

## **The complaint**

Mr F complains that Royal & Sun Alliance Insurance Limited trading as More Than (RSA) declined a claim he made under his home insurance policy for subsidence.

## **What happened**

The circumstances aren't in dispute, so I'll summarise the background:

- Mr F's property had a conservatory constructed in 2000.
- In October 2022, Mr F made a claim for potential subsidence affecting the conservatory.
- RSA appointed a loss adjuster to look into it. They carried out investigations and declined the claim. They said, in summary:
  - The conservatory had been damaged by subsidence as a result of clay shrinkage due to trees and vegetation located in the adjacent local authority land.
  - The foundation of the conservatory is 0.6m deep, and the main house foundation is at 1.2m.
  - Roots under the main property were identified as Poplar and roots recovered under the conservatory were identified as Poplar, Prunus and Hornbeam.
- RSA say the trees were present at the time the conservatory was built but they were not mature trees and so there has been significant growth. It says the conservatory should have been designed to accommodate this growth.
- RSA say the conservatory foundation is inadequate judged against the standards at the time of construction, and they should have had a minimum foundation depth of 0.9m in shrinkable clay subsoil.
- RSA say this amounts to faulty workmanship – which isn't covered by the policy.
- Mr F didn't think this was fair and complained. In summary, he said the foundations were constructed in accordance with the design and so workmanship in the construction was not faulty.
- Our Investigator upheld the complaint. RSA didn't agree so the complaint has been passed to me, an Ombudsman, to make a decision.
- I issued my provisional findings on the complaint on 7 March 2025. This is what 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.*

*Having done so, I'm satisfied RSA has acted fairly, in declining the claim. I'll explain why.*

*All insurance policies will be made up of terms and conditions. Most home insurance policies are like Mr F's – they cover damage caused in certain ways only, such as damage by fire or theft. But it won't cover all damage caused in those ways. The policy will contain a number of exclusions.*

*There's nothing unfair about this approach in principle because insurers are entitled to choose what they will and won't cover. But they must present those terms clearly and apply them fairly.*

*Relevant to this case, the policy covers damage caused by subsidence, subject to a number of exclusions. The one RSA is relying on says it won't cover, "faulty workmanship or the use of defective materials or damage caused by either of them" This is a very common policy exclusion. I think some variation of it will likely be found in most, if not all, home insurance policies. I don't find it to be a fundamentally unfair exclusion.*

*RSA accepts the conservatory has been damaged by subsidence. But it's declined the claim because it says this was the result of faulty workmanship. The onus is on RSA to show it would be fair to rely on that exclusion in order to decline the claim.*

*The loss adjuster is a chartered engineer. And they relied on investigations to show the foundation depths, soil types, and root identification. I haven't seen any evidence to challenge the investigation results or their professional opinion, so I have no reason to doubt it.*

*The loss adjuster has referred to Building Regulations Approved Document A and to guidelines by a builder of new homes, N.*

*When the conservatory was built in 2000, it wasn't subject to Building Regulation, and it wasn't built by N, so those regulations were not required. But I would nonetheless expect it to be built to an appropriate standard, such that it was likely to stand the test of time. To do this, the builder should have taken into account the best practice of the time and the specific site conditions to make a judgement call about the design of the foundation.*

*I'm satisfied best practice would suggest caution when building a foundation on shrinkable clay, particularly where vegetation is likely to influence ground movement. It advises the builder to design the foundation to take this into account, taking it deeper than the level where appreciable movement is likely the Standards suggest a minimum depth of 900mm – and potentially deeper where vegetation is nearby. In this case, there were semi mature trees nearby the conservatory at the time of construction, so it should have been recognised as a significant factor when designing the foundation. That means a depth of at least 900mm would have been reasonable, and possibly a depth in line with the main property. Had that been the case, it's unlikely there would have been any subsidence movement given the depth of the roots found and that the main property is not subsiding.*

*I've also considered the 'test of time' argument as I appreciate the conservatory has stood for approximately 22 years with no issues. However, RSA have supplied an arborist report that shows the trees at the time of the conservatory construction were semi mature. I'm therefore satisfied in the circumstances the conservatory can't be said to have stood the test of time, because the trees still had growth to meet maturity and it is now showing that the foundations can't support the structure now that some of these trees are reaching their maturity.*

*In these circumstances, I'm satisfied RSA has shown the foundation design was faulty – and had it been reasonable, it's unlikely subsidence would have occurred.*

### ***My provisional decision***

*For the reason's explained above, I don't intend to uphold this complaint.*

### **Responses to provisional decision.**

RSA said it had nothing further to add.

Mr F in summary has highlighted an email from the loss adjuster to RSA. The loss adjuster said Mr Fs claim was a *"case of defective design/faulty workmanship on a More Than policy, where there is no defective design exclusion."* Mr F has queried that whilst I've said I'm satisfied RSA have shown the foundation design was faulty, do I consider that faulty design is covered under the exclusion that RSA is relying on to decline the claim.

### **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 this carefully and my opinion is that faulty design is a result of faulty workmanship. I say this because the conservatory was designed and built to a plan that's been shown it had insufficient foundations. So, the contractors design was faulty and therefore the workmanship done to carry out the design was also faulty. Either way I look at it, the *'workmanship'* involved in erecting the conservatory, from the design through to completion, wasn't sufficient and hadn't taken into account the foundation depth needed for the area it was constructed in.

Taking everything into account, I'm satisfied that my provisional decision represents an outcome that's fair and reasonable.

### **My final decision**

For the reason's explained above, I don't uphold this complaint.

Angela Casey  
**Ombudsman**