

## **The complaint**

Mr N and Mr O complain that Royal & Sun Alliance Insurance Limited (“RSA”) declined a claim they made on their home insurance policy for damage caused by subsidence.

Mr N has primarily dealt with things so, for simplicity, I’ll mostly refer to him only.

## **What happened**

The circumstances of this complaint aren’t in dispute, so I’ll summarise the main points:

- Mr N bought his property in 2012. In October 2022, he noticed cracking to the conservatory and got in touch with RSA about it.
- RSA appointed a loss adjuster, C, who inspected the damage and carried out investigations. It said the damage had been caused by subsidence as a result of nearby vegetation. It recommended steps to stabilise the conservatory, including removing vegetation from Mr N’s and a neighbour’s property, and set out a timeline for repairs.
- In June 2023, C said the claim would be declined because the conservatory foundation wasn’t deep enough to take into account the impact of nearby vegetation. It said they were 650mm deep, but this didn’t comply with the Building Regulations in place at the time it was built, which required a minimum depth of up to 1,000mm.
- Mr N didn’t think this was fair. He made a number of points, in summary:
  - The conservatory had stood, problem free, for around twenty years.
  - No concerns were raised about it when he bought the property.
  - The conservatory was exempt from Building Regulation.
  - His vegetation was younger than the conservatory, so it couldn’t have been factored into the foundation design.
  - Whilst a neighbour’s Oak tree may have been older than the conservatory, C hadn’t said it was the cause of subsidence.
  - The claim had been poorly handled – it had taken too long, communication had been poor, and C had accepted it before reversing its position and declining it. All this had had a negative impact on Mr N and particularly Mr O who suffers from a medical condition exacerbated by stress and anxiety. He’d recently been signed off work and Mr N thought the claim experience had contributed to that.
- RSA noted the conservatory was exempt from Regulation but nonetheless repeated C’s reference to the Regulations and said the claim was rightly declined. It accepted the claim handling had been poor and offered £500 compensation.
- Our investigator thought the complaint should be upheld. As RSA had accepted the conservatory was exempt from Regulation, and bearing in mind the amount of time it

had stood prior to damage, she said RSA should accept the claim. She said the £500 compensation RSA had offered was reasonable in the circumstances.

- RSA didn't agree with our investigator and raised a number of new points. It said the nature of the heating system meant the conservatory was subject to Building Regulation after all. And it highlighted guidance in various British Standards documents it thought showed the foundation wasn't deep enough.
- Mr N thought additional compensation would more appropriately reflect the impact on Mr O. And he said he paid £120 to follow RSA's recommendation to remove vegetation on his property thought to be causing the subsidence problem.
- Our investigator asked RSA to pay Mr N for the vegetation removal and said her other recommendations remained the same.
- An agreement wasn't reached, so the complaint has been passed to me.

### **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 damage to the property caused by subsidence – but not damage caused by "poor or faulty design".
- There seems to be no doubt the conservatory has been damaged by subsidence as a result of nearby vegetation. RSA has declined the claim because it says the foundation design was poor or faulty. The onus is on RSA to show that's the case and it would be fair to decline the claim for this reason.
- C carried out a site investigation which showed the conservatory foundation is 650mm deep and built on shrinkable clay. It's not known exactly when the conservatory was added to the main house, but 2000-2005 has been estimated.
- RSA's reasoning has changed over time. Initially it relied on Building Regulations to explain why it thought the foundation design was faulty. When Mr N pointed out the conservatory was exempt from them, it agreed – but continued to rely on them. After our investigator said the complaint should be upheld, RSA then said Regulations *did* apply due to the nature of the heating system. It also introduced new points by referring to British Standards. At various times it's mentioned the guidelines used by a builder of new homes, N, although I don't think it's set out what foundation depth N's guidelines would have suggested. I'll look at each of these points in turn.
- The relevant version of the Regulations sets out exemptions – and the nature of the heating system isn't mentioned. The part RSA has pointed to is under the definition of 'building work' – but that entire part remains subject to the exemptions. Overall, that means RSA hasn't persuaded me that Building Regulations applied to the conservatory when it was built. And therefore they didn't need to be complied with.
- RSA has also referred to the guidelines used by N, a builder of new homes. N's guidance only applies when construction is under the supervision of N as part of a new home. That wasn't the case here. Whilst some builders and designers may turn to N's guidelines, I don't think that means all builders and designers are required to.

Put simply, the conservatory didn't need to comply with N's guidelines and so I don't think it would be fair to hold it to those guidelines.

