

The complaint

Mr K complains about the repairs carried out by Royal & Sun Alliance Insurance Limited after he made a claim under his property insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr K had a property insurance policy underwritten by RSA to cover two adjacent properties – shops with a flat above – which he owned and rented out.

He made a claim in 2010 after he noticed cracks in the walls of the properties. RSA accepted the claim and carried out repairs. This included work on the drains, a leak from which – in RSA's view - had caused subsidence.

After completing the repairs, in 2012, RSA issued a certificate of structural adequacy.

Some time later, further cracks appeared, and the claim was re-opened. RSA identified subsidence as the cause of the damage and carried out underpinning work, which they completed in March 2016.

A few months later, further cracks appeared. RSA again identified the cause as subsidence. And they carried out further underpinning to the front of the property.

This work was completed in 2019. In March 2019, RSA's engineer gave Mr K an assurance that his problems with subsidence at the properties were over.

In July 2022, Mr K put the properties on the market (to be sold together). A buyer made an offer of £136,000, subject to survey etc., which was accepted by Mr K.

The buyer then had a structural survey carried out. This concluded, amongst other things, that subsidence was likely on-going at the properties.

In short, Mr K eventually accepted an offer of £80,000 for the properties, given the conclusions of the structural survey – and the sale went through at that price.

Mr K then made a complaint to RSA. In his view, RSA had failed to properly repair the properties when they dealt with his subsidence claim. And he said that had cost him £56,000 – the difference between the original offer the buyer had made and the price he eventually paid.

RSA issued a final response to that complaint in August 2023. They didn't uphold the complaint.

They said there might be any number of reasons why a potential buyer would reduce their offer on a property. And there was, in their own words "no firm evidence" to suggest that the reduction in the price of the properties was a direct result of any failure or inadequacy in the

repairs their contractors had carried out.

They acknowledged Mr K's view that the stabilisation of the property they'd carried out was ineffective – at least in part because they hadn't underpinned the whole of the property. But they said because he'd now sold the property, they had no way to investigate and/or to confirm or deny his suspicions.

Mr K wasn't happy with this and brought his complaint to us. Our investigator looked into it and didn't think RSA had done anything wrong.

He recognised that RSA could no longer access the property to carry out further investigations, given that Mr K had sold it. And he said there was therefore no evidence – nor any prospect of any – to suggest that the properties had suffered further damage from subsidence or movement after the last repairs were completed in 2019.

Mr K disagreed and asked for a final decision from an ombudsman.

I also disagreed with our investigator and thought the complaint should be upheld. So, I issued a provisional decision. This allowed both Mr K and RSA the chance to provide further information or evidence and/or to comment on my thinking before I make my final decision in this case.

My provisional decision

In my provisional 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.

This is a complex complaint. And there is a significant amount of debate over the technical details and the likely effectiveness – or otherwise – of the repairs carried out by RSA.

As I see it, Mr K made a claim to RSA in 2010. RSA accepted the claim and identified subsidence at the properties.

From that point, Mr K was entitled to expect that any work carried out by RSA's contractors would provide an effective and lasting repair to the damage at the properties. And to do that, RSA would have to address – and resolve – the subsidence issues evident at that time.

So, the key questions for me in making this decision are as follows. One, did RSA (in the end) carry out lasting and effective repairs to the damage first reported by Mr K in 2010? And two, if not, what were the (unavoidable) consequences for Mr K?

RSA will understand why, on the face of it, they're on the back foot when they say their repairs were effective, given the history of the claim.

In short, RSA said they'd stopped the subsidence in 2012. They hadn't. They carried out further repairs, including attempted underpinning (of a particular type) in 2016. That failed to stabilise the properties.

And so, they carried out the last set of repairs and underpinning, completed in 2019. That's the third attempt at stabilising the properties, over nine years since the claim was first made.

With these latest repairs, RSA's contractor initially suggested a solution involving piling under some of the walls of the properties. After some discussion between themselves and the contractor, RSA commissioned a more traditional underpinning approach.

The buyer's structural surveyor's report – in January 2023 – concluded that traditional underpinning was unlikely to be effective given the structure and nature of the ground underneath the building.

The surveyor has access to the documents relating to the claim and the repair work RSA had carried out. They also concluded that any underpinning should have been across the whole of the structure of the building, whereas RSA had chosen to underpin only the front of the properties (facing onto the street) and a small part of the party walls close to the front elevation.

