

The complaint

Mr and Mrs L, represented by their daughter, Ms L, have complained about their property insurer Royal & Sun Alliance Insurance Limited (RSA), regarding a subsidence claim.

What happened

Mr and Mrs L made a claim to RSA in October 2021 when they noticed cracks in their home. RSA began investigating the subsidence. But by 2023 the property had not been repaired and Ms L complained to RSA.

In a final response letter (FRL) of 25 April 2023, RSA acknowledged some lengthy delays affecting the claim and poor communication. It noted a delay of two months in 2022 and four months in 2023 when the involvement of an arborist was identified as necessary but not appointed. It offered £600 compensation for upset caused. It assured Ms L that an arborist had now been appointed and that the loss adjuster would provide updates going forwards.

Mr and Mrs L remained unhappy. They were concerned about their deteriorating property and their own poor health. They didn't feel £600 was enough given the claim had been ongoing, with no real progress and limited communication since 2021. With Ms L putting in a lot of effort to get things resolved, at a time cost to her. Mr and Mrs L noted that their policy renewal in October 2022 had cost more – they felt this could have been avoided, or they'd have been able to negotiate or move insurers, if the claim had been managed properly and concluded within a reasonable time. They felt the arborist hadn't been appointed as advised in the FRL.

Our Investigator felt RSA had handled the claim poorly, significantly delaying the drain repair and appointing the arborist – to a far greater extent than it had accepted. She noted a lack of communication and support for Mr and Mrs L, its vulnerable policyholders. So she felt it should pay a total of £1,300 compensation.

Ms L said the additional compensation was disappointing and insulting. She said RSA's failings had caused severe stress and were life changing for Mr and Mrs L. Ms L said that Mr and Mrs L had been worried that their house would sink or was otherwise unsafe, and that RSA had ignored their concerns in this respect. Ms L emphasised that RSA had been dishonest in the FRL about the arborist having been appointed – that wrongdoing alone warranted far more compensation. She said Mr and Mrs L are out of pocket by more than £600 given the cost of renewal in 2022, and her time in dealing with matters has had a cost to her too. The complaint was referred to me for an Ombudsman's decision.

I felt RSA had failed Mr and Mrs L. A consequence of that being that they'd suffered distress and inconvenience. But I noted RSA had paid £1,300 compensation and I felt that was a fair and reasonable sum in the circumstances. I explained my views in a provisional decision, giving both parties the chance to respond.

RSA said it accepted my findings. Mr and Mrs L did not reply.

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 said provisionally:

“Our awards of compensation

When we consider what an insurer has done wrong, we look at the impact of that on its policyholders. Where we find they've been caused distress and inconvenience, we can award compensation for that. That is for distress and inconvenience caused by the failings, not just that which flows naturally from having an incident which results in a claim. And 'distress and inconvenience' might be some frustration and having to make a few additional phone calls at the lower end of the spectrum, up to agonised, daily worry, possibly impacting health and a lot of effort being needed to rectify matters, at the top end. And within all of that we also take into account over what period the additional upset was caused.

So our awards of compensation for distress and inconvenience are not meant to be punitive on the insurer. Further they do not take into account financial losses. If there are financial losses which have been incurred, they are treated separately. And we can only look at upset or financial loss for the policyholder/s, not regarding anyone assisting them with their claim or complaint.

It is within these parameters that I've considered what happened in this claim. I've done that for the period October 2021 until 23 April 2023. I'm aware that the claim progressed from that date, but my consideration of RSA's failings, under this complaint, ends at 23 April 2023, the date of RSA's FRL.

Claim progress (what went wrong and what should have happened)

Subsidence claims can take a fair while to resolve. How long each should reasonably take will depend upon a host of factors. But, generally speaking, in any claim, we'd expect the insurer to actively manage the expectations of the policyholder and to move things on in an orderly and timely manner. It is very clear to me that RSA did not do any of that here. I've bulleted the key delays and failings I've noted:

- The drains were noted as being damaged during RSA's first assessment visit in November 2021, with large, nearby trees identified and felt to be a possible cause of damage. But inspection and repair of the drains wasn't progressed until November 2022, and an arborist wasn't appointed until spring 2023.*
- It took two months for RSA's initial report on the property to be made, with RSA not updating Mr and Mrs L in the meantime.*
- In May 2022 it took RSA three and a half months to arrange a site visit to consider further movement identified by monitoring.*
- RSA felt an arborist would be needed if July 2022's reading showed further movement, it did show further movement but the arborist was not appointed until spring 2023.*
- Following the site visit in August, it was three months before contractors were appointed (to deal with the drains and temporary repairs).*

I understand that the need for the arborist and drain investigations and repair arose because this instance of subsidence was felt to have been being caused by tree roots. With those tree roots both affecting the soil around the property and having caused damage to the drains. Moving to investigate and then fix the drains sooner, along with appointing an arborist would, I think, have certainly meant the claim would have progressed differently.

