

The complaint

Mrs R is unhappy with how Accredited Insurance (Europe) Ltd (“AIE”) has handled a subsidence claim made on her home insurance policy.

Any reference to AIE includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I’ve summarised events. Mrs R has a home insurance policy which is underwritten by AIE. She made a claim on the policy in June 2023, having noticed movement to her conservatory floor.

AIE accepted a claim for subsidence related damage. Its surveyor said the damage to Mrs R’s property was likely related to leaking drains or nearby vegetation extracting moisture from the ground and changing the soil’s composition.

Following site investigations, AIE said the conservatory’s foundations weren’t sufficiently deep given the composition of the clay soil upon which the conservatory had been built. It said the foundations ought to have been 900mm deep, not 350mm. And because the foundations were undersized, the conservatory was more likely to be influenced by clay shrinkage.

AIE accepted roots had been observed within the soil, but said if the foundations had been deeper, the structure wouldn’t have moved. And that without addressing the foundations, any superstructure repair it carried out wouldn’t be lasting and effective.

AIE said it wouldn’t carry out works to the existing foundations – as this would put Mrs R in a better position than what she was in before the claim. But it offered a cash settlement for the flooring, which it said would need to be repaired after works to the foundations had been carried out at Mrs R’s own expense.

Unhappy, Mrs R brought a complaint to the Financial Ombudsman Service. An Investigator considered the complaint and upheld it. He didn’t think AIE could carry out a lasting and effective repair without carrying out works to the foundations.

So, he said AIE needed to carry out works to both the foundations and flooring, and it should withdraw the cash settlement. He also recommended AIE pay £200 compensation to recognise delays caused by its decision to not carry out works to the foundations.

AIE disagreed - in summary it said:

- The cost to repair the damaged floor was included in the scope of works for the cash settlement.
- The conservatory had stood for many years on its current foundations with no movement and only started to move once there was an external influencing factor – namely the tree roots which have grown over time.

- The arborist report says the implicated tree needs to be removed. But Mrs R has said she won't remove it because the tree was costly, sentimental and has not been shown to be the definite cause of movement.
- There's a significant difference in claim costs between removing the tree and an engineering solution. The latter could potentially impact Mrs R's premiums and limit her choice of insurance providers. And so, mitigation works on Mrs R's part will ensure there aren't unnecessary costs.
- If, following the removal of the vegetation, further movement occurs, AIE will consider other options.

As the parties disagreed, the complaint has been passed to me for an Ombudsman's decision. I reviewed the complaint and issued a provisional decision, in which I said:

"What I've provisionally 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. I've also kept in mind AIE's responsibilities as an insurer - as set out in the Insurance Conduct of Business Sourcebook (ICOBS) - to handle claims fairly and promptly.

Having done so, I'm not upholding this complaint. But before I explain why, it's important to clarify the scope of this complaint. Whilst AIE's final response letter also refers to other concerns Mrs R had about how it had handled her claim, this complaint focusses on Mrs R's unhappiness with AIE's decision to not carry out works to the conservatory's foundations or to include a payment for this in the cash settlement. This is what the Investigator considered, and as Mrs R didn't respond to say this wasn't correct, I've proceeded on the same basis.

Foundations

Mrs R says the cash settlement offered by AIE isn't fair because it doesn't cover the cost of works to the conservatory's foundations. She says this should be included as AIE had said a lasting and effective repair to the conservatory floor couldn't be guaranteed without first addressing the foundations.

If the only way to provide a lasting and effective repair results in the policy holder being put in a better position than what they were before the loss, I might consider it reasonable for the insurer to bear the cost of the "betterment" works. However, I'm not persuaded directing AIE to cover the cost of the foundation works - at this stage - would lead to a fair and reasonable outcome - I'll explain why.

Whilst AIE had initially focussed on the conservatory's foundations - saying they are undersized - it has since explained that vegetation in close proximity to the conservatory is likely to be the main cause of the movement. And that once this implicated vegetation is dealt with – in line with the arborist's recommendations – the conservatory will very likely stabilise.

In explaining its position, AIE said the conservatory hadn't moved since it was built in 2006 and had only moved in recent times. Because this movement coincided with nearby vegetation growing, it considers the vegetation – not the undersized foundations – to be the most likely cause of the movement. So, I've looked at the evidence to see if its conclusion - that removing the vegetation will most likely stabilise the property - is fair and reasonable in the circumstances.

AIE's botanical identification report shows that "live" or "recently alive" acer roots were found in the trial pit. Mrs R has confirmed the acer ("T1") in question is a Japanese maple tree. From what I've seen, there's no dispute about which vegetation the roots in the trial pit belong too.

The arborist appointed by AIE said in their report:

"In order to negate their current or future influence on the house, the only vegetation management option available is to remove T1 and H2 to ground level and treat the stump of T1 with Eco plugs to prevent regrowth."

These findings, coupled with the initial surveyor's observations - namely that tree roots were likely influencing the property's movement - persuade me AIE has reasonably shown that removing the vegetation will more than likely stabilise the property. And as Mrs R hasn't provided any persuasive evidence to the contrary, I'm satisfied AIE's decision to omit foundations works from the cash settlement was reasonable.

Removal of vegetation

I appreciate the acer is of sentimental value to Mrs R and was a significant expense. But as there's evidence to support AIE's position that the implicated vegetation needs to be managed, I don't consider it reasonable, at this stage, for AIE to have to resort to a more costly and invasive engineering solution because of Mrs R's desire to keep the acer in situ. Where the evidence supports the insurer's position on removing the vegetation, I'd reasonably expect a consumer to agree to the removal of that vegetation in order to stabilise their property. And from what I've seen, I'm satisfied the evidence supports AIE's position that removing the acer tree should be the first course of action.

