

complaint

Mrs G is unhappy with Great Lakes Insurance SE's (Great Lakes) handling of a subsidence claim she made under her building insurance policy.

background

In 2018, Mrs G became worried after noticing a problem with the floor of her conservatory, which appeared to be dipping in places. She instructed a contractor to inspect the floor to identify the source of the damage. When they indicated there were signs of subsidence, she contacted Great Lakes.

It sent engineers to Mrs G's home in September and November 2018. They carried out a trial pit excavation, and accepted subsidence had occurred in the conservatory. The engineer found the clay soil underneath the property was susceptible to shrinkage due to the water demands of nearby vegetation. He said evidence of roots had been found down to 2 meters. The engineer said the depth of the foundation at 340mm was inadequate for clay soil, and the foundations should be at least 1m deep – and potentially deeper as the vegetation was present when the conservatory was built almost 20 years ago. Based on this, Great Lakes declined Mrs G's claim.

Unhappy with Great Lakes' response, Mrs G asked us to look into her complaint. Our investigator said Great Lakes hadn't demonstrated the conservatory hadn't been built to the regulations in place at the time the conservatory was built. And on this basis, he thought it should settle Mrs G's claim in line with the policy terms.

In response to our investigators' view, Great Lakes said the conservatory was exempt from building regulations at the time of construction. However, it considered the design should be measured against good construction practice at the time, and referred to a set of guidelines, which set out the minimum depth for foundations would have been 1m given the high shrinkability clay typically found in the area.

I issued a provisional decision on 8 October 2020. My provisional findings said:

"I need to decide if Great Lakes is acting fairly in relying on the below term to decline Mrs G's claim:

"damage caused by faulty or unsuitable materials, design or poor workmanship. "

And this clause, as it set out in the final response letter:

"Loss or damage caused by compaction of infill or Settlement, shrinkage or expansion of the building..."

Great Lakes' engineer says the trees that caused the clay shrinkage were present when the conservatory was built almost 20 years ago. Great Lakes' engineer also confirmed the conservatory was exempt from building regulations at the time it was built.

However, he went on to say as the trees were present, in his view guidelines from another organisation involved in the building of new homes ought to have been considered, as they set out good construction practice at the time the conservatory was built. These guidelines set out that foundations should be dug to at least 1m deep, and deeper if there is existing

nearby vegetation, which Great Lakes say was the case. However, as Mrs G's conservatory wasn't built as a new home or by that organisation. I'm not persuaded those guidelines apply to this conservatory. For this reason, I don't think those guidelines are relevant to the claim for the conservatory and I won't consider them further.

Great Lakes has accepted the damage caused was as a result of clay shrinkage subsidence as a result of the water demands of nearby vegetation. It also appears to have accepted the conservatory has been in place for almost 20 years without incurring any damage.

While the building regulations wouldn't have applied to this conservatory, they can be considered a guideline for what might have been expected to be good practice. The building regulations in force when the conservatory was built set out foundations should be dug to a minimum depth of 900mm, whereas the depth of the conservatory foundations here are 340mm.

And while I need to consider what might have been good building practice at the time the conservatory was built, I also need to consider the fact Mrs G's conservatory has stood for almost 20 years without incident, or evidence that the workmanship was poor.

In balancing these considerations. I'm mindful the evidence shows if the conservatory foundation had been dug to a minimum depth of 900mm as Great Lakes indicated it should have been, it is more likely that it still would have been affected by subsidence given the high shrinkability of the clay in the area, because roots were found as deep as 2000mm. However, while the minimum depth of 900mm was to be in line with building regulations at the time, the conservatory was exempt from these regulations.

On this basis I'm minded to conclude it would be unfair to decline Mrs G's claim because even if the depth of the foundations had been 900mm, it's still likely that the conservatory would have been affected by subsidence. On that basis. I'm intending to direct Great Lakes to settle the claim in line with the policy terms and conditions.

In addition to this, I think Great Lakes has caused a some upset and worry to Mrs G by unfairly declining the claim. We've been told by her representatives this has caused her a great deal of worry. With that in mind, I'm intending to direct Great Lakes to pay Mrs G £200 in recognition of the trouble and upset it's caused her since March 2019 as a result of unfairly declining this claim."

Mrs G, through her representatives, accepted my provisional decision, as did Great Lakes.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

On the basis neither party has asked me to consider any additional evidence, I see no reason to depart from the conclusions I outlined in my provisional decision.

For the reasons I've given above, I'm directing Great Lakes to settle Mrs G's claim in line with the policy terms and conditions.

In addition to this, Mrs G has been impacted by Great Lakes unfairly declining the claim. We've been told by her representatives this has caused her a great deal of worry. With that in mind, Great Lakes should also pay Mrs G £200 in recognition of the trouble and upset it's caused her since March 2019 as a result of unfairly declining this claim.

my final decision

I uphold Mrs G's complaint against Great Lakes Insurance SE.

Under the rules of the Financial Ombudsman Service, I'm required to Mrs G to accept or reject my decision before 13 December 2020.

Emma Hawkins
ombudsman