I've thought then about what would likely have happened if those two key things had been done sooner by RSA – in January 2022. Fixing the drains would have allowed the ground to start to recover and would have prevented the unpleasant smell and worry Mr and Mrs L experienced during 2022 when the damage to the drains got worse. But that alone wouldn't have allowed the reinstatement work to the home to begin. For that the trees, the likely main cause of the subsidence, would have to be dealt with.

Clearly one of the first steps to dealing with trees felt to be causing subsidence is to get an arborist involved. They can provide some key expert evidence about whether or not, and if so which, trees are causing the problem. That can often be crucial in getting the offending trees removed. If trees are removed that can allow a long-lasting repair to the building to take place. However, even if trees are removed, and sometimes that isn't possible or straightforward, repairs often can't take place straight away. Rather the property will have to be monitored to ensure stability has been achieved, often over the following couple of seasons at least, with recovery often occurring during wetter winter months. But exactly how long that will take is highly dependent on uncontrollable factors like the weather. Only once stability is achieved can repairs safely progress.

There can be other complications too. Sometimes the offending trees are owned by someone other than the policyholder. And they may not be minded to remove their trees. In that circumstance monitoring results and other evidence of movement at the property will need to be gathered in order to present a persuasive case to the trees' owner to make them remove the trees. If they still do not agree then an insurer will have to look at other methods for stabilising the property – but they only come as a last resort. Here I can see that the trees, eventually identified by the arborist, belonged to Mr and Mrs L's neighbour and that it took several months for the neighbour to remove those trees.

To be clear, and as I've said, I'm not looking at what RSA did once the arborist became involved and the trees were identified – that post-dates 23 April 2023. But the trees belonging to the neighbour, and the fact that they were, for whatever reason, reluctant over a period of months to remove them, does help me understand what would most likely have happened if RSA (alongside the drain investigations and repairs) had appointed the arborist in early 2022.

If the arborist had been appointed by early 2022, both parties would have known which trees were felt to need removing to make Mr and Mrs L's home stable. RSA could have begun contacting the neighbour at that time, and I think it's likely the neighbour would have taken about six months to remove the trees. I know it took eight or nine months in 2023/2024, but I bear in mind the neighbour sadly passed away during that period and matters were taken over by her family. I think it's fair to say that likely added in another level of complexity which would have been avoided if the arborist had been appointed earlier. So I've taken that into account by concluding it's most likely that, in 2022, it would only have taken six months for the neighbour to be persuaded to remove the offending trees. That would take the claim to a point where the ground around the property should have been able to start recovering as of June 2022.

Bearing in mind what I've said about recovery above, I think RSA would have wanted to monitor the property for a while before progressing the repairs. I think that would have been for at least six months in order to see what happened over the remaining part of the summer and into the likely wetter winter months. So I think repairs wouldn't ever have started at the property until at least December 2022. I think those repairs, with careful planning and pro-active management, could have been completed within the month. So, in my view, this claim should and could have all been resolved as 2023 began.

Renewal October 2022

I know the premium went up at renewal. That Mr and Mrs L feel they couldn't negotiate or shop around because the claim was ongoing. But even if the claim had resolved, I think they'd likely have had difficulty. But as a natural result of having had a subsidence event and claim, rather than any failure of RSA. And the detail I've set out above shows the claim, even properly handled by RSA, would never likely have resolved before October 2022. I don't think RSA caused Mr and Mrs L any financial loss in this respect. Whilst the cost of renewal and the feeling of being tied to RSA was possibly worrying and frustrating for Mr and Mrs L, I don't think RSA is responsible for that either.