- However, I'd still expect the conservatory to be built to an appropriate standard, such that it was likely to stand the test of time. To do this, the builder should have taken into account the best practice of the time and the specific site conditions to make a judgement call about the design of the foundation – including any vegetation likely to have an impact on the structure then or in the future. I'll consider the evidence RSA has provided to support its view the foundation design was poor or faulty.
- RSA originally pointed to the Regulations, despite them not applying. It's quoted a part which says, in summary, the building should be constructed so that ground movement caused by soil shrinkage won't impair its stability. Even if Regulations applied, I'm not persuaded taking it as literally as RSA has suggested would produce a fair outcome. It would amount to concluding that *any* claim for subsidence caused by clay shrinkage meant the foundation was inadequate and the damage wasn't covered by the policy. The part of the Regulations RSA has quoted is a broad aim, followed by more specific information about how to achieve it.
- C looked to some of that specific information. It said a minimum foundation depth of 750 to 1,000mm was required depending on how shrinkable the clay soil is. However, this range of depths wasn't specified in the Regulations until the 2013 version, so it's not relevant. The 2004 version simply recommended a minimum of 750mm – and prior to that no minimum was set out. So, depending on exactly when the conservatory was built, Regulation set out no minimum or 750mm, regardless of how shrinkable the clay soil is.
- So, if the conservatory was built prior to 2004, RSA hasn't shown it failed to meet Regulation. And if it was built in 2004 or 2005, its depth of 650mm wasn't far from the 750mm minimum set out – despite being exempt.
- RSA has introduced new points late in the process. That's very disappointing – it had eight weeks in which to investigate Mr N's complaint and provide a thorough response. So I wouldn't expect it to raise new points *after* a complaint has been referred to this Service and our investigator has given their opinion. Nonetheless, I'm required to consider the points it's made.
- In summary, it pointed to two sets of British Standards which it thinks supports its view the foundation design was faulty. It also said it wasn't the role of insurers to cover the inevitable consequences of design failures and it was entitled to rely on the policy term for 'poor or faulty design' – despite this Service 'trying to circumvent it'.
- Let me be clear – this Service is independent and impartial. Its role is not to seek to 'circumvent' any policy terms. It's to consider the merits of a complaint, taking into account, amongst other things, the policy terms, the evidence provided by both parties, and what it considers to be fair and reasonable in the particular circumstances of that complaint.
- The British Standards RSA has pointed to largely repeat the point I accepted above – that the site specific conditions, including significant vegetation, are to be considered when designing a foundation. In addition, one Standard says that a foundation in clay should be built to at least 900mm where vegetation is nearby. Another notes guidance on foundation depths is given by N. I'll consider these points.

- I'm satisfied the Standards represent independent best practice of the time. Clearly the foundation doesn't meet the minimum depth set out, so arguably its design is poor or faulty. But I'm not satisfied the damage has been caused by this.
- C noted the nearby Oak tree was older than the conservatory, so the foundation ought to have been designed to take it into account. I agree it should have been a factor. But here, Oak roots weren't found beneath the foundation, and it hasn't been recommended for removal. So the conservatory doesn't seem to have been affected by the Oak tree.
- The vegetation the arborist recommended for removal has been described as 'similar age to property' or 'younger than property', so it's not clear that either area of vegetation was on the site at the time of construction – and therefore couldn't have been factored in by the builder.
- The second Standard does refer to N's guidelines – but I don't think it goes so far as to say they must be followed or that they're effectively the Standards to follow. So I don't consider that the builder was required to follow N's guidelines.
- I also take into account the age of the conservatory. It seems likely to have been around twenty years old at the time of the damage and I haven't seen anything to suggest it had suffered damage previously. A structure which has stood problem free for twenty years doesn't strike me as one which has been poorly designed.
- Even if I was satisfied RSA had shown the damage was caused by poor or faulty foundation design, I would also have to consider whether it would be fair for RSA to decline the claim for this reason.
- Mr N bought the house with the conservatory in place. As it was exempt from Regulation, there would have been no Building Control certificate to show it was built to an appropriate standard. He had a pre-purchase survey carried out which noted the conservatory to be "satisfactory condition", aside from non-structural issues. So I think he took the steps he reasonably could have done to ensure the conservatory was likely to have been built to an appropriate standard. In these circumstances, I'm not satisfied it would be fair to decline the claim.
- Overall, for the reasons given, I haven't been persuaded the damage was caused by poor or faulty design – or, even if it was, that it would be fair for RSA to decline the claim in these circumstances. To put things right, it should accept the claim, subject to the remaining terms of the policy.
- Mr N has removed the vegetation on his property, so I think RSA should reimburse him for that. It will then need to consider how to progress and settle the claim in a way that provides an effective and lasting solution to the subsidence problem.
- Part of Mr N's complaint is about the way the claim was handled. The key points being the timescale, communication, and declining the claim after earlier accepting it. RSA has conceded it handled the claim poorly, so I don't think that point is in dispute. The question for me is whether the £500 compensation RSA offered is reasonable in the circumstances.
- Mr N made the claim in October 2022 and by June 2023 it was declined. That's a timescale of around nine months. During that time, C inspected the damage, carried out a site investigation, obtained arborist advice, considered the evidence, and began

taking steps to stabilise the conservatory by having vegetation work carried out. All of that needed to be done to progress the claim effectively and it would inevitably have taken some time to do. In my experience, several months is common and reasonable for these steps. So the avoidable delay is likely in the order of a few months.

- During that time, Mr N has seen the damage worsen, which will naturally have caused him concern. It's accepted he had to chase C numerous times and didn't always get clear or prompt replies. It must have been disappointing and frustrating for the claim to be accepted – and then later be declined.
- Mr N has also highlighted the impact on Mr O. It's clear he suffers from a medical condition made worse by stress and anxiety, so I can appreciate how the circumstances described above may have had a greater impact on Mr O than others. He was signed off work earlier this year, so it's possible the claim experience has contributed to that. However, I haven't seen any medical evidence making such a link. So whilst I don't doubt Mr O has had a stressful experience, I'm not satisfied it would be fair for me to hold RSA responsible for him taking time off work.
- Overall, I'm satisfied the £500 compensation RSA offered fairly reflected the distress and inconvenience caused by its poor claim handling. I understand it hasn't been paid yet – but if it has, RSA need not pay any further compensation at this time.

### **My final decision**

I uphold this complaint.

I require Royal & Sun Alliance Insurance Limited to:

- Accept the claim, subject to the remaining terms of the policy.
- Pay £120 for vegetation removal.
- Pay £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mr O to accept or reject my decision before 17 January 2024.

James Neville  
**Ombudsman**