

The complaint

Mrs W and Mr W complain about Royal & Sun Alliance Limited's decision to decline a claim made under their home insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll give only a brief summary here.

Mrs W and Mr W bought their current home in 2006. They have a home insurance policy underwritten by RSA. This covers their buildings and contents, amongst other things.

They made a claim in January 2023 after noticing damage to their conservatory. In short, the damage was consistent with movement in the conservatory, possibly due to subsidence.

RSA appointed loss adjusters to assess the claim. They visited the site in late January 2023 and decided that further technical investigations were required.

They commissioned a report from another company who are technical experts. They visited the property and carried out investigations in late March 2023.

In mid-May 2023, the loss adjuster contacted Mrs W and Mr W to say that the claim was being declined on the basis that the foundations to the conservatory were inadequate.

They said the policy terms were clear that no cover would be provided in cases where damage was due to "*poor or faulty design, workmanship or materials*".

Mrs W and Mr W complained to RSA about the decision to decline the claim and about poor service they received. There was also a later complaint, also about poor service.

In short, RSA maintained that the decision to decline the claim was correct. But they apologised for service failings and awarded Mrs W and Mr W £250 in total (across both complaints) for their trouble and upset.

They admitted some delays, a lack of updates which meant Mrs W and Mr W had to chase them for progress, a failure to call back when they'd promised to do so on more than one occasion, and confusion arising from one of their agents failing to put Mr W through to the loss adjuster to get accurate and up-to-date information.

Mrs W and Mr W weren't happy with RSA's response and brought their complaint to us. They thought the trouble and upset they'd been caused was very impactful, especially in light of Mrs W's serious illness. And they didn't agree with RSA's decision to decline the claim.

Our investigator looked into it and thought RSA hadn't acted fairly and reasonably towards Mrs W and Mr W. She said they should re-consider the claim without reference to the exclusion they'd relied on. And they should pay a further £400 in compensation to Mrs W and Mr W to reflect the fact that the claim hadn't been handled fairly.

RSA disagreed and asked for a final decision from an ombudsman.

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.

There's no dispute here about the terms of the policy. They say, in effect, that RSA won't provide cover where the cause of the damage is poor design / building – and that would include inadequate or defective foundations.

Our approach in this kind of case is to say that, as long as those policy terms are clear, it's fair to decline a claim on the basis of defective foundations if (and only if):

(a) the foundations were in fact built poorly, according to the standards in place at the time; **and**

(b) it was the poor design or build that caused the damage for which the claim is being made.

In this case, Mrs W and Mr W didn't have the conservatory built. It was there when they purchased the house. Images from Google show that the conservatory wasn't there in 2000, but it was in place by 2006 when Mrs W and Mr W bought the house.

That means we don't have any evidence from the builder about their planning and design of the conservatory. There's no dispute though that the conservatory wouldn't have had to comply with building regulations at the time, given its size.

That doesn't mean the builder was entitled to build it whatever way they liked – and expect an insurance company to cover the costs when things later (and inevitably) went wrong. We'd say it would be fair to expect builders to take the regulations and accompanying guidance as at least a starting point when designing a building or extension.

The technical expert report (March 2023) involved the excavation of a trial pit to a certain depth and a bore hole beneath that. It's evident – and not disputed – that the foundations under the conservatory are around 700mm deep (below ground level).

The building regulations themselves are open to interpretation and don't contain specific requirements as to foundation depth. The accompanying guidance is only guidance – and, as I say, strictly speaking wouldn't apply in this case.

However, I'm satisfied the guidance should have been taken into account when the conservatory was built. And I'm also satisfied that – at the time – it recommended foundations at a depth around 750mm in very shrinkable clay soil (which the expert report confirmed is the soil type at Mrs W and Mr W's property). And likely deeper if there was significant vegetation within influencing distance.

I note that in one internal email exchange between RSA personnel, one of their experts does refer to the foundations under Mrs W and Mr W's conservatory as "*half decent*". It might be a stretch then to suggest that the conservatory was built very badly and/or that the relevant standards had been missed by a distance.

However, on balance, I would agree with RSA that the foundations didn't entirely meet the building regulations and best practice guidance at the time, given the soil type and the proximity of a tree in a pub car park to the left hand side of the conservatory (as you look

from the front of the property).

As I've already set out above though, RSA can't fairly decline the claim on that basis alone. The onus is on them to demonstrate that the relevant exclusion applies. And so – bearing in mind our approach, as set out above - they would also have to show that it was the defective foundations that were the proximate cause of the damage to the conservatory. And that the damage would not have occurred had the foundations been as deep as they ought to have been.

It's worth noting that the trial pit and bore hole used by the technical experts in March 2023 is on the right-hand side of the conservatory. I suspect that may be because that's where the damage is and/or where the most likely source of the problem is located (as the experts saw it).

On that side – and in very close proximity to the conservatory – there's a hedge on the boundary of the neighbouring property, which has been put in place by the neighbour. The hedge wasn't there when the conservatory was built. It's a relatively recent addition.

