

The complaint

Ms L complains Royal & Sun Alliance Insurance Limited (“RSA”) hasn’t carried out the necessary repairs on her property following a claim for subsidence on her home insurance policy. She’s said the condition of her property has worsened as a result.

All references to RSA include its agents.

What happened

Ms L had a property insurance policy with RSA. Around August 2018, she reported damage to her home caused by subsidence. RSA registered a claim and identified the subsidence damage was being caused by trees which needed removing.

There was a period of time following this when Ms L’s policy was cancelled so the claim didn’t move forward. Our Service already looked into a complaint about the cancellation so I won’t go into detail about that here.

RSA arranged for an arborist report to be drafted which it’s given us a copy of. This report says the damage to Ms L’s property was consistent with clay shrinkage caused by vegetation. It highlighted two trees – one in each of Ms L’s neighbours’ properties which it thought was causing the problem. And it recommended they both be removed.

RSA says it was liaising with Ms L’s neighbours from January 2022 to ask for the trees to be removed. It says, up to June 2022, it appeared that both neighbours would remove their trees – and one neighbour did. Ms L says her neighbour has only cut their tree down.

RSA’s said it needed to gather evidence, through monitoring, to give to Ms L’s neighbours to show the impact of the trees on her property. But it didn’t attempt to start this until October 2022, at which point it says Ms L wouldn’t allow the monitoring to start unless it agreed to repair her gate as part of the claim. As a result, monitoring didn’t start. RSA offered Ms L £250 for the delays it caused to starting monitoring and the service provided but otherwise it didn’t think it’d done anything wrong.

From around March 2023 RSA says there were complications with the neighbours removing their trees which it says has delayed things. It says there were birds nesting and later, Ms L’s neighbour refused to remove their tree due to an ongoing dispute he had with Ms L. In the meantime, RSA agreed to cover the cost of temporary repairs to Ms L’s property upon evidence of the repairs from her.

Ms L complained that RSA wasn’t doing enough to force her neighbours to remove their trees. Or alternatively, she said it should make other repairs – such as underpinning her property – to stop the further movement.

As the complaint wasn't resolved, Ms L asked our service to look into things. Our Investigator didn't uphold the complaint. She thought RSA's offer was fair. And she didn't think it was responsible for forcing Ms L's neighbour to remove their tree. She also accepted it hadn't been able to monitor Ms L's property – and didn't think it needed to consider alternative options for repair.

Ms L didn't accept our Investigator's opinion. She explained her house is uninhabitable and she thought RSA should be forced to bring legal action against her neighbours and repair her property. As the complaint wasn't resolved at that stage, the case was passed to me for a Final Decision. In the meantime, RSA told us one of Ms L's neighbours had agreed to get costs for their tree to be removed, after which, monitoring can be started.

I issued a provisional decision on this complaint in February 2024. My provisional decision forms part of this decision and I've copied what I said below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen so far, I'm planning on upholding this complaint in part. I'll explain why.

It doesn't seem to be in dispute in this case that the movement to Ms L's property has been caused by trees on neighbouring properties. From what I've seen, it seems to me, RSA's approach has been to persuade Ms L's neighbours to remove the trees. For example, it's obtained an arborist report and planned to monitor Ms L's property for movement so it can share the results with her neighbours. And that's what I'd expect initially. But considering the time that's passed and the difficulty RSA has had in getting any agreement from both of Ms L's neighbours, I don't currently think that's enough in this case.

I know Ms L thinks RSA should force her neighbours to remove the trees through taking legal action. But RSA's said it's not in a position to do so due to an ongoing dispute she has with her neighbours. I've thought carefully about the dispute and the comments made by Ms L's neighbour. Overall, I can't direct RSA to remove the trees from a third party's property itself. And I don't think it would be appropriate for me to direct it to take court action to force Ms L's neighbours to do so. I say this in part because it's unlikely to be workable in practice as neither our service, nor RSA can control the court process.

However, based on everything I've seen in this case, I don't think it's reasonable to leave Ms L's property in the condition it is in, particularly considering the ongoing movement RSA is satisfied the trees are causing and the increasing damage Ms L's said is happening as a result. So, I currently think RSA should move to adopting an engineered solution to stabilise the property in order to undertake long-lasting effective repairs. It will need to appoint a suitably qualified engineer to determine what is needed in that respect. It is possible the engineer may require further investigations to be undertaken in order to establish what stabilisation method is required and Ms L should cooperate with those reasonable investigations.

I know RSA has said one of Ms L's neighbours is now looking into the cost of removing the tree on their property which it will pay towards to keep things moving. So that suggests, removing the trees might still be an option. But I don't think it would be reasonable for RSA to delay alternative repairs any further on the basis that the tree should hopefully be removed – particularly as it's unclear whether the second tree still needs fully removing. Instead, I think RSA should start work to appoint an engineer to decide and plan the most appropriate alternative stabilisation method. If all necessary trees are removed by the time the engineer is able to do this, I think it would be reasonable for RSA to monitor the property to see if it has stabilised. And if it hasn't stabilised, it should move ahead with the engineer's plan and design.

I understand RSA previously needed to monitor Ms L's property to show her neighbours their trees need to be removed. But it's said Ms L hasn't allowed them to start this. She's given us her reasons why she thinks RSA should add her gate to the scope of works. But that doesn't form part of this complaint, so I haven't looked into it. Whilst I don't think RSA should be focussing on removal of the trees only, it may need to monitor Ms L's property for the purpose of identifying other solutions to stabilise it. And if that's the case, it should confirm this with Ms L who will need to allow access in order to move the claim forward.

