complaint

Mr and Mrs D complain about the way Royal & Sun Alliance Insurance Plc (RSA) handled their home insurance claim for fire damage to their property.

background

I issued a provisional decision for this complaint in January 2017, a copy of which appears at the end of this document and forms part of this final decision. Mr and Mrs D responded and said they accepted my provisional decision. They also made the following points:

- That they'd told RSA as early as September 2015 that they were going to sell the property. They sent us a copy email (from Mrs D to RSA) dated 11 September 2015 stating so.
- As a result RSA knew they were intending to sell.
- They accept that this service can't make RSA buy the house from them.
- That they'd been reassured twice by RSA – in both September and November 2015 – that the house had been issued with a Certificate of Woodworm treatment. When their buyers asked for a copy during the conveyance it transpired that it had never been obtained. It wasn't until February 2016 that the significantly disruptive work was undertaken by a certified specialist.
- That the offer to buy the house of £625,000 had subsequently been reduced to £600,000. They didn't accept it but last month received an offer of £650,000 which they have now accepted.

RSA responded to my provisional decision and made the following points:-

- That it wasn't until November 2015 that Mr and Mrs D told it that they intended to sell the house.
- That planning consent was never required. It was two separate listed buildings consents that were needed.
- RSA had notified and registered the applications with the listed building officer from the start. The local authority – not RSA - was responsible for issuing the required paperwork. RSA shouldn't be held responsible for delays caused by local authority requests for further information/guidance.
- The fault lay with the local authority. It failed to request from RSA all the information it required in order to progress the consent applications.
- It had taken a pro-active approach to the reinstatement works thereby ensuring that the claim was kept moving. It directly engaged with the listed buildings officer throughout which in turn facilitated the final granting for the consents.
- It disagrees that its approach to the rectification works was in any way detrimental to the overall timeline of the project.
- Insofar as there were any delays these were caused by:
    - RSA's initial failure to install a 'top hat' scaffold thereby allowing the building to sustain further damage;
    - RSA's 'Best Practice' requirement to scope the works at the right time;
    - Access issues related to scoping the works caused by the additional damage caused by the lack of top hat;
    - The unavailability of Mr and Mrs D's own thatcher;
    - RSA's approval of subsequent extensive variations to the scope of works including to areas not damaged by the fire;
    - The knock-on effect of the privately agreed works to the second chimney

- The need for an extensive drying period as a result of the failure to install a top hat at the outset;
- The local authority's failure to issue the consents in a timely fashion.

The complaint was passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I appreciate the comments in response to my provisional decision by Mr and Mrs D. I've noted them carefully but they haven't changed my mind about the outcome of this complaint. I'm pleased to note that they do now appear to have a buyer for the house.

But it is clear to me, from what Mr and Mrs D have said, and from the copy email that they sent in, that RSA knew from early September 2015 that they intended to sell the property. So I don't accept RSA's comment that it didn't know about the sale before November 2015.

RSA's final response letter refers to delays in obtaining planning permission. There are frequent references throughout the claim file to obtaining planning permission. I have seen the planning permission certificate dated 3 March 2016 which appears in RSA's file (the date of application being 4 December 2015). So it's reasonable to assume that an application for planning permission was made and granted.

The separate listed buildings consent application was made by RSA on 16 November 2015. The application form asked if any pre-application advice was sought from the local authority. The answer given by RSA's agents was that it was on two occasions, in April 2013 and in November 2013.The advice given by the listed buildings officer in April 2013 regarded the installation of a top hat to prevent further damage to the building. The advice given in November 2013 was that it was alright for RSA to remove the right hand chimney stack.

From RSA's files these two dates appear to me to be the *only* occasions between the fire in March 2013 and making the applications in November/December 2015 when it consulted with the listed buildings officer. I don't think that this shows that RSA directly engaged with the listed buildings officer throughout the claim. I've noted that RSA told Mrs D in an email dated 1 January 2016 that it had had consultations 'throughout' with two conservation officers but this was in the same email in which it told her it already had the two consents when clearly it didn't.

I'm also unable to agree that RSA notified and registered the applications with the listed buildings officer 'from the start'. I've checked the local authority's planning pages and can see that both applications were made late (in November/December 2015), after the completion of the works and at least two and half months after Mr and Mrs D told RSA it was going to sell the property.

From making the planning application in December 2015 it took three months for the local authority to grant. I don't consider that the local authority caused any delay in doing so.

It took the local authority six months from receipt of the application to grant listed buildings consent. It's clear to me that the delay in granting this consent was due to RSA's inadequate

application. In an email from the listed buildings officer at the local authority to Mrs D in March 2016 he explains how the application has been considered but can't be granted:-

> *"in essence the problem I have is that although the works appear to have already been carried out and completed, the application does not include a definitive list of what has actually been done. There is a schedule of works, but this appears to have been written before any works were carried out and includes estimated and provisional measures; it is not, therefore, a precise and definitive account of what was actually done, where, and with what materials and methods. Drawings have been submitted but these are also not definitive, they are just annotated to indicate that various timber frame members in some areas are to be replaced "as necessary" without giving an unequivocal account of what was actually replaced and how. Because of this it is not possible to assess the impact of the works [on] the building's significance as a heritage asset and I am unable to comment on whether it represents appropriate works that the Council can accept or not. Had the application been lodged before works were carried out, the deficiencies and uncertainties in the application documents could possibly have been overcome by imposing conditions on any consent"*

So I don't think it would be fair to think that the fault for the delay lay with the local authority. It's the responsibility of the applicant to ensure that all the necessary relevant documents are submitted in support. When they weren't, it wasn't unreasonable of the listed buildings officer to ask for further information.