That might suggest that the current issues are caused by the (recent) hedge – and not by the tree in the pub car park. Which, I note, was there in 2000 and has seemingly co-existed with the conservatory for at least 16 years (2006-2022) without causing any problems.

That period of stability in the conservatory – from 2006 at the latest, when Mrs W and Mr W bought the property with the conservatory already in situ – to 2022, when the damage to the conservatory was first noticed, might suggest that the current problems aren't caused by the depth of the foundations.

The conservatory, in short, has sat quite happily on those foundations for at least 16 years, probably more. The timing of the damage suggests a more recent cause of the movement in the property than the building of the foundations - in 2006 at the latest.

The technical experts found roots in the soil – on the right hand side of the conservatory, near the hedge – to a depth of 2m. The trial pit went down 1m, the bore hole then went down another 1m.

So, if the exclusion RSA wish to rely on is to be fairly applied in this case, they would have to show that the foundations should have been built down to at least 2m. And they would have to assume that the roots don't go any deeper. Otherwise, the damage would have occurred anyway – even with foundations that met the requirements of the time.

RSA have said the foundations should have been built to 2.2m deep. That seems to me to be an unjustifiable stretch. Particularly since they appear to have originally told Mr W that the foundations would need to be 1.5m deep.

For one thing, it relies on guidance issued by the National House-Building Council (NHBC). However, the conservatory wasn't required to be built in line with NHBC standards. So, I don't think it's reasonable to apply NHBC standards when deciding if the foundation was defective.

NHBC standards aren't regulations – and the builder would have been under no obligation to follow the standards. And it would be unfair to hold the builder – and effectively Mrs W and Mr W – to a standard greater than they were required to meet.

In any case, those standards are open to some interpretation. In answering our questions about their approach, RSA appear to have used an NHBC table which shows how deep

foundations should be if trees of certain sizes are within certain distances.

RSA again refer to the tree on the left of the conservatory (which has been there all along) and they say – for a broad-leaved tree (which it is) not exceeding 10m in height and 10m from the foundations, they would need to be 2.2m deep.

In fact, the table they refer to only stipulates foundations deeper than 2m – for trees at 10m distant – if the tree is above 14m in height. The expert report says this particular tree is 5m in height. The table starts at 8m in height.

In short, I don't think it's fair to apply the NHBC guidance. Even if you do, it appears not to cover trees as small as the one in question. And in any case, it's most likely not that tree which is causing the problem.

I can see no evidence that the guidance accompanying the Building Regulations (which it may be fair to apply) recommends foundations at 2.2m or more, even in shrinkable clay soil and/or with vegetation in close proximity.

Furthermore, the trial pit and bore hole used by the technical expert only goes down to 2m. And at that depth, they report still finding roots. No analysis has been carried out on those roots to determine their source, by the way.

There may well be roots well beyond 2m deep. RSA simply don't know whether that's the case or not. The bore hole didn't go any deeper than 2m.

So, even if we were to allow RSA's seemingly confused interpretation of the NHBC guidance (which isn't in fact applicable here and say the foundations ought to have gone to 2.2m, it's then not clear whether the roots go beneath that depth anyway.

In any case, they certainly go to 2m. And I'm satisfied it *would* have been reasonable at the time for the builder of Mrs W and Mr W's conservatory to build foundations at less than 2m.

That being the case, the damage here would likely have occurred whether or not the foundations were inadequate or defective. And so, it isn't the defective foundations that are the primary or proximate cause of the damage. In which case, RSA can't fairly and reasonably apply the exclusion for poor design or workmanship.

In summary – I don't believe it would be reasonable to suggest that the builder of the conservatory ought to have gone as deep as, or deeper than, 2m with the foundations, at the very most.

Even if they had gone as deep as 2m, the damage would likely still be occurring given the likely depth of the roots to the right-hand side of the conservatory (most likely from the relatively recently planted neighbour's hedge).

And so, the defective foundations are not the cause of the damage. And RSA can't decline the claim on the basis of poor design and/or workmanship.

Putting things right

For the reasons set out above, I agree with our investigator. It would not be fair for RSA to apply the poor design / workmanship exclusion in this case. So, I'm going to require them to re-open the claim and consider it again under the remaining terms of the policy.

Given the poor service provided to Mrs W and Mr W – as outlined above and as admitted by

RSA – I'm satisfied that the £250 compensation paid by RSA was fair and reasonable. I bear in mind the fact that the service failures were undoubtedly annoying and frustrating, but they didn't cause any excessive and unnecessary delays in dealing with the claim.

However, I agree with our investigator that a further £400 is reasonable for the stress and anxiety that Mrs W and Mr W have undoubtedly been caused by the decision to decline the claim, given the nature of the damage to their property and their personal circumstances at the time.

RSA's compensation award did not take that particular stress and anxiety into account because, as far as they were concerned at the time, RSA believed they had not wrongly declined the claim.

My final decision

For the reasons set out above, I uphold Mrs W and Mr W's complaint.

Royal & Sun Alliance Insurance Limited must:

- re-consider the claim in accordance with the remaining terms of the policy; and
- pay Mrs W and Mr W £400 for the trouble and upset caused by their decision to decline the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 13 September 2024.

Neil Marshall
Ombudsman