Their report noted very significant signs of subsidence at the properties. It noted that some of these appeared to be recent – for example, doors which no longer fit their frames. And it noted cracks to the front of the property which the surveyor thought could and would have been repaired by RSA's contractors if they'd been evident at the time of the previous works.

The surveyor's report is very detailed, thorough and persuasive. So, I disagree with both RSA and our investigator when they concluded that there was no longer any chance of unearthing evidence to suggest the 2019 repairs hadn't been lasting and effective. The inspection carried out by the surveyor, in my opinion, provides exactly that evidence.

I'm aware that the surveyor says he can't be absolutely sure that the cracking and other signs of subsidence post-date the repairs completed in 2019.

However, on the balance of probabilities, the evidence he sets out very much suggests that there has been on-going movement at the properties after 2019.

And it's very clear from the surveyor's report that he believes that the type of underpinning carried out was always unlikely to be effective. He also concludes quite firmly that any underpinning should have been to the whole of the two-storey original sections of the properties (not including the one-storey and later extensions at the rear) if it was to be effective.

I'll try to summarise my current thinking. Unless I get any persuasive evidence or information to the contrary in response to this provisional decision, I'm minded to conclude that it's more likely than not that the properties have suffered further movement since the latest repairs were completed in 2019. And that the works carried out by RSA at that time were ineffective and unlikely to provide a lasting solution to the subsidence problems with the properties.

Mr K has explained why he was unable to postpone the sale of the properties in 2023 in order to allow further investigation by RSA and further attempts at repair. He's also provided evidence to show that the eventual price realised for the properties was in fact £56,000 less than the original, pre-survey offer. And that this reduction was based on the findings of the surveyor's report.

I don't agree however with Mr K's idea that RSA are therefore responsible for him in effect losing £56,000. I'll explain why.

The buyer's surveyor concludes, as I say above, that there is likely on-going movement at the property and that the repairs carried out by RSA were unlikely to be effective. However, he also notes other structural issues with the properties which are clearly not related to subsidence or movement.

He says there are significant issues with the roofs and guttering. Some of the issues with the roofs may be related to the movement in the properties, but it's unlikely the problems with the guttering are.

He also mentions significant issues with a steel stairway leading to the flat above the shops, which he believes needs fundamental repair or replacement. And he notes that the fire protection measures between the shops and the flat need significant upgrading.

He also says, in conclusion, that "there are numerous non-structural defects with this property, far too many for me to mention in this report". The photographs included with the report also appear to show a significantly run-down property, which is clearly poorly maintained in numerous places.

So, I'm minded at present to conclude that I certainly can't hold RSA entirely responsible for the reduction in the price of the property which followed the surveyor's report.

Properties very rarely sell at the asking price. And they are frequently subject to negotiated reductions in price following surveys and/or inspections.

And it seems in this case – from the surveyor's report's conclusions – that there were numerous reasons why the buyer might have felt that a reduction in the asking price was necessary.

It's impossible now to estimate what proportion of the £56,000 reduction in price was due to the subsidence issues, what proportion was due to other structural and non-structural defects, and what proportion was simply due to the negotiating skills of the buyer.

However, that difficulty in calculation can't deflect from the fact that the subsidence issues appear to have had some effect on the property's sale price – and very likely a quite significant effect.

That being the case, I'm minded at present to require RSA to pay Mr K £20,000 to account for that part of the price reduction which was due to their not having made effective and lasting repairs in response to Mr K's subsidence claim – and to reflect Mr K being deprived of that money for a period of time (since the sale went through in effect).

Mr K has also suffered a degree of distress, upset, frustration and worry – over a fairly prolonged period – as a result of RSA's errors in the way they handled and responded to his claim. I'm therefore minded as things stand to require them to pay Mr K £500 in compensation for his trouble and upset."

The responses to my provisional decision

Mr K responded to my provisional decision to say that he agreed with it in principle.

However, he also says that the buyer of his property had inspected the property before

making his offer and was aware of the “cosmetic” (Mr K’s own word) problems with the property. He also points out that the buyer had been a previous tenant at the property and was aware of the issues.

It’s Mr K’s view then that the subsidence issues identified in the surveyor’s report were the sole reason the offer was reduced. And he suggests that the buyer’s solicitor confirmed this.

Although he doesn’t say so directly, I believe Mr K wants me to increase the payment RSA are to make to him from the £20,000 set out in my provisional decision to the full £56,000 drop in the price of the property between offer and purchase.

RSA responded to say that although Mr K wished to sell the property, he could – and by implication should – have contacted them first.

