

The complaint

Mr and Mrs S are unhappy that AXA Insurance UK Plc (“AXA”) declined their claim for subsidence under their home insurance policy.

What happened

Mr and Mrs S made a claim to AXA when they noticed “*movement*” in their conservatory. They said, “*there are external cracks to the mortar on two sides of the building*”. Mr and Mrs S expected the remedial work of underpinning would be covered by the subsidence section of their policy.

AXA appointed a loss adjuster to review and validate the claim, and a further expert was commissioned to provide a report on the damage, and this has been discussed internally by AXA’s “*Subsidence Consultant*”.

AXA said “*[Our loss adjuster has] advised that from reviewing the site investigations report, it shows that the foundations of the conservatory have not been designed and structured with reasonable skill and are not fit for purpose. I can see [our loss adjuster] have issued a detailed letter to yourself with their findings and the reasons why the claim cannot be considered due to an exclusion on your policy*”.

AXA advised the policy doesn’t cover any loss or damage “*caused by subsidence, heave or landslip arising from, the use of defective materials, defective design or faulty workmanship*”.

Mr and Mrs S think this is unfair, as they had a survey of the property carried out at before they purchased it and the survey report didn’t highlight any issues with the conservatory or its design.

Our investigator decided to uphold the complaint. He didn’t think AXA had done enough to fairly rely on the exclusion clause that it did, so he asked AXA to re-consider the claim in line with the terms and conditions of the policy. He asked AXA to pay £300 compensation, for the distress and inconvenience caused by their decision. AXA disagreed, so the case has been referred to 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.

As AXA has relied on an exclusion within the policy to decline the claim, the onus is on AXA to show that the use of defective materials, defective design or faulty workmanship was the most likely cause of the subsidence.

I’ve reviewed the letter that AXA sent to Mr and Mrs S that explained why their claim was declined. It was sent by its appointed loss adjuster. The summary or conclusion of the report reads:

“Unfortunately, the recent investigations have revealed the foundations of the Conservatory are too shallow at 550mm and have not been constructed in accordance with good building practice relevant at the time of construction, which recommends a minimum depth of 750mm and therefore the insurance claim for the damage reported to the Conservatory has been declined”.

AXA has acknowledged that when the conservatory was built there wouldn't have been any need for the homeowners at the time to gain any planning approval or assurance for the work under the Building Regulations that existed.

However, AXA has shared evidence supporting that good practice guidelines show that the depth of foundations should've been deeper when placed on clay soil, which is what was found at the property when AXA's experts carried out its investigations. AXA said that the builder who constructed the conservatory should've matched the depth of foundation on the main house (1400mm). AXA has explained that the original house was built with 1400mm foundation to avoid roots.

AXA has shared case law showing that even where there is no need for formal Planning or Building Regulation assurance to be required, it's the builder's responsibility (i.e. the builder of the conservatory in this case) to ensure he has exercised reasonable skill and care in formulating the design and provides a construction that is fit for purpose.

However, I think in AXA's own arguments, it has identified that whilst building the conservatory needed skill and care, the depth of foundation required wasn't an exact science. It has explained it thinks the conservatory foundation should've been built to a depth to match the house at 1400mm but has also said good building practice suggests only a minimum depth of 750mm is required.

Whilst, I appreciate AXA has pointed towards some guidance, I don't think it has provided a definitive measurement / depth where the foundation would've prevented the subsidence occurring. I don't think AXA has shown if the depth was 750mm, that the subsidence wouldn't have occurred. The roots that were said to cause the issue, were at a depth of 1000mm, so I haven't seen evidence to show a slightly deeper foundation would've stopped this issue.

I've also considered what assurance Mr and Mrs S completed to ensure the house they bought (including the conservatory) was in good condition. Mr and Mrs S had a survey completed when they purchased their property. Whilst a survey can't possibly cover every element of a house's structure, I think it has shown Mr and Mrs S have taken reasonable steps before they purchased the house. And as AXA has acknowledged *“there doesn't appear to be any indication of issue with the conservatory at time of purchase”*.

I've also considered how long elapsed between the conservatory been built and when the first signs of an issue were identified. The conservatory was in place for 15 years before any signs of subsidence were noted, which suggests to me the conservatory was built to a reasonable standard.

Therefore, for these reasons I uphold this complaint. I don't think there was a Regulation that definitively sets out the depth the conservatory foundation should've been built to. And whilst there is good practice guidance of the appropriate depth, the conservatory itself has been in good condition for a long time and the survey carried out at purchase didn't show any issues. Finally, I'm not convinced that if the conservatory foundation was 200mm deeper, that it would have made any difference on the subsidence that was experienced, given the roots cited in this case were at a depth of 1000mm. Therefore, I think it would be unfair on Mr and Mrs S if this claim wasn't re-considered.

As I don't think AXA has provided persuasive evidence that faulty design was the cause of the subsidence, I don't think it can fairly rely on the exclusion. So, I require AXA to re-consider the claim in line with the remaining terms and conditions of the policy. For the delay and distress to Mr and Mrs S getting a fair outcome, I award £300 compensation. I don't think Mr and Mrs S lost the use of the conservatory during this period of the claim.

My final decision

My final decision is that I uphold this complaint. I require AXA Insurance UK Plc to:

- re-consider the claim in line with the remaining terms and conditions of the policy
- pay Mr and Mrs S £300 compensation – for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 4 February 2026.

Pete Averill
Ombudsman