

The complaint

Mr N has complained that Covea Insurance plc has declined a claim he made for damage to his conservatory caused by subsidence.

What happened

Mr N's conservatory was constructed in 1994. In early 2022 he noticed the conservatory appeared to be moving away from the house. The damage worsened throughout 2022 and he made a claim to Covea – his home insurance provider – in October 2022.

Covea carried out various investigations into the claim and ultimately decided to decline it.

Covea accepted the damage was being caused by clay shrinkage induced subsidence due to the influence of a nearby oak tree. But Covea said the foundations of the conservatory were inadequate and so the conservatory had been doomed to fail since construction. Based on this, it relied on an exclusion in the policy for poor or faulty workmanship in order to decline the claim.

Mr N disputes Covea's decision. He says there were no applicable regulations covering a conservatory of this size in place when it was built and that his conservatory had stood for 28 years with no issues. Mr N says the exceptionally hot, dry Summer of 2022 is likely the reason his conservatory suffered the damage it did.

One of our investigators looked into Mr N's complaint and thought it should be upheld. He agreed with Mr N that there were no specific regulations applicable to this conservatory when it was constructed and felt it had stood the test of time. So, he wasn't persuaded that Covea had demonstrated poor design or faulty workmanship. He said Covea should deal with Mr N's claim and pay him £150 compensation for the distress and inconvenience it had caused him.

Covea didn't accept our investigator's opinion. So, as no agreement has been reached, the complaint has 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 carefully considered all the evidence and arguments, I've reached the same overall outcome as our investigator. I'll explain my reasons below.

It isn't in dispute that the conservatory has suffered damage due to subsidence, which is an insured event under the terms of Mr N's policy. The issue I need to decide is whether Covea can fairly and reasonably rely on the policy exclusion it has, to decline the claim, in these circumstances.

Covea is seeking to rely on the following policy exclusion to decline Mr N's claim:

"What we don't cover you for:

Poor design, faulty workmanship or the use of defective materials"

This means the onus is on Covea to show that this exclusion more likely than not applies to the damage being claimed for.

Covea has referred to Building Regulations and British Standards at various points to highlight why it feels the conservatory was poorly designed. The former included a requirement for buildings to be constructed so that ground movement caused by subsidence, in so far as the risk can be reasonably foreseen, will not affect the stability of any part of the building. And the latter recommended a minimum depth for foundations within cohesive clay of 0.9m, and suggested depths greater than this when building near trees.

Covea has provided additional evidence, in the form of various site investigation reports which, in summary, say:

- The property and conservatory are founded on clay with a medium to high shrinkage potential.
- The house foundations are in excess of 1.2m deep
- The conservatory foundations are 250mm deep
- There is a 150-year-old oak tree within 12m of the conservatory
- Roots from the oak tree were discovered beneath the foundations – albeit these were described as juvenile and under 1mm in diameter.

Between them, Covea's reports conclude the cause of damage to the conservatory is tree root induced clay shrinkage subsidence. They say the shallow conservatory foundations (and the differential between the house and conservatory foundations), coupled with the ground conditions and proximity to the oak tree, mean that subsidence damage to the conservatory was inevitable. Covea suggests the builder ought to have considered the site conditions and tree and constructed the foundations of the conservatory to the same level as the house. It says this would have prevented the damage from occurring.

I've carefully considered all of the above. I should point out here that the conservatory was built significantly before Building Regulations set out any minimum foundation depth. And in any event, given its size and construction, Mr N's conservatory is exempt from Building Regulations, so the builder would not have been required to strictly adhere to these.

Even if Building Regulations had applied to the conservatory, I'm not persuaded taking the broad aim of this part of the regulations literally would produce a fair outcome. Doing so would effectively amount to concluding that any claim for subsidence caused by clay shrinkage meant the foundation was inadequate and the damage wasn't covered by the policy – which clearly wouldn't be correct or fair. But, as explained, the conservatory was exempt from the regulations in any event.

However, the British Standards Covea has pointed to were published in 1986 and so were in place when the conservatory was built. And these did highlight a specific minimum depth of foundations in the type of ground at Mr N's property – 0.9m – and suggested the depth should be increased if building near to a tree.

