DRN-4658867

The complaint

Mr M complains about the way Royal & Sun Alliance Insurance Limited ("RSA") handled a claim he made for subsidence damage on his home insurance policy.

Mr M has been represented in both the claim and in bringing this complaint. But for ease I've mostly referred to all actions and comments as being those of Mr M.

What happened

Mr M made a claim for subsidence damage to an outbuilding around 2004. This was accepted and dealt with by RSA in 2006, when a cash settlement was issued for the repairs. In 2010, Mr M made a further claim for damage to the outbuilding, he thought there was more subsidence damage.

RSA accepted the subsidence claim and a number of investigations were undertaken over the following years. Vegetation was determined to be the cause and this was removed by summer 2011. But there was a disagreement between RSA and Mr M as to the proposed repair schedule and in 2013 RSA closed the claim as Mr M had stopped responding. Around a year later, RSA reopened the claim following further contact. After this point further monitoring was undertaken, with the building being deemed stable again in 2019. In 2021, a complaint was made by Mr M about the claim and the proposed settlement. He wanted the outbuilding to be demolished and rebuilt. He submitted a report which estimated this would cost around £300,000. In February 2022, RSA responded to the complaint. It proposed a cash settlement of £135,000 to settle the claim. It said if this wasn't accepted, it would offer appointing an independent engineer to review the reports carried out for both parties. Mr M didn't accept that and so brought a complaint to this service. He said there didn't need to be any reports carried out and a decision should be made based on the evidence already presented.

Our investigator said she couldn't look at events before 2016, because of time limits that apply to our service. She said based on the evidence she had reviewed from 2016, RSA had made a fair offer to cash settle the claim. She also thought RSA's alternative offer of a further review by an independent engineer was fair, given the difference of opinions in the best way to resolve the claim.

Mr M didn't accept that outcome. He said he didn't think any part of his complaint was out of time, and that all reports should be reviewed in deciding the outcome.

As Mr M didn't agree, the matter has come to me to decide.

In January 2024, I issued a provisional decision on this complaint. As it forms part of my decision, this is copied below.

What I've provisionally 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.

Firstly, I've considered this service's time limits to decide what we can look into as part of this complaint. Having done so, I agree with our investigator that parts of this complaint are out of time, but for different reasons.

Mr M says a report carried out in 2004 said the outbuilding should be underpinned. Part of Mr M's complaint now is that RSA failed to adhere to that report. The rules that govern our service say we can't look at a complaint if it's made more than:

- Six years after the event complained of; or if later
- Three years from when the customer was aware, or ought reasonably to have been
- aware, of cause for complaint.

The report was carried out in 2004, a complaint was brought about it 2021, which is more than six years on from the report. So I've considered when Mr M ought to have been aware he had cause for complaint. Mr M raised a further claim for damage caused by subsidence in 2010, and this was confirmed as being caused by vegetation shortly after. So I think by this time, he ought to have reasonably been aware that he had cause to complain about the settlement of the 2004 claim. So if Mr M ought to have reasonably been aware of an issue in 2010, that means he had three years from that date to bring a complaint. But he didn't complain until 2021. As this is more than three years later, I'm satisfied this part of the complaint is out of time.

This service can consider complaints out of time if the business - so in this case RSA – agrees. I've already asked RSA if it would give consent for me to consider this out of time. But it hasn't agreed to do so. So I can't review the complaint about the 2004 report not being followed, as I have no power to do so.

But I want to be clear, that this doesn't mean I'm not considering any events from before 2016, as our investigator had set out.

I've considered the handling of the claim since 2010, when the further damage was noted. I see there being three main areas of complaint:

- whether RSA has made a reasonable offer to settle the claim;
- Whether RSA is liable for the contents Mr M says have been damaged due to RSA's
- inaction during the claim;
- And whether RSA has caused unreasonable delays in progressing the claim.

I've considered each in turn. As an impartial service I haven't commented on every report or piece of evidence provided. But I'd like to reassure all parties that I've read, and considered, everything provided so far.