They also asked for clarification of my “specific calculations” (their own words) of the reduction in the price of Mr K’s property caused by the subsidence issues identified in the surveyor’s report.

Again, it’s not explicitly stated, but I suspect RSA are at least implying that the £20,000 payment I suggested to cover Mr K’s losses is too high.

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 don’t agree with Mr K that all of the other problems with the property identified by the surveyor are “cosmetic”. For example, the stairs to the flat require substantial repair or replacement and the report referred to the need for a significant upgrade in the fire protection between the shop and the flat.

Even if I did agree, I’m sure Mr K doesn’t need me to point out to him that buyers will often (if not usually) wait for a survey to support their reduction in an initial offer.

And as for the buyer being a previous tenant of the property, Mr K tells us this was in the 1990s. That predates even the first claim Mr K made by some distance, so it’s not really relevant, in my view.

We do have on file an email from the buyer’s solicitor which says the buyer had concerns about the “structural aspects” set out in the surveyor’s report. And that email ends with a reduced offer of £80,000. However, the email says the buyer proposes “a further reduction” in the purchase price, to £80,000. So, it is clear there were earlier reductions in the offer, possibly based on other matters.

In any case, it is not credible that the buyer would have ignored all the other issues with the property, including the staircase and the fire protection between floors - and otherwise described by the surveyor as too numerous to mention – when putting forward his final offer.

So, whilst I understand the comments Mr K has made in response to my provisional decision, I’m not persuaded to require RSA to pay Mr K £56,000 to cover the whole reduction in the price of the property. Nor am I persuaded to increase the amount from the £20,000 suggested – and explained - in my provisional decision.

I appreciate RSA’s comment that Mr K might have contacted them before selling the property. However, I can understand that he didn’t, in all the circumstances.

He wanted to sell the property quickly for his own reasons (which are perfectly reasonable). And I can see from the evidence we have that he was under some pressure from the buyer to complete the sale as soon as possible. There may have been an element of bluff in that, but it's not unreasonable for Mr K to suggest that he was entitled to be the judge of that.

I also bear in mind the context and the time it took RSA to deal with Mr K's previous claims and complaints. Mr K might be forgiven for thinking that involving RSA at that stage would inevitably lead to complication and further delay, possibly without anything useful coming of it.

In short, it's difficult to see what might have been achieved. Mr K (quite reasonably) wasn't going to wait for further repairs (possibly taking years rather than months) before selling the property.

And he already had in hand an expert surveyor's report from his buyer which outlined (convincingly) the on-going problems with the property – and showed that RSA most likely hadn't dealt with the subsidence issues at the property by providing a lasting and effective repair.

RSA also asked that I set out my "specific calculations" to arrive at the proposed payment of £20,000 to cover Mr K's losses. As I pointed out in my provisional decision, that figure is an approximation based on the buyer's surveyor's report and the issues identified by it.

I made it very clear in my provisional decision that it was impossible now to calculate exactly what proportion of the £56,000 reduction in price was due to the subsidence issues and what proportion was due to other structural and non-structural defects and/or the negotiating skills of the buyer.

I also made it clear that the difficulty in calculation should not in all fairness be used to justify RSA being absolved of all blame for the reduction in the price of the property – because, bluntly, their failure to adequately deal with the subsidence issues clearly impacted the sale price in a significant manner.

There are then no "specific" and/or detailed calculations to arrive at the £20,000 figure. It is a best possible guess, on balance, based on the surveyor's report. RSA have offered no suggestions as to how I might make a more detailed or more accurate calculation. And so, nothing RSA have said has made me change my mind about that approximation.

Putting things right

I'm grateful to Mr K and RSA for their comments on my provisional decision. However, I haven't changed my mind about the fair and reasonable outcome of this complaint.

As set out in my provisional decision then – and for the reasons set out in my provisional decision - I'm going to require RSA to pay Mr K £20,000 to account for that part of the price reduction which was likely due to their not having made effective and lasting repairs in response to Mr K's subsidence claim – and to reflect Mr K being deprived of that money for a period of time (since the sale went through, in effect).

I'm also going to require RSA to pay Mr K to pay Mr K £500 in compensation for his trouble and upset – again, for the reasons set out in my provisional decision.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mr K's complaint.

Royal & Sun Alliance Insurance Limited must:

- pay Mr K £20,000 to account for that part of the price reduction which was due to their not having made effective and lasting repairs in response to Mr K's subsidence claim (and to reflect Mr K being deprived of that money for a period of time); and
- pay Mr K £500 in compensation for his trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 June 2024.

Neil Marshall
Ombudsman