Ms L's said she's needed to make temporary repairs to her property to make it habitable. For example, she's said the movement has caused water to enter her property through her kitchen floor. RSA's asked her to provide evidence of the emergency repairs she's had done, including invoices for the work and it would consider whether it could cover the cost of that. I understand Ms L hasn't provided this information yet so I would encourage her to do so.

RSA's offered Ms L £250 to make up for the service it's provided. But I don't currently think that's enough in this case. This claim's been ongoing for a number of years, during which, I think RSA should've considered and implemented alternative methods of stabilisation – particularly after it was clear the trees weren't likely to be removed quickly. As a result, Ms L says her property has continued to get worse while she's remained in it. At the moment, I think RSA should pay Ms L a further £500 in addition to the £250 it's already offered to make up for the delays in this case. When reaching this figure, I've only considered the avoidable delays, not all of which were caused by RSA.

Ms L's said her property is uninhabitable due to the further movement that's happened over the years. I've not been given enough evidence of the condition of the property to say whether it is habitable or not. But I'm currently satisfied Ms L's policy provides cover for alternative accommodation if her home is uninhabitable during the period necessary to repair the building and until it's restored to normal living conditions. So RSA should assess whether her property is uninhabitable and provide alternative accommodation in line with the policy terms and conditions if it is."

I asked both parties to make any further comments before I reached a Final Decision. Ms L said she accepted most of my provisional decision. But she said in summary:

- The parties to a court case never have control over the court process so this shouldn't stop me from directing RSA to take legal action against her neighbours.
- She has legal expenses cover under the policy which covers her for disputes with her neighbours.
- She'd like me to direct RSA to place her in alternative accommodation and to confirm a deadline by which RSA needs to complete the outstanding repairs as it didn't carry out the repairs after the last complaint she brought to our Service.

RSA referred to its final response letter sent in March 2023 and said in summary:

- Monitoring is needed before any alternative methods of stabilising the property are considered but Ms L hasn't allowed it to start.
- It's unsure of whether the property has stabilised following removal of one of the trees as it hasn't been able to carry out any monitoring.
- It already told Ms L it would issue a final notice to her neighbour to remove the tree if the arborist report and monitoring showed the property was still moving.

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've also thought carefully about the comments made in response to my provisional decision. And having done I am still upholding the complaint in part.

RSA's referred to its final response letter from March 2023 which confirmed it needed to monitor Ms L's property following removal of one of her neighbour's trees to assess whether it was enough or whether the other neighbour's tree still needed removing. It also said at that point, it had instructed an arborist report. And, as Ms L didn't allow it to monitor her property, it doesn't think it should take alternative action now. But I don't agree.

RSA's purpose for monitoring has been to persuade Ms L's neighbours to remove their trees. But I understand it shared the arborist report with her neighbours which provides evidence that both trees are impacting the property and should be removed. Considering the time that's passed since then – and the difficulty RSA has had in getting any agreement from both of Ms L's neighbours to remove the trees even with the report, I don't think the lack of monitoring alone is what has caused delays here. Or that monitoring the property will have necessarily led to a different result with the neighbours. So I still think RSA should've considered alternative options earlier. I also note the arborist report highlights that the tree RSA was referring to hadn't been removed but had been cut back (as Ms L's also said).

RSA says it can't consider any engineered solutions to stabilise the property until monitoring takes place. But in my provisional decision, I've accepted monitoring – or other reasonable investigations – may need to take place in order to identify other engineered solutions to stabilise it. And Ms L will need to allow access in order to move the claim forward. So this doesn't change the outcome I've reached – and I still don't think RSA should be focussing on removal of the trees only at this stage.

I note Ms L's mentioned a few times that our Service had previously told RSA to carry out repairs but it hasn't done so. And it's clear she's worried that will happen again. But I'd like to clarify that the complaint which Ms L previously brought to our Service was about the cancellation of her policy. And whilst our Investigator instructed RSA to progress the claim in line with the previous terms, I don't agree they said it should carry out any specific repairs.

I appreciate Ms L's comments about the court process. But I don't think directing RSA to take legal action would be the most fair and reasonable outcome in this case. This is because even if I do direct RSA to pursue legal action against Ms L's neighbours, there's no guarantee it would be successful.

Ms L's highlighted that she has legal expenses cover so she thinks RSA should take action against her neighbours under that part of her policy. But I've not seen evidence she's made a claim for legal expenses and, in any event, this complaint is about her subsidence claim only. If Ms L has made a legal expenses claim and is unhappy with how the insurer has dealt with that, she'll need to make a separate complaint about that.

In response to my provisional decision, Ms L's asked me to confirm RSA needs to arrange alternative accommodation for her. But, as I explained in my provisional decision, I've not been given enough evidence of the condition of her property to say whether it is habitable or not – and it needs to be considered uninhabitable in line with the policy terms. So I still think it's fair for RSA to assess whether Ms L's property is uninhabitable and provide alternative accommodation in line with the policy terms and conditions if it is. Ms L's also asked me to give RSA a deadline for completing the outstanding repairs. But as above, the repairs depend on Ms L cooperating with RSA's reasonable investigations, which may include monitoring of her property. So I don't think that would be fair in this case.

Putting things right

To put things right in this case, I direct RSA to:

- Appoint an engineer to decide and plan the most appropriate alternative stabilisation method in order to achieve long-lasting, effective repairs without delay. Move ahead with that plan and design unless all necessary trees have already been removed in the meantime and the property has stabilised after a period of monitoring.
- Assess whether Ms L's home is uninhabitable and arrange alternative accommodation for her in line with the terms and conditions of the policy.
- Pay Ms L £500 compensation in addition to the £250 it's already offered her, to make up for the delays it's caused to moving her claim forward.

My final decision

For the reasons I've given, I uphold Ms L's complaint and direct Royal & Sun Alliance Insurance Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 10 April 2024.

Nadya Neve
Ombudsman