

## **complaint**

Mr W is unhappy that Aviva Insurance Limited declined a claim for subsidence damage to his conservatory.

## **background**

Around 2008 a conservatory was added by the previous owners to what is now Mr W's home. In June 2018 Mr W noticed some cracks when decorating. These were filled as part of the decorations, but within a matter of weeks the cracks had reopened. Having been told this might be due to subsidence, Mr W contacted Aviva.

Aviva sent out a firm of loss adjusters to inspect the damage. It was noted the floor was sloping and there was distortion in the flank walls along with distortion of the door into the garden. It was concluded the damage was either due to settlement or root-induced clay shrinkage. Some further investigations were undertaken.

The ground investigations took samples from two points near Mr W's conservatory – one either side. It was identified that the conservatory was built on 35cm foundations. Beneath that there was 'made ground' to a depth of 0.6m from ground level. Made ground is the term used for soil that has been imported to a site, usually used for levelling purposes. Beneath the made ground was soft slightly sandy, silty clay which became firm at 1.1m and 1.6m below ground level respectively in the two samples taken. The clay was determined to have a medium plasticity and so would shrink if dehydrated. In the sample taken from the right of the conservatory, closest to nearby trees, roots were found down to 1.1m. In the sample to the left of the conservatory roots were only found down to 35cm.

The arboriculture report detailed there were three large trees within 8.5m of the conservatory, with the two willows being the dominant influence. All were considered to be of a similar age to the house and all three species were known to have high water requirements. In addition there were two smaller trees within 4.5m of the conservatory that could also have been influencing the hydration of the soil. It was recommended the three large trees be removed.

Aviva's experts concluded the foundations of the conservatory were inadequate – they should have been much deeper (1m) given the presence of made ground, clay beneath it and trees nearby. It said that some of the damage would have been caused by bedding-in settlement and the remainder due to the reduction in water content due to the dry summer. Aviva explained that damage caused because of faulty design was not covered by the policy, so the claim was declined.

Mr W wasn't happy with this and referred his complaint to us. In doing so Mr W said that he accepted the foundations were inadequate. However, he said that was only one factor as Aviva had confirmed the trees had caused the ground to dehydrate and it had been the hottest, driest summer for many years.

One of our investigators considered the complaint. She recommended it be upheld. This was because she wasn't persuaded that even if the conservatory had foundations to the depth Aviva thought were necessary, that it would have stopped the subsidence from happening. This was because there would still have been tree roots beneath the foundation level.

Aviva didn't accept the investigator's conclusions. It said that it was not its role to investigate what would have happened had the foundation been adequate. It quoted some industry guidance for the design of foundations, taking the surrounding environment into account: *'The depths are not those at which root activity, desiccation and ground movement are non existent, but they are intended to provide an acceptable level of risk.'* It was satisfied that although there would have been some roots beneath the foundation level, they would not necessarily have been problematic. It remained of the view that its decision to decline the claim had been the right one. It asked that the complaint be referred to an ombudsman for review.

Mr W accepted the investigator's conclusions.

I issued my provisional decision on 3 February 2020 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'When the previous owners of Mr W's home had the conservatory built it didn't need planning permission, so building regulations and any associated guidance didn't need to be complied with. It's not unusual to find conservatories built with relatively shallow foundations as a conservatory is usually a light structure and so the load it represents is easy to transfer effectively into the ground.'*

That said, even though building regulations didn't apply to the conservatory, the builder/installer should have taken account of the ground conditions when putting in the foundations. In very basic terms, any foundation needs to fulfil its core function of providing a stable footing for the structure above.

This is reflected in the document Aviva provided – 'A Guide to Good Practice in the Specification and Installation of Conservatories within the UK', issued by the Conservatory Association and the Glass and Glazing Federation in 2007. Whilst the document is only a guide, it does set out what two bodies in the conservatory industry considered was good practice at the time Mr W's conservatory was installed. It says:

*'The type of foundations are always dependent on local ground conditions and the Surveyor should always determine the details of the existing property foundations.'*

*'In some instances specialist foundations may be required for the conservatory, eg. due to reclaimed land, poor ground conditions, or the presence of trees or rock in the area, Building Control or a Civil/Structural engineer may be contacted.'*

Aviva has highlighted that the conservatory was built on soft made ground and soft shrinkable clay in the presence of several trees. I can't disagree with Aviva that those conditions should have been taken into account when the foundations were designed. Nor can I say that the evidence indicates they weren't – 35cm is a shallow foundation depth even for a structure as light as a conservatory. I note that Mr W has accepted the foundations were inadequate.

