complaint

Mr R is unhappy with Royal & Sun Alliance Insurance Plc (RSA) because it's declined his claim made on his home insurance policy after a leak was found in his bathroom.

background

In July 2017 Mr R was having his bathroom renovated and a leak was found. The water damage had affected the bathroom, the shower room it backed on to and the room below. He made a claim. RSA sent a loss adjuster to the property to assess the damage. The claim was accepted; negotiations and investigations began into what a fair settlement would be.

RSA wrote to Mr R and said that it was prepared to pay £39,911.05 (after deducting the excess amount payable under the policy). It also said the claim hadn't been handled as well as it should have been. In particular it noted its loss adjuster hadn't been best placed to consider the claim. It offered £250 compensation. The content of this letter was discussed with Mr R over the phone on 7 September 2017.

On 8 September the claim was passed to another RSA representative to allow payment to be made. The claim was then reviewed and it was decided that the offer of settlement would be rescinded. Mr R was called that same day and given the news. An email confirming this position was sent to Mr R a few days later.

The email confirmed that the cover had begun on 1 April 2017 and the evidence of rotten woodwork showed that the damage had started prior to that date. Therefore, any claim should be considered by Mr R's previous insurer. It also noted that Mr R was likely under-insured. But it said it was sending Mr R £250 as compensation for the upset it had caused by initially and erroneously offering to settle the claim.

Mr R complained to us and our investigator thought RSA should pay the claim. It disagreed and the complaint was passed to me for a decision. I thought RSA did need to honour Mr R's claim but didn't think a simple instruction to pay or meet the claim fully resolved the matter or answered some underlying issues raised within RSA's file. I issued a provisional decision.

"my provisional findings

under-insurance

RSA mentioned this in its email to Mr R but didn't seek to take any action in respect of this issue. However, it did indicate in its claim file that this was something it would want to take into account if any settlement were to be made. If that were the case then I'd have expected it to have been clear about this possibility in its email – it could have done so on a without prejudice basis. But it didn't.

In any event, I note that the policy doesn't include any term allowing RSA to settle on a proportional basis where under-insurance is found. This would be necessary for RSA to take any action in this respect – so this maybe why it only drew the under-insurance to Mr R's attention. Whatever the reason for the slight disparity between its claim notes and the email sent to Mr R, as the policy doesn't allow for proportional settlement, I won't be taking the under-insurance into account in any award I make here.

previous offer of settlement

I think RSA failed Mr R in this respect. It put him to quite a lot of trouble in considering his claim; contact was made with his contractor and various details and reports were requested. I'm not sure if Mr R had a cost for these reports. If he did he should provide me evidence of this as I think RSA should reimburse him any outlay he had plus interest. To make an award in this respect I'll have to see evidence of this in response to my provisional decision.

RSA knew from the outset that the damage was found quite close to the start of the policy but this key issue was overlooked until the very last minute, at which point the settlement offer was rescinded. I accept that this caused Mr R some substantial anguish and frustration. He also had a contractor waiting to do the work, I'm not sure if any charges were levied when Mr R had to cancel due to lack of funds. If they were, and Mr R can evidence this to me, I'd probably be minded to make RSA reimburse these costs, plus interest. To make an award in this respect I'll have to see evidence of this in response to my provisional decision.

But I don't think it would be fair to hold RSA to paying this proffered settlement. When the rescission came it was before funds were sent to Mr R and the space between the offer and rescission was short. And Mr R hadn't taken any action based on the offer, such as paying his contractor, meaning the recession left him at a disadvantage. And I'm mindful that, from RSA's point of view, the sums concerned were not inconsiderable. So I can understand why it would have wanted to amend its position on the claim. Therefore, while I think RSA's action was unfair, I also think that it wasn't wholly unreasonable. As such I'm going to allow the rescission of that settlement offer to stand.

The question for me then, is what is a fair and reasonable outcome in this situation?

pre-existing damage

It has long been the approach of this service, regardless of any strict legal position, to say that, where damage occurs during a current policy, even if that has been going on for some time but as long as it couldn't reasonably have been noticed, it's fair to make the current insurer take on the loss. It is then up to the current insurer to chase the previous insurer for a contribution if it wants to. In any event, unless it can differentiate between the damage which occurred pre and post cover, it will have to repair the damage as a whole. Regardless of differentiation, it has to carry out effective repairs for the damage that has occurred during its tenure. Pre-existing damage doesn't wipe out its liability for damage occurring on its watch.