AIE has confirmed it will cover the cost of removing the vegetation. This is what I'd expect it to do as it can't complete a lasting and effective repair without stopping the current subsidence movement first.

It has also said that if following the removal of the tree, the conservatory continues to move, it will reconsider the matter and look at other means of stabilising the property. Again, this is what I'd expect it to do as it has to provide a lasting and effective repair.

Whilst I appreciate it's Mrs R's preference to have works done to the foundations – because she wants AIE to make sure the property doesn't move again in the future - AIE only needs to stop the current movement. As I'm satisfied AIE has shown, on the balance of probabilities, that removing the vegetation will most likely result in the conservatory stabilising, I won't be directing it to carry out works to the foundations. Nor will I be telling it to include a sum for this work in the cash settlement.

I appreciate my provisional decision will be disappointing for Mrs R, but I hope, having read my findings she understands why I don't intend on upholding this complaint.

*My provisional decision
My provisional decision is I don't uphold this complaint."*

AIE replied to say it accepted my provisional findings.

Mrs R replied saying:

- The conservatory has stood since 2006 without issue – so the foundations are adequate. It wasn't her preference to have work done to the foundations, but she considered it necessary on the advice of AIE's surveyors.
- AIE's reports didn't conclusively show the Acer was the most likely cause of the damage. And if it did, she'd have removed it. Her neighbours' vegetation has also been implicated – suggesting it's not the Acer.
- The conservatory hasn't moved since the initial contact with AIE.
- She's had several tree surgeons visit who have said the Acer has extremely shallow roots and stands in soil alongside the lawn which is higher than the ground the conservatory is built on, meaning it's unlikely to be the cause of the movement.
- Tree surgeons had advised that roots cause a floor to lift, and slabs to raise, not drop.
- Builders had said the minor shrinkage at the rear is more likely to be storm damage that has washed away parts of the ground.
- Her tree had been damaged during a visit by AIE.
- She hadn't been able to relax in her garden for two summers. And being unable to use her conservatory this Christmas has caused her upset. She's had to spend time away from her job to deal with the claim, and it's been a very stressful situation for her.

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.

I've considered Mrs R's response to my provisional decision, but I'm not persuaded I need to change the outcome I reached. I'll explain why by focussing on what I consider to be key to determining this complaint.

AIE accepts the conservatory has stood since 2006 without issue. Whilst it initially said the foundations were inadequate and made the conservatory susceptible to movement, it has since moved away from this position. Instead AIE says the movement is due to tree roots extracting moisture from the ground upon which the conservatory is built – thus causing it to move. So, I don't actually need to comment on whether AIE's initial position was fair and reasonable, because it doesn't consider inadequate foundations to be the main cause of the movement.

Mrs R says tree surgeons she's appointed told her the roots of the Acer would be too shallow to reach the soil under the conservatory, given the distance between the two. I haven't been provided with the experts' findings to support this. But, in any event, I can't ignore that AIE's arborist report shows Acer roots were found during site investigations in "TP/BH4".

Mrs R's tree surgeons also said tree roots will only cause slabs and floors to lift, and not to drop – and so, isn't the cause of the subsidence damage. But this rationale simply isn't correct. Subsidence can and does occur because of roots extracting moisture from the

ground. This can cause the soil composition to change and in turn, the ground to move downwards. So, I'm not persuaded by this argument.

Following Miss R's response, I asked AIE some further questions about the water that was found during site investigations – noting that "TP/BH5" was terminated owing to excessive moisture causing suction.

AIE responded to say the location of BH5 was the closest borehole to where previous repairs to the drains had been carried out in September 2023. It said the soil in BH5 showed high plasticity clay - which is low in permeability. This means water drains very slowly. So, it seems AIE considers the faulty drain to have been contributing to the excessive moisture that was found.

It said this will take months, sometimes longer to drain away completely under natural conditions. But it's satisfied that repairing the drain, together with the removal of the implicated vegetation (as these roots were found in BH4), will show – after a period of the ground recovering – that the conservatory has stabilised. In the absence of persuasive evidence to the contrary, I'm satisfied this is a reasonable conclusion.

Mrs R has said she doesn't consider the property to be moving anymore and says it hasn't since the insurance claim was made. I appreciate she may have said this to support her position that the Acer doesn't, therefore, need to be removed. But if the property has stabilised as she's suggested, it's unclear why it would, therefore, be reasonable or necessary for AIE to carry out an engineering solution to the foundations at this time.

I remain satisfied that AIE has shown, on the balance of probabilities, removing the vegetation will most likely result in the conservatory stabilising, and so, I won't be directing it to carry out works to the foundations. Nor will I be telling it to include a sum for this work in the cash settlement.

I don't underestimate the impact this situation has had on Mrs R. Understandably, not being able to enjoy her garden and make full use of her home is both upsetting and inconvenient for her. But, unfortunately, subsidence claims by their very nature can be drawn out and cause loss of enjoyment to a property. But this isn't something her insurance policy compensates for.

I'm aware AIE had offered £150 compensation specifically for the upset caused to Mrs R in relation to her tree being damaged during a visit by AIE to her property. I'm satisfied this amount is fair and reasonable in the circumstances, and so, I won't be recommending AIE pay additional compensation.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 January 2025.

Nicola Beakhust
Ombudsman