

The complaint

Mrs C is unhappy Royal & Sun Alliance Insurance Limited (RSA) has declined a claim made under her insurance policy. She's also unhappy a floor tile was broken by RSA during the claim investigation.

What happened

Mrs C noticed her conservatory floor was cracking. As she thought it might be due to tree roots from a local authority owned tree, she contacted them. They advised Mrs C to contact her insurer and obtain a report. So Mrs C contacted RSA, the provider of her home insurance, in June 2020.

RSA appointed a loss adjuster who arranged an investigation into the cause of the cracking. Following this, RSA declined Mrs C's claim. They said that the conservatory was subsiding due to inadequate foundations, and they said damage caused by faulty design was excluded under her policy.

Mrs C was unhappy with this decision, and that a tile had been broken during claim investigation, so she complained to RSA. Ultimately RSA maintained the claim decision. But they agreed to cover the cost of the missing broken tile on a health and safety basis, subject to Mrs C providing quotes.

Mrs C was unhappy with RSA's claim decision, so she approached this service.

Our investigator looked into things and upheld the complaint. She said that she didn't think RSA had fairly applied the faulty design exclusion. She said RSA had relied on regulations and standards that weren't relevant at the time the conservatory was built. So, she said RSA should reconsider the claim in line with the remaining policy terms. She also said that RSA had acted fairly in offering to cover the cost of replacing the tile if Mrs C provided quotes.

Mrs C agreed with our investigator. RSA didn't agree and an ombudsman was asked for a final decision.

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.

RSA doesn't dispute Mrs C's conservatory is suffering from subsidence, and that's an insured event under her policy. But RSA say that an exclusion applies, and therefore the claim isn't covered. I'll consider whether RSA has acted fairly by applying the exclusion.

Mrs C's conservatory was constructed in 1995 by a builder. Mrs C said the builder suggested foundations of 457mm, but due to the proximity of trees, she asked for this to be increased to twice the depth.

Following Mrs C noticing cracking, in June 2020 she reported this RSA. A loss adjuster and specialist were appointed by RSA who carried out investigations into the cause. When RSA's experts investigated the claim, they carried out analysis of the ground. They said the foundations were 1,000mm and roots from an oak tree were found at 2,300mm.

RSA believes that but for the depth of the foundations, which they say are inadequate, the subsidence wouldn't have occurred. So, RSA relied on the following exclusion in Mrs C's policy:

"What is not covered

Damage caused by:

- *or from poor or faulty design, workmanship or materials"*

RSA says that the foundations are inadequate for several reasons. In the early stages of the claim, RSA said the conservatory foundations didn't meet the standards laid out by a new home warranty provider I'll call Z. They said Z's standards are recognised in the construction industry as the minimum requirements for construction. They said these standards say that the foundations should've been 3.2-3.3m. However, the standards referred to by RSA here were from much later than when the conservatory was built.

In any event, I don't think it's fair or reasonable for RSA to rely on Z's standards to conclude the foundations are inadequate – or then apply the exclusion. I say this because no evidence has been provided to show that the conservatory was required to be built in line with Z's standards. Although they may be recognised in the industry, they aren't regulations, and as they didn't apply to Mrs C's conservatory at the time, the builder was under no obligation to follow these. Consequently, I don't think it's fair or reasonable for RSA to rely on Z's standards to say the conservatory foundation is of a faulty design or to then decline the claim on this basis.

RSA have also relied on BS8004 (1986) 3.2.8.2 and they say this also shows the conservatory foundation was poorly designed:

"The shrinkage of clay may be increased by the drying effect produced by the root system...The range of influence depends on the species...Care should be exercised to ensure that there is adequate space between new buildings and existing trees or the sites of trees that have been removed. Alternatively, special foundations founded at depths greater than 900mm should be provided"

However, RSA accepts that Mrs C's conservatory is exempt from building regulations. But RSA also say good building practices weren't followed at the time of construction. They've said that damage to the conservatory could've been avoided if proper consideration had been given to the proximity of the vegetation.

Whilst it might've been exempt from building regulations, the builder still would've had an obligation to build the structure to a good standard, and it should stand the test of time. And this is generally shown by the structure being reasonably consistent with the building standards at the time and standing without issue for an extended period.

As I said, I don't think it's fair to rely on Z's standards as the builder was under no obligation to follow them. And the conservatory was exempt from building regulations. But in any event, having looked at BS8004, it does appear that the vegetation was taken into account at the time of construction. As I've outlined above, initially foundations were going to be at a depth of 457mm, but Mrs C asked for these to be doubled. And the foundations have been concluded by RSA as 1,000mm. Therefore, they were deeper than the minimum 900mm

outlined. In addition, the conservatory was built in 1995 and the cracking wasn't noticed until around 25 years later, so I think it's fair to say it has stood the test of time.

So, as the conservatory was exempt from building regulations, but still exceeded the minimum foundation depth guidance, and stood the test of time, I don't think it's fair or reasonable for RSA to rely on the faulty design exclusion to decline the claim. Therefore, RSA needs to reconsider Mrs C's claim in line with the remaining policy terms.

During the initial claim investigation, a tile was cracked by RSA's specialist. RSA noted the floor in the remainder of the conservatory had multiple cracked tiles due to the subsidence. But ultimately RSA agreed to cover the cost of replacing the single damaged and missing tile on a health and safety basis, subject to Mrs C providing quotes.

I think RSA's offer in relation to the tile here at that time was reasonable, if the remainder of the claim was assessed and declined fairly by RSA. But as outlined, I don't think that claim decision was fair. So, I'm directing RSA to reconsider the claim. And in the course of doing this, that may well result in the tiles more generally being covered as part of the claim, although at this stage that's not known. But either way, if the tile isn't otherwise covered as part of reconsidering the subsidence claim, then I think RSA's offer to replace the tile is reasonable, subject to Mrs C providing quotes - as they previously offered to do.

My final decision

It's my final decision that I uphold this complaint and direct Royal & Sun Alliance Insurance Limited to:

- Reconsider Mrs C's subsidence claim in line with the remaining policy terms
- If it isn't otherwise already covered when reconsidering the subsidence claim, cover the cost of replacing the damaged tile, subject to Mrs C providing quotes

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 March 2022.

Callum Milne
Ombudsman