Our investigator said that these standards only applied to a “*normal range of buildings and engineering structures*” and he wasn’t persuaded that this would cover a 10 square meter conservatory. I’ve thought carefully about this, but I’m not sure I agree. Conservatories are typically classed as buildings, and the type of conservatory Mr N has isn’t, in my view, so unusual that I’d consider it to fall outside the description of a of normal building or engineering structure. I’m also mindful that if these standards couldn’t reasonably be considered as good practice for conservatories at the time, this would effectively mean there were no applicable standards or guidelines that a builder ought to have considered – which also doesn’t seem correct or fair.

In these circumstances, I think it’s fair to consider the British Standards as an example of best industry practice. So, I think the builder ought reasonably to have taken these into account when designing and building the conservatory and its foundations – to ensure they built a solid structure that was likely to stand the test of time, considering the specific site conditions. That’s not necessarily to say the foundation depths outlined needed to be strictly complied with. But I think it ought to be evident that they were taken into account.

Had Mr N’s conservatory foundations been significantly closer to the suggested depths outlined in the British Standards, I might have been more comfortable concluding that the builder took the standards into account – even if they weren’t strictly in line with the depths suggested. But 250mm foundations are very shallow, particularly given the proximity of the oak tree. So, as the foundation depths are significantly shallower than best practice outlined, I think it’s reasonable to conclude that their design was poor.

Based on the above, I’m persuaded the foundations were poorly designed. But in order to conclude that Covea has fairly relied on the exclusion, I also need to be persuaded that the damage being claimed for is a result of the poor foundations.

Mr N has pointed to a survey carried out by The British Geological Society which suggested the long hot summer of 2022 as a major cause of ground shrinkage affecting building structures throughout the UK. Mr N has also argued that the conservatory stood issue free for 27/28 years and that the roots found beneath the foundations were described as juvenile, which he says suggests they weren’t the cause of subsidence. Based on all of this, Mr N disputes that the tree or foundation design are the reason for the damage.

I’ve thought carefully about Mr N’s points here. I’m mindful that the geological report he’s referred to is a general report about shrinking and swelling soils across the UK, rather than a report specifically about the conditions at his property or the circumstances of his claim. So, I don’t think this report, in isolation, would outweigh the expert reports Covea has provided, which are specific to Mr N’s property, and this claim.

However, taking all the evidence into account, I’m not persuaded Covea has sufficiently shown that damage to the conservatory was inevitable due to the foundations, nor that the shallow foundations are the proximate cause of the damage. I say this because, if subsidence damage to the conservatory was inevitable from the outset, I’m struggling to understand why it didn’t occur much sooner, given the tree was already mature at the point of construction.

As highlighted by Mr N, the conservatory has stood for a very long time, around 28 years, without suffering from subsidence damage. This was despite the ground conditions and the close proximity to an already established, mature oak tree. I’m also mindful that there have been several ‘subsidence surge seasons’ between 1994 and 2022, such as in 2003, 2006, 2010, 2011 and 2018, yet the conservatory didn’t suffer from subsidence damage during any of these surges.

Taking the above into account, I haven't been persuaded that the damage being claimed for has been caused by poor or faulty design. Instead, it seems to me that Mr N's conservatory has stood the test of time, despite the shallow foundations and the specific site conditions. So, in the particular circumstances of this claim and complaint, I don't think Covea can fairly or reasonably rely on the poor design/faulty workmanship exclusion to refuse Mr N's claim.

To put things right, I think Covea needs to accept Mr N's claim, and to settle it in line with the remaining policy terms and conditions.

Claims for subsidence damage can take time to be investigated. This can be frustrating and inconvenient, but it wouldn't be fair to hold Covea responsible for that. However, I think Covea has caused Mr N additional, avoidable distress and inconvenience by, in my view, unfairly declining his claim. So, in addition to dealing with his claim for the subsidence damage to his conservatory, I think Covea should pay Mr N £150 to compensate him for the impact of its failing here.

My final decision

For the reasons I've explained above, I uphold Mr N's complaint. Covea Insurance plc must:

- Accept and settle the subsidence claim
- Pay Mr N £150 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 June 2024.

Adam Golding
Ombudsman