When Mr M complained he wanted the outbuilding to be rebuilt. The cost of which was estimated at around £300,000. After negotiation with RSA I understand he's said he wanted a cash settlement of £255,000. This was for various costs including the cost of clearing the contents and treating mould in the building, storage of contents while repairs are carried out, fixing the damp proof course, levelling the floor as well as decoration costs. RSA agreed to costs of £135,000. It said the main differences between its offer and Mr M's claim was the cost of underpinning [which Mr M says will cost £75,000] replacing a window [around £6,000] and replacement of damaged contents [costing around £27,000]. So I've considered whether RSA's offer is reasonable, and whether it's been reasonable in its refusal to cash settle for the other amounts claimed above.

Mr M's said the property needs to be underpinned due to the issues faced over the years. It's not in dispute that vegetation was agreed as the cause of the subsidence. In 2010 Mr M provided a report which said its unlikely tree removal would be successful in stopping the movement given where the property is located [next to a golf course and overgrown land to one side of the property]. However RSA wanted to pursue mitigation by removal of trees. I don't think this was unreasonable. Generally, this service would consider structural solutions to be a last resort, if other mitigation wasn't possible for any reason. In this case, it appears from the file that whilst the vegetation belonged to a neighbouring golf course, there wasn't an issue in having the vegetation removed and this was done by summer 2011. I consider this to be a reasonable timeframe.

It's not clear from the file whether any monitoring was undertaken following the removal of the trees, but a schedule of repair was drawn up in 2012. And the level monitoring which was finalised in 2016 showed no evidence of any significant ongoing movement. So whilst Mr M had raised concerns about the building still moving, this doesn't appear to be supported by the evidence from that time.

There was further monitoring carried out later and I note RSA then said the front of the building hadn't stabilised. Further arborist reports showed more trees were influencing the property but as Mr M didn't want to remove further vegetation, he asked for an extended period of monitoring. Whilst it's not clear from the file exactly what happened after that, it seems both parties agree the property was stable again from 2019. So on balance I think the evidence suggests that the subsidence can be resolved by vegetation removal and management.

Mr M has provided a report in 2021 from his own expert [I'll refer to as 'F']. This report says given the distortion and cracking, consideration should be given to demolishing the buildings and rebuilding on a piled raft foundation. It says a lesser solution would also be underpinning of the building. RSA say this report shouldn't be relied on as F hasn't used measurements or industry standards to explain why it isn't possible to reinstate the building in the way it has proposed.

I've considered RSA's proposal. It accepts, for example, the floor of the building has been affected and needs to be levelled. It's provided a detailed solution which it says will rectify that issue. Having considered all of the reports, I'm not persuaded that based on F's report, that RSA would not be able to achieve a lasting and effective repair with the schedule it had proposed. And as such, whilst Mr M would like underpinning to prevent further issues, I don't think that's necessary for RSA to resolve the claim. Whilst we expect an insurer to be able to deliver a lasting and effective repair, this doesn't mean it needs to pay to underpin a property that can be stabilised by other reasonable means. So I'm satisfied RSA doesn't have to pay costs towards the underpinning of the property.

Mr M also claimed around £6,000 for a replacement to a window in the roof of the outbuilding. I haven't seen any evidence that the window has been damaged by the subsidence. I have seen comments from RSA's structural engineer, he is of the view this damage hasn't been caused by subsidence. And I haven't seen anything from Mr M which convinces me otherwise, so again RSA doesn't need to include this amount in its settlement. The final significant difference is for damaged contents. RSA has disputed paying any amount for this. It says Mr M doesn't have contents cover for subsidence damage on his outbuilding. But Mr M says the damage has only occurred due to RSA's poor handling of the claim.

It seems accepted by both parties that the subsidence allowed moisture to enter into the outbuilding. In 2011, Mr M asked for dehumidifiers to be installed. RSA declined this as it said it would pay for temporary filling to the cracks instead to stop moisture getting in. It's

unclear whether this happened. But even if it did, RSA accepted later that dehumidifiers should be installed, the earliest I've seen noted in the file is 2015. So even if it did provide a temporary filling of the cracks in 2011, it seems to accept this didn't work, given it later accepted there was an issue with moisture.

I also haven't seen any evidence of significant movement between 2011 and 2014. So it seems more likely the moisture was able to get into the building before this, i.e. around the time RSA declined to instal dehumidifiers. So based on what I've seen so far, I think it's likely RSA should have installed the dehumidifiers earlier. And because it didn't, I think RSA has contributed to the mould getting into the outbuilding and damaging the contents.