I've noted that RSA disagrees with my view that its approach to the works was detrimental to their overall timeline but this hasn't caused me to change my mind about this complaint. To take just one aspect of its approach, the failure to install a 'top hat' meant the property sustained yet further damage. A letter from the local authority to RSA in April 2013 advises that the current measures in place to protect the building were inadequate. It said this gave it cause for considerable concern. It recommended the installation of a top hat without delay or it would use its statutory powers to intervene to prevent any further deterioration to the building.

For all the reasons given above, nothing that RSA has said has caused me to alter my view on this complaint.

my final decision

My final decision is that I uphold this complaint in part.

I require Royal & Sun Alliance Insurance Plc to pay Mr and Mrs D total compensation of £2,500 for the trouble and upset they were caused by the way their claim was handled. This will have to be paid within 28 days from the date on which we tell Royal & Sun Alliance Insurance Plc that Mr and Mrs D accept my final decision. If it pays later than this it must also pay 8% simple interest* on the compensation from the date of my final decision until the date of payment.

RSA should also reissue its cheque for £244 for the aborted conveyancing costs if Mr and Mrs D ask it to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 20 April 2017.

Claire Woollerson
ombudsman

*If Royal & Sun Alliance Plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr and Mrs D, it should tell them how much it's taken off. It should also give Mr and Mrs D a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

provisional decision

complaint

Mr and Mrs D complain about the way Royal & Sun Alliance Insurance Plc (RSA) handled their home insurance claim for fire damage to their property.

background

Mr and Mrs D's home caught fire in March 2013. Extensive damage was caused to the property which was both thatched and grade 2 listed. Mr and Mrs D made a claim under their home insurance policy for the damage caused. RSA accepted the claim. The repairs were completed and the house handed back to Mr and Mrs D in November 2015.

By the time that the repairs were completed Mr and Mrs D had decided that they no longer wished to live in the property. In November 2015 they accepted an offer of £730,000 from some prospective buyers. Solicitors were instructed and the conveyance started. During the conveyance Mr and Mrs D found out that RSA hadn't applied for planning permission or listed building consent for the repairs. RSA applied for both, retrospectively, in December 2015. The applications had to be revised in January and in March 2016 because they were inadequate. Planning consent was given in March 2016 but listed building consent wasn't given until May 2016. Shortly before it was, Mr and Mrs D's buyers pulled out of the sale because they were unable to wait any longer.

Mr and Mrs D complained to RSA. They complained about the length of time the repairs had taken and the delays in applying for the relevant consents for the works undertaken. RSA sent Mr and Mrs D a cheque for £1,000 in recognition of the delays and inconvenience caused during the repair work. Mr and Mrs D returned the cheque. RSA also sent Mr and Mrs D a cheque to cover their aborted conveyancing costs, which they didn't cash. They said they'd had to re-market their property at a reduced figure but were yet to receive any offers. They also said they were incurring costs associated with still owning the house, such as insurance and council tax.

Mr and Mrs D said that if RSA had managed the repairs properly then the property would've been sold, the money from the sale would be in the bank earning interest and they wouldn't be experiencing the ongoing stress of having to look after it. They thought RSA should buy the property from them at the price they'd agreed to sell it for at the end of 2015.

Mr and Mrs D complained to this service. Our adjudicator investigated their complaint and recommended that it was upheld in part. He said RSA should pay Mr and Mrs D total compensation of £2,500 (the £1,000 originally offered and returned plus a further £1,500) for the delays and the associated stress they caused to Mr and Mrs D. He said:-

- he couldn't look at the distress caused by the loss of Mr and Mrs D's buyer as part of this complaint because this would be better considered when looking at any complaint in the future about the loss of the buyer.
- it wasn't reasonable to consider a complaint about the lost sale because, as yet, it was unknown whether Mr and Mrs D would indeed suffer a loss. That wouldn't be known until they sold the house.
- for the same reason, he couldn't look at any complaint about potential loss of interest on the potential sale proceed nor the additional running costs Mr and Mrs D had incurred as a result of the lost sale.

Mr and Mrs D replied to our adjudicator to say that they had further reduced the price on their house and had just received an offer for £625,000. RSA responded to say it disagreed with our adjudicator's compensation recommendation. It said the claim was very complex given the house had a thatched roof and was a listed building. Consequently it'd taken a long time (given the administrative need for the local authority's involvement) to complete the claim. It said that if it'd been told by Mr and Mrs D earlier on that they intended to sell the property then they could've adjusted their processes. Once it knew about Mr and Mrs D's intentions it did all it could to proactively progress the two consent applications. RSA sent our adjudicator a timeline of events.

