

## **The complaint**

Mrs S and Mr S are unhappy with AA Underwriting Insurance Company Limited's ongoing handling of a subsidence claim made under their home insurance policy.

All references to AA include its appointed agents.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it here. Instead, I'll provide a summary of the present position as I see it below.

- A previous ombudsman considered matters up to 25 November 2021. AA then issued a further final response letter on 23 February 2022 which Mr and Mrs S referred to our service.
- My decision covers AA's handling of the claim from 25 November 2021, up to the date of its final response on 23 February 2022.
- AA told Mr and Mrs S that their claim would be covered in full in November 2021. It subsequently investigated the damage and applied a policy exclusion for faulty design to the conservatory foundations. Mr and Mrs S were unhappy and complained to AA.
- AA maintained its decision to turn down cover to the foundations. It made a settlement offer to cover the superstructure repairs to the conservatory and offered £200 compensation for the distress and inconvenience caused to Mr and Mrs S – for mismanaging their expectations and the time taken to reach its decision.
- Mr and Mrs S didn't agree and referred the complaint to our service.
- Our investigator looked at everything and recommended the complaint be upheld. They concluded that AA hadn't fairly relied on the policy exclusion because it couldn't be shown that building regulations (such as a minimum required depth) applied to the conservatory foundations at the time it was built.
- The investigator concluded that they were satisfied the foundations broadly met the regulations in any event, and that the conservatory had stood the test of time. They recommended AA should accept the claim and include any necessary work to the foundations. And they recommended AA pay Mr and Mrs S a further £200 compensation for the distress and inconvenience caused.
- Mr and Mrs S accepted our investigators findings. AA disagreed. It said that as the main property hadn't moved at the same time as the conservatory, this showed the foundations weren't designed adequately to prevent movement. And it said it was likely the movement in the conservatory had been occurring for some time before Mr and Mrs S noticed it. AA considered any work to stabilise the foundations would be considered betterment under the terms of the policy.

The complaint has now been passed to me to decide.

### **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 broadly agree with the conclusions reached by our investigator, and I'll explain why below:

- As AA has relied on an exclusion to turn down this part of the claim, it's for AA to show that it fairly applies and that the foundations are insufficient or of faulty design.
- Conservatories such as Mr and Mrs S' have generally been exempt from building regulations. And I'm satisfied this applies Mr and Mrs S' conservatory based on when it was built around 2006. The conservatory is also exempt from any technical requirements which are attributed to a certain builder of new homes – who I'll refer to as "N".
- As the builder of the conservatory wasn't required to follow either building regulations or N's standards, there wasn't a prescribed minimum depth for the foundations. However, our service's approach is that the builder did have a duty to build a reasonable structure that was likely to stand the test of time, and which took into account relevant things like ground conditions and general good practice.
- Here, the builder placed foundations to a depth of 300mm and the conservatory stood for around 14 years before Mr and Mrs S noticed the damage. I've considered AA's comments regarding minimum foundation depths, and that the damage may have likely happened earlier. But I'm more persuaded the period between the conservatory being built and showing subsidence lends weight to it being suitable *at the time it was built*.
- I've not seen any evidence to support AA's argument that the foundations of the conservatory should've been the same depth as the main property. The main property is a significantly larger and heavier structure, and it simply doesn't follow that a small, single-story conservatory would require the same depth of foundation.
- I accept that this case is finely balanced. But based on everything I've seen; I'm not persuaded AA has fairly shown the policy exclusion applies. AA hasn't shown a minimum foundation depth fairly applies here. And I think that for AA to decline the claim fairly for faulty design it needed to show that either Mr and Mrs S knew there were underlying problems with the soil at the time and didn't take the conditions into account, or that the planning and design process was inherently defective. And from everything I've seen I'm not persuaded it has shown either of these things.
- AA has said that any foundation stabilisation works would amount to betterment. But I've not seen anything here that would be different to a standard subsidence claim. Ultimately, AA as the insurer is responsible for providing Mr and Mrs S with an effective and lasting repair to their structure in the event of a valid claim and should now do so.

- I've considered the distress and inconvenience caused to Mr and Mrs S during this period. And I can understand why being told their claim would be covered in full and then partially turned down would've been very upsetting for them. Having considered everything, I find our investigator's recommendation of £400 compensation total to be reasonable in the circumstances.

### **My final decision**

My final decision is that I uphold this complaint. In order to put things right, I require AA Underwriting Insurance Company Limited to:

- Settle the claim in line with the remaining policy terms and conditions and include any stabilisation work to the conservatory foundations to the scope of repairs.
- Pay Mr and Mrs S a total of £400 compensation for the distress and inconvenience caused.

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 17 January 2023.

Dan Prevett  
**Ombudsman**