

## **The complaint**

The executors of Mrs A's estate complain about AXA Insurance UK Plc's decision to decline a subsidence claim made under a buildings insurance policy. The executors are represented in this complaint by Mrs H.

## **What happened**

The late Mrs A made a claim to AXA in 2018 after noticing crack damage to her conservatory. AXA's loss adjuster thought the damage had been caused by subsidence, but concluded that the foundation of the conservatory wasn't as deep as it ought to have been.

AXA said the subsidence damage was therefore the result of defective design, and so the claim was excluded under the policy terms.

After Mrs A sadly passed away, the executors of her estate brought a complaint to this service. They disagreed with AXA's conclusion that there had been defective design.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for AXA to conclude the foundations of the conservatory weren't deep enough, and that this had resulted in the subsidence.

Mrs H, on behalf of the executors of Mrs A's estate, didn't accept our investigator's conclusions. The matter has therefore been passed to me for a decision.

## **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.

The policy covers subsidence, but excludes 'defective design'. In relying on the exclusion, the onus is on AXA to show that it applies.

AXA's loss adjuster carried out an inspection. They noted there were clay soils at the property, as well as several trees and shrubs nearby. They thought some of the roots may extend beneath the house foundations, and pointed out that tree roots can be troublesome in clay soils because they can induce volumetric changes. The loss adjuster thought there had been moderate damage to the conservatory, and said that the pattern and nature of the damage was indicative of subsidence. They thought it was possible that the foundations to the conservatory weren't of sufficient depth to cope with the site conditions, and so decided to arrange further investigations.

Site investigations then took place. The property was found to have silty clay soil. The conservatory foundations were at a depth of 370mm, and tree roots were found at that depth, but not further below this. The foundations for the main house were at a depth of 850mm.

The conservatory was built around 1992. I've read the building regulations in force at the time and the relevant code of practice for foundations, and this says that foundations for traditional brick and masonry buildings in clay soils should be at a minimum depth of 900mm.

I accept that conservatories were exempt from building regulations, and I also accept that the depth of 900mm referred to traditional brick and masonry buildings which a conservatory is not. However, I think this can be considered a reasonable guideline for what might have been expected to be good practice. There's a significant difference between the recommended foundation depth of 900mm, and the depth of the conservatory foundations here at 370mm. It was for this reason that AXA's loss adjuster thought the conservatory foundations were inadequate for the site conditions.

I think it was reasonable for AXA to rely on its loss adjuster's opinion here. Although Mrs H says that the conservatory foundations were appropriate for the time of construction, she hasn't provided any expert opinion to support this.

Mrs H has referred me to a document that she says supports that conservatory foundations at 300mm are acceptable. The document is a guide to good practice for the specification and installation of conservatories within the UK. The guide is dated 2016, which is over 20 years after the conservatory was built. Nonetheless, I've looked carefully at this document and I see that the reference to 300mm refers to the *width* of the foundations, rather than the depth.

The document says the minimum *depth* of foundations should not be less than 600mm, and in clay, the depth should not be less than 1.0 metre. This supports the loss adjuster's view that the conservatory's foundation depth of 370mm wasn't sufficient, particularly given the presence of clay soils.

Mrs H says the conservatory was built many years ago, and if the foundations were too shallow, then damage would have happened previously. However, I note the loss adjuster has said that mortar at the junction of the conservatory and main house has been re-pointed previously, which they thought was indicative of previous movement at that location. This is the area where further movement has taken place.

I understand Mrs H thinks the previous repair was to cover up a shrinkage hairline crack. I've looked at a photo of the repair, and it does look as though the re-pointing took place over a fairly large area, which would seem excessive for a hairline crack. It therefore doesn't seem unreasonable that the loss adjuster concluded there had been previous movement in that area.

### Conclusions

Given that there were clay subsoils and that tree roots were found at the same depth as the conservatory's foundation, I think it was reasonable for AXA to conclude that the nearby vegetation was responsible for the subsidence damage.

The conservatory's foundations weren't of a sufficient depth in accordance with good building practice at the time, and tree roots weren't found below 370mm. Therefore, if the conservatory's foundations had been at the recommended depth, or even had the same depth as the main house, it's unlikely they would have been affected by the nearby vegetation. This is supported by the fact that the main house doesn't have any subsidence damage.

Although the conservatory has stood since 1992, there's evidence of a previous repair in the same area where further movement has taken place, which suggests there has been movement there previously.

Taking all of this into account, I'm satisfied that it was reasonable for AXA to conclude that the conservatory foundations were defective, and that it was for this reason that the subsidence damage happened - and therefore turn down the claim.

The executors have also complained about the time taken for a claims decision to be made. As the investigator has pointed out, AXA was waiting for a report after the site investigations had taken place before it made its claims decision. I don't think it caused any unnecessary delays in its handling of the matter.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs A to accept or reject my decision before 14 January 2021.

Chantelle Hurn-Ryan  
**Ombudsman**