

## **complaint**

This complaint concerns UK Insurance Limited's decision to decline Mr and Mrs B's claim for subsidence damage to their conservatory.

## **background**

Mr and Mrs B made a claim for subsidence damage to their conservatory in October 2010. UKI appointed a loss adjuster to visit the property and inspect the damage.

Site investigations were carried out and results showed that the conservatory was built upon foundations to a depth of 250mm sitting on clay subsoil. It was noted that the main property had been built upon a piled foundation. Two trees were noted within one metre of the conservatory, with roots being found beneath the foundations.

The loss adjuster considered the damage had been caused as a result of the conservatory being built on inadequate foundations. The claim was declined as Mr and Mrs B's policy excluded cover for damage caused by faulty workmanship or design.

Mr and Mrs B complained about this decision, arguing that the property had stood for 11 years with no previous problems. They further argued that this exceeded the maximum guarantee period for foundations determined by the National House-Building Council ('NHBC').

UKI subsequently agreed to re-investigate the claim and appointed a new loss adjuster to carry out the investigation. Confirmation of this was sent to Mr and Mrs B in August 2011.

The new loss adjuster agreed with the conclusions of the first one. UKI's final response letter was then sent to Mr and Mrs B in November 2011, in which they were advised that UKI's decision to decline the claim remained unchanged. Mr and Mrs B were unhappy with this response and referred the complaint to the ombudsman service. Following the referral, UKI agreed to pay £150 in recognition of the distress and inconvenience caused by its handling of the claim and subsequent complaint.

Our adjudicator did not consider that UKI had acted unfairly in declining Mr and B's claim under the 'faulty design' exclusion. Although he acknowledged that the conservatory had stood for 11 years, he felt that the information provided suggested the foundations installed were to an inadequate depth for the site conditions at the time of construction. He pointed out that two separate loss adjusters had been of the view that 250mm foundations were inadequate for the conservatory. Furthermore, he felt that the information provided did not show that consideration had been given to the proximity of two trees, the make-up of the soil, or that the conservatory complied with building regulations at the time of construction.

Although he did not consider UKI's decision to decline the claim to be unreasonable, he did consider that UKI should increase its award for distress and inconvenience for the way it had handled the claim and subsequent complaint. Therefore, he recommended that UKI pay an additional £150, making a total award of £300. UKI agreed to this increase in compensation.

Mr and Mrs B did not agree with our adjudicator and still thought that the conservatory should be an insurable risk as it had stood for 11 years with no previous issues.

## my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In considering this matter I have to have regard to the expert evidence. The report from the first loss adjuster, following site investigations says:

*"The conservatory is founded 250mm below ground level bearing onto a mid brown silty clay subsoil".*

It also found that the main house is built on a piled foundation which would be to take account of the highly shrinkable clay subsoil. It concluded that the foundations were inadequate and UKI then declined the claim as the policy excludes damage caused by:

*"faulty design of, faulty workmanship on or faulty materials used in the Buildings".* The second loss adjuster agreed with the report's conclusions.

I note that the conservatory lasted 11 years before it started to subside and that the builder gave a 10 year warranty as the NHBC would. However that does not mean the foundations were not of a faulty design, nor have I seen evidence to show that the foundations were built to NHBC standards. It seems likely that as the trees grew over the years they took more moisture out of the subsoil.

Based on the nature of the subsoil and that the house itself was built on a piled raft, I do consider that foundations to a depth of 250mm are too shallow and that it was reasonable for UKI to decline based on faulty design and faulty workmanship.

I note Mr and Mrs B say that the foundations are much deeper than 250mm. However I have seen no expert evidence to show this. They also say that the ash tree was not there when the conservatory was built and that the cypress tree's roots were dealt with. All I can say is that the foundations were in my view too shallow even if the presence of the trees is ignored.

I note that Mr and Mrs B feel that UKI should have checked the property before taking on the risk. However this is not how home insurance policies work. The consumer buying the policy is responsible for the condition of their own property. Whilst I appreciate that Mr and Mrs D could not be expected to know the depth of their foundations, it is not the insurer's responsibility to check. Most policies have an exclusion for faulty workmanship or design and we generally consider it reasonable for such an exclusion to be applied when relevant. Notwithstanding the 10 year guarantee Mr and Mrs B may have a case against the builder. However they should seek advice on this point.

With regard to distress and inconvenience, I have noted that there were delays in the handling of the claim. In particular there was a delay of several months after Mr and Mrs D complained following the first loss adjuster's report, the second loss adjuster reviewing the case and the result being advised to them. I agree that this was unacceptable as Mr and Mrs B were not sure what is going to happen, and had the inconvenience of chasing UKI. I do think that the proposed offer of £300 negotiated by the adjudicator is fair and reasonable.

**my final decision**

My final decision is that I uphold the complaint in part. I direct U K Insurance Limited to pay to Mr and Mrs B £300 as compensation for the distress and inconvenience caused them by its handling of their claim.

Ray Lawley  
**ombudsman**