

The complaint

Ms N and Mr H complain that Royal & Sun Alliance Insurance Limited (“RSA”) declined their claim for subsidence on their home insurance policy.

What happened

Ms N and Mr H bought a property in 2021. They took out home insurance that’s underwritten by RSA.

In 2022 they noticed cracking to their conservatory and made a claim for subsidence. RSA sent an expert to inspect the damage but subsequently declined the claim. It said the conservatory had insufficient foundations for the soil type and proximity to vegetation. It said building regulations stated the foundations should be 1,000mm deep and the conservatory only had them built to 600mm. It said that the policy contained an exclusion for faulty design and this would apply here.

Ms N and Mr H didn’t think this was fair. They said they had a survey carried out before they bought the property and this showed no issues with the conservatory. They also said as the conservatory was built between 2005 and 2007, it had stood for at least 15 years without issue, so it seemed unlikely the foundations were insufficient. They brought their complaint to this service.

Our investigator didn’t recommend the complaint be upheld. He said while the conservatory may not be bound to follow building regulations, these represent industry best practice. And those in place at the time required structures to have foundations to a depth of 1,000mm. As the foundations were only 60% of this, he said RSA had acted fairly by relying on the faulty design exclusion to decline the claim.

Unhappy with this, Ms N and Mr H asked for their complaint to be reviewed by an ombudsman.

In October 2023 I issued a provisional decision, in which I said:

‘It is not known the exact year the conservatory was built, however both sides are in agreement that it was most likely between 2005 and 2007. As the subsidence was first discovered in 2022, that means that the structure was in place at least 15 years, possibly up to 17 years before problems arose. I therefore don’t think it’s fair to say the foundations were defective if they’ve stood for such a period of time without issue.

Further, while not all conservatories are required to meet building regulations this service considers the regulations that are in place at the time of the build to represent good industry practice. So we’d expect builders to take regard of them when building a new structure.

The relevant regulations at the time the extension was built in around 2005 state the foundations should be 1,000mm in high shrinkage clay soils. As the foundations have been shown to be built to 600mm, I agree that the foundations didn’t meet these requirements.

However, when deciding if a business was fair to apply an exclusion for defective foundations, we'd expect it to not only show that the foundations didn't meet the building regulation requirements at the time, but also that if they had done then this would have prevented the subsidence.

Here, RSA has said that it found roots at a depth of 1,100mm. That means that even if the foundations had met the building regulations and been built to a depth of 1,000mm, then the subsidence would still have happened. As even the depth required under the regulations wouldn't have been deep enough to prevent the tree roots' growth.

I'm therefore not persuaded that the depth of the foundations is the cause of the subsidence and think it would have happened even if they were sufficient.

For these reasons, I don't think RSA has acted fairly by relying on the exclusion for faulty design to decline Ms N and Mr H's claim. The structure has stood for at least 15 years without issue, and I'd expect the foundations to fail much sooner if they were defective. Further as the roots found were deeper than the requirement stated in the relevant building regulations, RSA hasn't shown that not meeting these was the reason for the subsidence. I'm therefore minded to require RSA to accept Ms N and Mr H's claim for subsidence and settle it in line with the remaining policy terms and conditions without applying the exclusion for faulty design.

By originally unfairly declining Ms N and Mr H's claim, RSA has caused them some distress and inconvenience. I'm therefore also minded to also ask it to pay them £100 compensation to apologise for this.'

Response to my provisional decision

Ms N and Mr H responded to accept my provisional decision.

RSA didn't accept the findings. It responded with a number of objections, in summary it said:

- The 1,000mm depth of the foundations is a minimum in the building regulations, and it explains that this should be increased based on soil type and proximity of vegetation. So the foundations likely should have been deeper than 1,000mm. It said it calculated the necessary depth to be 2,400mm based on a nearby oak tree.
- As the foundations were so shallow, the structure was 'doomed to fail' so it doesn't matter how long it stood for as it would eventually cause issues.
- The house itself had foundations of around 2,000mm and it'd expect the conservatory foundations to have been built at the same depth.
- As the house hasn't suffered subsidence, this shows that had the conservatory been built with suitable foundations, it wouldn't have failed either.

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.

I've considered what RSA has submitted in response to my provisional findings, but it hasn't changed my position on the complaint.

RSA has said that 1,000mm is a minimum depth for the foundations and that further considerations such as soil type and nearby vegetation increase the required depth. It's provided reference to various guidance to support this and says the foundations should have been 2,400mm. It's not clear where this calculation has come from, but it seems it's from

guidance for new build homes.

Ms N and Mr H's claim relates to a conservatory added to their property. So the builders weren't required to consider this guidance for new builds. For this reason, it wouldn't be fair to apply it here. I said in my provisional decision that this service would expect the builder of a conservatory to take regard of the building regulations at the time to ensure good practice. And as these stipulate a minimum of 1,000mm depth I think this is a fair benchmark.

I appreciate RSA has said this is a minimum that should be increased when there's nearby vegetation, but it's done nothing to show how it reached its calculations of what the depth should be. And while it's referenced the main house having a foundation depth of 2,000mm at one juncture, from what I've seen there are other areas of the main property that has foundations at a depth of 1,000mm. So I don't find this evidence persuasive.

But regardless of the correct depth for the foundations based on guidance, RSA originally declined the claim due to faulty design. And had the structure been built poorly, with insufficient foundations, I'd have expected it to have failed a lot earlier than it did. The fact it stood for at least 15 years without issue persuades me that the foundations were sufficient. And RSA hasn't done enough to persuade me otherwise.

Based on this, I see no reason to depart from the outcome I came to in my provisional findings.

My final decision

For the reasons I've given, I uphold Ms N and Mr H's complaint and require Royal & Sun Alliance Insurance Limited to:

- Accept Ms N and Mr H's claim for subsidence and settle it in line with the remaining terms and conditions of the policy, without applying the exclusion for faulty design.
- Pay Ms N and Mr H £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms N to accept or reject my decision before 15 January 2024.

Sophie Goodyear
Ombudsman