

The complaint

Mrs S and Mr S have complained about Royal & Sun Alliance Insurance Limited (RSA). They are not happy that it turned down a subsidence claim under their commercial properties insurance policy and the delay in dealing with the claim.

For ease of reading any reference to RSA includes its agents and I've mainly referred to Mrs S and Mr S in this decision as opposed to their representative.

What happened

Mrs S and Mr S made a claim in relation to an ongoing subsidence issue at their rental property. But when they made a claim under their commercial properties insurance policy RSA turned down the claim and removed cover for subsidence from the policy. This was because RSA felt that Mrs S and Mr S hadn't made a fair representation of the risk posed as they didn't fully outline the previous subsidence problems at the property. And had they have done so RSA said it would not have provided cover for subsidence.

As Mrs S and Mr S weren't happy about this they complained to RSA. It maintained its position about the decline of the claim and the reasons why. But it did offer £50 by way of compensation in acknowledgement of its delays in dealing with their claim.

However, Mrs S and Mr S remained unhappy, so they complained to this Service.

Our investigator looked into things for Mrs S and Mr S but didn't uphold their complaint. She thought it was clear that they should've told RSA about their previous problems relating to possible subsidence at the property. And had Mrs S and Mr S have done this RSA wouldn't have provided cover for this. So she didn't think RSA had done anything wrong in turning down the subsidence claim and that its offer of £50 compensation for its delays was fair.

As Mrs S and Mr S didn't agree the matter has been passed to me for review.

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.

Having done so, I agree with our investigator that I don't think this complaint should be upheld. I know this will come as a disappointment to Mrs S and Mr S, but I'll explain why.

I think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I've looked at all the arguments and information provided by both sides and the relevant law, which in this case is the Insurance Act 2015, and I don't feel the complaint should be upheld.

I say this as I don't think Mrs S and Mr S made a fair presentation of the risk they posed and provided all the information that I would expect them to provide before the policy was taken out.

The Act places a duty on them to make a fair presentation of the risk when taking out insurance. And so Mrs S and Mr S should've looked to disclose everything they knew, or ought to have known, that would influence the insurers judgement to insure and on what terms or enough information to put RSA on notice that it needed to make further enquiries about potentially material circumstances.

I've seen sufficient evidence to show that Mrs S and Mr S should have made RSA aware of previous issues at the property stemming back to the 1980's (when steps to underpin the property were undertaken) and other insurance claims have been raised since that time. The statement of fact stemmed from answers provided by Mrs S and Mr S and states that *'The Premises and adjacent property have not suffered any previous Damage caused by Subsidence, Landslip or Heave and show no signs of any Damage caused by Subsidence, Landslip or Heave.'* Had the previous problems at the property stemming from possible subsidence issues been highlighted then RSA would've referred the risk to its underwriters. And it is clear from the information provided that RSA would have excluded subsidence from cover due to the previous history at the property.

I know Mrs S and Mr S have suggested that the problems they have faced at the property are not subsidence. But even if that was the case I still think they had a duty, even more so as a commercial customer, to make RSA aware of the general issues they had faced at the property. And the fact that they had made claims, whether successful or not, in relation to subsidence previously. Had they have done so; RSA would have been on notice that it needed to make further enquiries about potentially material circumstances.

I note that Mrs S and Mr S has highlighted that they thought RSA should've checked the Claims and Underwriting Exchange (CUE) when the policy was taken out and I understand their position. However, insurers aren't obliged to do this and often only check CUE at claim stage, so I don't think RSA have acted unreasonably.

Given all of this I can't say RSA haven't acted fairly here. It is clear that had Mrs S and Mr S provided details about potential subsidence issues at their property that had been ongoing for a long time then RSA would have acted differently as there had been a qualifying breach of the Insurance Act. And I think RSA has treated Mrs S and Mr S fairly and in line with the Act by providing all remaining cover under the policy excluding subsidence as Mrs S and Mr S hadn't provided a fair presentation of the risk. Finally, I can see that RSA offered £50 compensation in acknowledgement of delays which seems fair.

My final decision

It follows, for the reasons given above, that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 15 January 2024.

Colin Keegan
Ombudsman