Our adjudicator looked at what RSA had said but didn't change his mind. He said the planning application was poorly made and caused Mr and Mrs D unnecessary delays and subsequent upset. The complaint was referred to me for a decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with our adjudicator's assessment and recommendations for this complaint except for one element. I think the distress and inconvenience caused to Mr and Mrs D by the loss of their buyer should be considered as part of this complaint. I'll explain why.

delays in carrying out repairs

I accept that this claim – given the nature of the property – would've taken longer to deal with than if the property had been of conventional construction. But I think that 2 years 8 months was too long. I can see from the timeline – and indeed RSA has admitted it to be so – that there were avoidable delays during this period. I can see Mr and Mrs D had to do a lot of chasing and were caused significant inconvenience above and beyond that which we'd normally expect to see associated with a claim of this nature.

RSA has offered Mr and Mrs D compensation of £1000 for these delays but I don't think this is a fair and reasonable amount in all the circumstances of this complaint.

delays in applying for planning and listed buildings consent

I'm not persuaded by RSA's argument that it couldn't have applied earlier for these consents. My understanding is that the roof repairs (for which planning consent was required) were completed by July 2014. But planning consent wasn't sought (retrospectively) until December 2015 and even then the application was poorly made. The local authority rejected it and it had to be resubmitted again, causing unnecessary delay in it being granted. There was a similar situation with the listed building consent which took until May 2016 to be granted.

It is also regrettable that when Mr and Mrs D asked RSA for copies of the two consents at the start of January 2016 (to pass to their conveyancer) its contractor told RSA that the consents had been received when clearly they hadn't.

I appreciate that RSA didn't know that Mr and Mrs D intended to sell the house but I don't think this excuses the very late retrospective applications. Regardless of whether the house

was to be sold, the applications should ideally have been made before the works or, at the very latest, as soon as they were completed. They weren't made at all until Mr and Mrs D asked for the consents to be forwarded to them (having assumed, and been led to believe, they'd already been applied for).

The result of this delay was that Mr and Mrs D lost their buyers. The buyers hung on until May 2016 but in the end they withdrew their offer. I don't doubt that these months were very stressful for Mr and Mrs D.

In addition to compensation for the delays in carrying out the actual repairs to the property, I think RSA should pay Mr and Mrs D compensation for the distress and inconvenience they were caused as a result of its failure to apply for planning and listed building consent in a timely manner. I include the stress associated with trying to keep, and then losing, their buyers within this. I think compensation for this distress should be considered within this complaint. Doing so now doesn't prejudice any future complaint Mr and Mrs D may want to make to RSA (and/or this service) about the actual financial losses they think they've suffered as a result of RSA's handling of the consent applications. But I want to be quite clear that the compensation I'm provisionally awarding here is specifically for the delays in applying for the consents and the effects they had on Mr and Mrs D up to, and including, the loss of their buyers in May 2016.

sale of the house and costs associated with continued ownership

As of yet, there's no completed sale on the house. So it's not possible to quantify what the financial loss is to Mr and Mrs D being unable to sell their home for £730,000 in May 2016. So I can't consider that as part of this complaint. If Mr and Mrs D ultimately end up making a loss they may wish to raise this as a separate complaint with RSA. Should they do so, it's my recommendation that any further complaint includes all the financial losses they consider they've suffered (for example, loss of interest, continued payment of council tax etc.). This is so any remaining issues can be addressed by RSA under one final complaint.

Whilst Mr and Mrs D want me to make RSA purchase the house from them, this isn't something I'm able to do.

compensation amount

RSA sent Mr and Mrs D a cheque for a £1,000 for the delays associated in doing the repairs. But I don't think compensation of £1,000 for the repairs *and* the effect of the delays in applying for the consents had on Mr and Mrs D is a fair and reasonable amount. I think that total compensation of £2,500 is a fairer reflection of the stress Mr and Mrs D endured – above and beyond that which would normally be associated with a claim of this nature - from the date of the claim until the date their buyers withdrew their offer.

My understanding is that Mr and Mrs D returned the cheque sent to them by RSA for £1,000. If this is the case, RSA should now pay Mr and Mrs D £2,500. If it isn't then it only need pay a further £1,500.

I think the cheque for £244 RSA sent Mr and Mrs D for the aborted conveyancing costs was fair. Mr and Mrs D have said that they haven't cashed the cheque. Should they wish to do so and find that the cheque is no longer valid, I think it would be fair for RSA to reissue it.

my provisional decision

My provisional decision is that I uphold this complaint in part.

I require Royal & Sun Alliance Insurance Plc to pay Mr and Mrs D total compensation of £2,500 for the trouble and upset they were caused by the way their claim was handled. This will have to be paid within 28 days from the date on which we tell Royal & Sun Alliance Insurance Plc that Mr and Mrs D accept my final decision. If it pays later than this it must also pay 8% simple interest* on the compensation from the date of my final decision until the date of payment.

RSA should also reissue its cheque for £244 for the aborted conveyancing costs if Mr and Mrs D ask it to do so.