However, having reviewed everything, I don't consider it would be fair for RSA to have to reimburse Mr M for all of the damaged items. It seems to me that whilst RSA should have installed the dehumidifiers earlier, Mr M could have also done this if he was concerned about mould forming in the outbuilding. He could have taken steps to mitigate his loss in this respect.

There was also a period where the claim was closed by RSA due to inaction by Mr M. Mr M said he was going to source his own distortion survey in 2012 before he would agree to repairs to start. RSA chased for this report on a number of occasions before saying it would have to close the claim if no response was received. Which it then did. Mr M then made no further contact with RSA for around a year. And in 2014, when Mr M asked for the claim to be reopened, he reported that the mould had already affected the equipment.

So it seems likely the mould problem got worse whilst he had stopped contacting RSA about the claim. Had he been in contact earlier, RSA might have been able to take more proactive steps to limit the mould damage earlier. It's difficult to know how much each party's actions have contributed to the mould growth. So I think RSA should pay 50% of the damage claimed by Mr M, so long as he can evidence the loss. Mr M has claimed around £27,000 for 'damaged contents replacement', so as long as he can provide evidence to support that the cost is £27,000, RSA should pay £13,500 towards this.

Given that RSA has agreed to £135,000, adding 50% for the damaged goods, if evidence can support the cost, means I think RSA should pay £148,500 to settle the claim. I asked RSA to show me that this offer covered the work it said was required, by providing a most recent schedule of works. It said it didn't have one, as the £135,000 was offered due to negotiation with Mr M's representative. However, based on everything I've seen so far, I think £148,500 would be a fair offer to settle the claim and allow Mr M to reinstate the outbuilding.

I understand RSA offered Mr M the choice of a further engineer's report if he didn't want to accept the £135,000 it had offered. If Mr M would prefer this, he can choose not to accept this decision and ask RSA to move forward with that solution instead. However, I think considering all of the reports already available and the time the claim has taken to get to this stage, a cash settlement is a fair resolution in the circumstances.

I've considered Mr M's point about the claim going on for too long, and the distress and inconvenience it's caused him. I can see this is a long running claim, and many parties have been involved. I also accept he's most likely been without the use of his workshop for some time. But that is primarily because of the issues with the subsidence, rather than the inaction of RSA. And this service doesn't make awards for the inconvenience caused by the claim itself. We can only make awards where we see that an issue caused by a business, or an error made, has caused distress and inconvenience above an expected level when experiencing a long running and complex claim.

I accept there are points when RSA could have moved things along quicker. But Mr M and his representative have also at times asked for things to pause, or delayed matters in search of their own experts. Having considered everything, based on what I've seen at the moment I'm not going to ask RSA to pay compensation, as I'm not satisfied that any avoidable delay it caused in the claim is significant to warrant it. So unless I see anything that changes my mind, I'm not awarding any compensation for distress and inconvenience caused by any errors made by RSA.

My provisional decision

My provisional decision is that Royal & Sun Alliance Insurance Limited needs to pay £135,000 to settle the claim.

It should also pay an additional £13,500 for the damaged workshop contents. On receipt of proof of the items damaged by the damp conditions due to the subsidence.

Response to my provisional decision

RSA said it wasn't going to challenge the decision and didn't provide any further points.

Mr M's response was, in summary:

- Our Investigator had said RSA's offer was £150,000, but I had said it was £135,000 so could it be clarified which was correct.
- The window was only damaged by the subsidence and so should be included in any settlement figure
- RSA should pay all of the claim for damaged contents, Mr M has already proven his loss and 8% interest should be added to the settlement amount.
- There will be costs, not yet quantified, for disposal of items via a commercial facility which exceed £80,000, this hasn't been included in the settlement figure.
- The costs should be increased given inflation since the initial offer was made
- RSA should provide an undertaking to underpin the building should it move again.

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 accept our Investigator said the offer was £150,000. I checked with RSA and it clarified that it had asked if Mr M would be agreeable to an offer of £150,000 but the agent who said this didn't have the authority to agree to it. I've seen an email between RSA and Mr M which confirms the same thing. I'm satisfied there has never been an offer of £150,000 made. I've also clarified this with Mr M before reaching this decision.