I'm satisfied that damage has likely occurred in the months RSA has been on cover. And I'm satisfied that Mr R didn't know about the on-going leak. While Mr R could approach his previous insurer that would leave him stuck between the two companies while arguments over liability preside. That wouldn't be fair and is the main reason for our established approach explained above. In the circumstances here I think RSA needs to accept liability for the claim and reconsider what a fair settlement is.

Giving RSA a chance to review the settlement is important because repairs haven't yet been done. That means it may well be the case that some differentiation can be established. But RSA will need to act quickly as Mr R's home has now been in a state of disrepair for some months, and only because of the errors RSA has made in handling this claim.

I also understand that Mr R patched the ceiling downstairs. If he had any costs for this, I think RSA should reimburse them plus interest. But I'll need to see proof of these in response to my provisional decision, or I'll likely find there is nothing owed in this respect.

policy exclusion for damage caused gradually

While RSA so far has said it isn't seeking to rely on these terms to decline the claim, it occurs to me that it might re-think its position in this respect when reconsidering the damage. If that were the case then I'd remind it of our approach to these types of exclusions, which include rot. While we note that most policies allow for claims to be declined in such circumstances we say that where gradual damage, including rot, stems from an insured event, and where the policyholder didn't know damage was occurring, then it isn't fair for the insurer to rely on such an exclusion to defeat its liability in anyway.

compensation

I think, as mentioned above, RSA did cause Mr R an amount of frustration when it, out of the blue, withdrew its settlement offer. I'm also aware that Mr R has his home finished, barring this damage and part strip out, to a very high standard, which was why the appointed loss adjusters were unable to properly assess his loss (because it is superior to the standards they work to). So I accept that having the rooms left in this state over all this time would have been particularly distressing. And I'm also aware that Mr R had the inconvenience of having to do a temporary patch repair to the ceiling for family visiting over Christmas. Overall I'm minded to think that £500 compensation is fairly and reasonably due."

responses to my provisional decision

RSA said it had no comment to make.

Mr R said he generally welcomed my findings and clarified that he hadn't been charged for the reports he'd obtained or for cancelling the work. He also said he hadn't incurred any costs in fixing his ceiling. However, he said had concerns about the stress and inconvenience that would be caused by RSA getting to assess the claim again.

my findings

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

As Mr R hasn't incurred any charges or costs I won't make any award respect of the reports, cancellation charges or repairing the ceiling.

I do understand Mr R's concerns about RSA reassessing the claim but I do have to be fair to both sides. The damage is still in situ and there to be assessed. As RSA may want to seek recovery of some its outlay from the previous insurer it fairly has to be given the chance to carry out further inspections of the damage. But I don't envisage its enquiries in this respect should result in much further work or require much more input from Mr R – the reports on what is needed to fix the damage are already there.

Of course, the reconsideration is not only about recovery. There is also the element of whether RSA can limit its own liability by differentiating between damage caused previously and that which has occurred on its watch. It is possible that RSA might think it can do this and it is possible that this might result in further debate with Mr R feeling he needs to challenge RSA again. I do hope this won't happen but I can't fairly prevent RSA from having this chance to investigate and consider its liability.

I accept it would have been much neater if I could just have said RSA needs to pay "X" in settlement of Mr R's claim. That would have meant, once payment was made, both parties could just walk away. But because it might be possible for differentiation to be determined and because RSA, if it wants to seek recovery from the other insurer, will need to gather evidence to support its case in that respect, setting a price and making RSA pay it is just not the right, fair or reasonable outcome here. But I would emphasize what I said provisionally:

"*RSA will need to act quickly as Mr R's home has now been in a state of disrepair for some months, and only because of the errors RSA has made in handling this claim."*

my final decision

I uphold this complaint. I require Royal & Sun Alliance Insurance Plc to:

- Accept and re-consider Mr R's claim for his water damaged home. Its reconsideration will have to take into account the directions I've given above in regards to differentiation, recovery, liability for fixing damage that has occurred while on risk and our approach in respect of exclusions for damage that occurs gradually (including rot).

- Pay Mr R £500 compensation. This payment to be made within 28 days of the date on which we advise that Mr R has accepted my decision (if he does). If it pays later then interest* will have to be added from the date of my final decision until settlement is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 March 2018.

Fiona Robinson
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Royal & Sun Alliance Insurance Plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr R, it should tell him how much it's taken off. It should also give Mr R a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.