Mr W has said he accepts the conclusions about the adequacy of the foundations but believes the shallow foundation depth was not the only factor in play with the movement of his conservatory. He's pointed out the trees influenced the dehydration of the clay and that the hot, dry summer would also have been an influence. I would agree these things would have been involved in what happened to the conservatory, but as far as the trees are concerned, their influence is one of the factors that make the foundations inadequate,

rather than them being a separate factor in the consideration. The hot, dry weather may have accelerated and maintained any dehydration of the soil caused by the trees, but that again comes back to the influencing factor of the trees meaning the foundations were inadequate.

Our investigator accepted the foundations were inadequate, but wasn't persuaded this was the dominant factor in the conservatory subsiding. She also accepted Aviva's engineer's explanation about the depth the foundations should have been – just under a metre in depth. However, she wasn't persuaded having deeper foundations would have made a difference to whether Mr W's conservatory subsided or not. This was because there were roots below the depth Aviva's engineer calculated the foundations should have been dug to.

Buildings will cope with a certain amount of ground movement because ground conditions will vary throughout a year. During summer soils will have a lower water content and possibly shrink a little and during winter the water content will increase causing a clay soil to recover its full volume. This is called seasonal movement and doesn't normally cause damage. It's only when the degree of movement exceeds the building's ability to cope that damage occurs and the building is considered to have subsided.

In this case it has been evidenced there were roots from 10cm to 1.1m below ground level, which were removing moisture from the soil around Mr W's conservatory. In the case of the existing foundations this means there was up to 0.75m of shrinkable soil containing roots beneath the foundations. Had they been built in line with Aviva's engineer's assessment that would have reduced to just 20cm. Given the engineer took into account the existence, type and distance of the trees when assessing the depth the foundations should have been, I think it reasonable to accept the expert opinion that they would have prevented the movement that caused the damage to the conservatory.

Overall, I am satisfied Aviva didn't act inappropriately when it applied the exclusion for faulty design and poor workmanship to defeat Mr W's claim.'

Aviva didn't respond to my provisional decision. Mr W did and didn't accept my findings.

Mr W disputed Aviva's finding that there had been some hairline cracking present in the conservatory due to initial settlement. He said he would have noticed any such cracking long before 2018 and he believes the hairline cracking was the start of the subsidence. In addition, he provided growth rates for the trees that Aviva had said should have been taken into account when the foundations were built. He said that there was no evidence the trees had been there when the conservatory had been built and even if they had been, they may have been shorter than the fences and so the builders wouldn't have known they were there.

Mr W also hypothesised about whether a greater foundation depth would have prevented the subsidence that occurred. He suggested that as roots were present beneath the recommended foundation depth the subsidence would still have occurred and could only have been prevented if the foundations had been 1.5m down to hard ground. He explained that he felt through no fault of his own he was stuck with a hefty bill to dismantle the conservatory, replace the foundations with adequate ones and have it rebuilt – the cost of which is likely to be around £20,000.

## **my findings**

I have considered all the available evidence and arguments from the outset, including Mr W's recent comments, to decide what's fair and reasonable in the circumstances of this complaint.

Mr W has commented about the conclusions reached by Aviva regarding the cracking in the conservatory. Whilst I understand why he has made the comments he has, whether there was some settlement damage or not wouldn't alter my conclusions in the matter I have considered. It would only be a factor if I were to consider the repairs needed to the conservatory.

Mr W has suggested the two willow trees might not have been visible to the builders at the time the conservatory was installed. In order to decide whether this may have been the case, I reviewed the sales photographs from 2011 when the property was last sold. The photographs show all of the trees that the arboriculture report recommended being removed. The two trees in neighbours' gardens were clearly visible and more than double the height of the fences. Although the photographs were taken three years after the conservatory was built, I am satisfied from their size in 2011 and 2018, they would have been visible to the builder in 2008. As such, the builder should have factored their existence and future full size into the foundation design.

As for Mr W's comments about whether there would have been subsidence if the foundations had been deeper, I accept there can be no guarantees about what would have happened had the foundations been deeper. However, as I explained in my provisional decision, in such technical matters I rely on expert evidence and opinion. That says the conservatory wouldn't have sustained the damage it did if the foundations had been designed taking into account the influence of the trees present.

### **my final decision**

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 11 April 2020

Derry Baxter  
**ombudsman**