Mr M says this shows RSA was willing to offer more, so knows the claim was worth more. I don't agree that it does show that. It seems both sides were trying to negotiate on costs to reach an agreement to end the claim. But Mr M didn't accept RSA's offer and came to this Service. So it is for me to decide if £135,000 is a fair offer. It wouldn't be fair for me to hold RSA to any other figure that it hadn't actually offered before the complaint was brought to this Service.

Mr M has provided a photograph of one of the windows he says has been damaged by the subsidence. He says that allowed moisture into the building which has caused the frames to rot and should therefore be included in the claim settlement.

I can see from the photo there is condensation on the window, I can see the wood at the bottom is wet, especially in one corner. And there is mould near it, although this is on the ceiling [for which redecoration costs and mould removal have been factored into the settlement amount]. I can't see any mould on the window frame itself. I accept it's possible this is related to the claim, but I'm not satisfied Mr M has shown that all three windows he's claiming for as part of his £6,000 claim have been damaged by the subsidence. And from the photo provided to me, I can't see that the window needs to be replaced as a result. So I'm not going to require RSA to include the cost of it in a cash settlement.

I've considered Mr M's comments on the damaged contents, but I'm still of the opinion that it wouldn't be fair or reasonable for RSA to reimburse Mr M the total cost for these, for the reasons set out in my provisional decision. He's said mould damage isn't reversible and its commonplace for dehumidifiers to be installed after water damage. But this isn't a water damage claim. There was discussion, in 2011, about moisture potentially getting into the building due to the cracks, so it seems to me this would have happened gradually over time, and at certain points of the year. And it is around this time that the claim was paused due to no response from Mr M's representative. So I'm not satisfied RSA is wholly responsible for this damage. I still require RSA to pay half of the damaged costs claimed.

Mr M has said he's already provided a list of these to RSA, so there's nothing more he can show. Having reviewed this again, I'm satisfied RSA needs to pay £13,500 to resolve this part of the claim. But I don't think RSA needs to add 8% onto this amount, as I haven't seen anything that suggests Mr M has been without this money. He hasn't provided any evidence he's already replaced any of this equipment, so he hasn't fairly been without funds RSA should have provided earlier.

Mr M has said I've overlooked, in my provisional decision, the costs for cleaning, moving, storage and disposal, which will exceed £80,000. I did consider those costs as part of my provisional decision. And I'm satisfied that RSA's offer is sufficient to cover those costs, and the other costs it agreed to, such as repairing the damp proof course and relevelling the floor. I'm not persuaded there are any other reasonable costs that should be considered here.

Mr M said given the time that's passed since the offer was made, prices have gone up. So the settlement offer should increase to reflect that.

I've seen some quotes on the case file dated around 2020/2021, so I do accept that some prices are likely to have gone up since that time. However, I don't think it's practical at this stage to ask for any quotes such as for storage or mould decontamination to be re-costed. To do so would add more delay to the resolution of this claim. I'm also aware that, overall, I've largely found that RSA's offer made in 2021 was reasonable - but for the settlement of the damaged contents. So I don't find a fair resolution would be for RSA to pay the current market rates for all of the costs.

But I do think RSA should account for some increase in costs from the £135,000 originally offered. Given the time that has passed since the offer was made and considering my finding that RSA should have also contributed to the damaged contents. And noting the fact inflation has been well documented as being high over the last few years. Whilst it's very difficult for put an exact number on that, I said to both Mr M and RSA I was minded to add £10,000 to the settlement amount to reflect the general increase in some costs. RSA accepted that. Mr M said he thought it would be more appropriate to add 8% interest on the settlement amount to reflect inflation. Having reviewed matters again, I still think RSA should add £10,000 to the sum as a contribution towards any increased costs, for the reasons set out above. So to resolve that part of the claim RSA is required to pay £145,000.

Finally, Mr M has asked me to include an undertaking that RSA will underpin the building if it moves again. I don't think it's reasonable for me to do that. I would expect RSA to deal with any future claim in line with its policy terms, but in the circumstances of this case I don't think it's appropriate to set out how any future claim would have to be handled.

My final decision

My final decision is that I require Royal & Sun Alliance Insurance Limited to pay Mr M:

- A total of £145,000 to settle the claim
- Pay £13,500 towards the cost of damaged items

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 April 2024.

Michelle Henderson
Ombudsman