Arborist appointment in spring 2023

RSA, in its FRL said the arborist had been appointed on 20 April 2023. Mr and Mrs L feel RSA lied about that because, when Ms L spoke to the arborist in May 2023, he said he'd only been appointed the day before. If RSA had lied in its FRL that would be unreasonable, I accept that would have upset Mr and Mrs L and I'd likely take it into account when considering compensation.

I don't doubt what Ms L says she was told. And I can't say why the arborist might have said that. But I don't think RSA lied about what it had done. As part of its submissions RSA presented its loss adjuster's activity notes. These are a contemporaneous record of activities. From that record I can see that on 20 April 2023 RSA called the loss adjuster and told it to appoint an arborist – that this was overdue. I can also see that, within a few minutes of that call, the loss adjuster had emailed a new instruction to an arborist. With RSA, mindful I suspect of the backdrop of poor communication which had dogged the claim, making sure to clarify, in its FRL of 23 April 2023, that this had been actioned. Notwithstanding what I've said above – that the arborist should've been appointed in January 2022 – I think RSA acted fairly and reasonably in the FRL when it told Mr and Mrs L the arborist had been appointed on 20 April 2023.

Safety of the property and temporary repairs

I think living in a crack damaged property was a cause for worry for Mr and Mrs L. But I bear in mind that, even had RSA dealt with things as it should've done (as I've set out above), they'd always have had to wait for permanent repairs to take place. With the general worry experienced in the meantime a natural result of the incident and claim.

I've seen photos of the property. I don't think it was so damaged as to mean RSA should have acted to move Mr and Mrs L out. But, if at any point, Mr and Mrs L told RSA they were worried or had particular concerns, RSA should have responded to them. Particularly given they are vulnerable customers. I see that in November 2022 Mr L said he was concerned that nothing had happened in the last three months – whilst they were being left to live worrying about their home disintegrating, with it being known that major work to the drains was needed. Then in late November 2022 Ms L clarified that her parents needed some reassurance, and she provided RSA with photos showing some major concerns at the property including an uneven floor.

It was January 2023 before the drains were repaired and RSA acted to complete temporary repairs to the floor (and windows). I think RSA could have acted to complete the temporary repairs sooner, and I said above the drains should have been repaired long before this to avoid such an impact on the policyholders at this time. I accept that these few months were particularly worrisome for Mr and Mrs L. I also understand that they each have medical conditions which can be exacerbated by stress. I'm glad RSA did act to assist Mr and Mrs L,

but because I think it should have done so sooner, I've taken into account, when awarding compensation, the distress and inconvenience they were caused at this time.

Compensation

I've noted above RSA's key claim failures. I've also explained where I think it's failed Mr and Mrs L in other ways. Further that if it hadn't failed them so badly in handling the claim, I think the claim should have been resolved by the beginning of 2023 – with it actually being largely unresolved by the point of RSA's 23 April 2023 FRL. I accept that during that four-month period, plus the two months at the end of 2022 when they were really worried about the drains and the deterioration of their home, that their health was likely impacted too.

I'm mindful that, on top of the delays, RSA has accepted it didn't communicate well with Mr and Mrs L. I've seen that, at times throughout the claim, Mr and Mrs L, or Ms L, had to chase RSA, or its loss adjuster, to find out what was happening. I think Ms L mostly took the communication over entirely from November 2022. So that would have meant Mr and Mrs L were caused less inconvenience. But they would still have experienced the frustration of RSA's mismanagement in this respect. And in a delayed claim, where there were serious worries about the state of the property, that feeling would be heightened.

I appreciate that, from Mr and Mrs L's point of view, the claim has been delayed and ongoing since 2021. However, above I've explained why I think, if their claim had been properly managed, it would only have resolved at the end of 2022. Meaning that RSA's poor handling resulted in a claim delayed, at the point of the FRL, by four months. Having taken everything into account. I'm satisfied that £1,300 is fair and reasonable compensation."

I note RSA's acceptance of my findings, and that Mr and Mrs L have not replied. I've reviewed matters in light of no objections or comments being received and I've no cause to change my findings from those provisionally stated. My provisional findings are now those of this, my final decision.

My final decision

I uphold this complaint – Royal & Sun Alliance Insurance Limited failed Mr and Mrs L. I'm satisfied that £1,300 compensation is fairly and reasonably due to make up for this and I'm aware that Royal & Sun Alliance Insurance Limited has paid this sum already. As such, I don't require it to do or pay anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 17 May 2024.

Fiona Robinson

Ombudsman