F's comments refer to arguments they've already put forward which centre around their unhappiness with RSA's technical consultants' opinion. And while I recognise there is a clear dispute between Mrs F and Mr F's opinion, based on the reports they obtained, and the opinion this technical expert reached, I think my provisional decision has already explained clearly why I think RSA were fair to rely on this.

And I think my provisional decision also addresses Mrs F and Mr F's stance regarding their belief RSA promised to cover their costs in full, before reneging on this. So, while I have thought carefully about the further assertions Mrs F and Mr F have made, I don't think I've been provided with any new information or evidence that alters the initial decision I reached.

As I explained within my initial decision, it is not my role to decide what I think should've been repaired by RSA under the claim, as we are not loss adjustors and so, I don't have the expertise to do so. So, I haven't, and won't, be speculating on the scope of works. Instead, it is my role to think about the overall claim decision RSA made, and the settlement they have paid or have offered to pay, considering the evidence available to them. And my opinion remains unchanged that RSA's decision, considering the opinion of the technical consultant and the reports compiled by S and D, was most likely a fair one.

But my decision also remains the same that I think it's clear the claim has been ongoing for a significant period of time. And I think it's clear the claim itself has been particularly distressing and inconvenient for Mrs F and Mr F, which has seen them needing to actively engage with RSA at times where I think RSA could've done more to be more proactive to prevent this. I also think it's clear there have been occasions where Mrs F and Mr F have supplied invoices and had to wait an unreasonable amount of time for these to be paid.

I also think RSA have provided confusing and sometimes conflicting messages to Mrs F and Mr F, which has led to them believing they would receive a higher cash settlement than they ultimately have. And I can recognise the upset and frustration this would've caused. So, considering all the above, my decision remains the same that the £500 originally offered by RSA isn't enough to recognise this impact appropriately. Instead, I think this payment should be increased to £1,000 in total. So, this is what I'm directing RSA to do.

And I must be clear this payment is intended to address the impact that has definitively been caused to Mrs F and Mr F. I note in their response to my provisional decision, they have asked for compensation to recognise damage that may have occurred to their home that has not yet been identified. As I have no evidence to show further damage is apparent, or that it has been caused or worsened by an error RSA made, I haven't considered this in the payment I'm directing.

And in terms of the drainage invoice of £1,362 I initially directed RSA to pay, I note there is some confusion over whether this has been paid. Mrs F and Mr F say it has, while RSA's comments suggest they think it remains outstanding. So, as I can't be sure of the payment status, my decision remains that this should be paid to Mrs F and Mr F if it hasn't already. I note Mrs F and Mr F have referred to an interest payment on this amount, but I think any financial loss here is adequately addressed in the compensatory direction I'm making, as this is intended to acknowledge delays in invoice payments.

While I note RSA have disputed whether this invoice is something our service should comment on, I note the claim itself was made due to a blocked drain. So, I think any work undertaken to repair this blockage is relevant to the claim and so, within our service's scope to decide upon.

I understand this isn't the outcome Mrs F and Mr F were hoping for overall. And I want to make it clear I've thought carefully about the financial impact this will have to Mrs F and Mr F, as I appreciate they've paid a significant amount to B to complete the repairs. But for all the reasons above, I don't think I can reasonably say their full costs should be covered, based on the evidence I've seen compared to the actions RSA have taken.

My final decision

For the reasons outlined above, I uphold Mrs F and Mr F's complaint about Royal & Sun Alliance Insurance and I direct them to take the following action:

- Pay Mrs F and Mr F £1,362 to cover the amount paid to B for the reinstatement of the drain and gully, if this hasn't been paid already; and

- Pay Mrs F and Mr F an additional £500 compensation to recognise the distress and inconvenience the level of service they provided caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 26 February 2024.

Josh Haskey
Ombudsman