

The complaint

Mr and Mrs D complain about Royal & Sun Alliance Limited's decision to decline a claim made under their home insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll give only a brief summary here.

Mr and Mrs D bought their current home in 2020. In August 2020, they took out a home insurance policy underwritten by RSA. This covers their buildings and contents, amongst other things.

They made a claim in August 2022 after noticing that it was becoming difficult to close the windows and doors in their conservatory. They'd also previously noticed a gap between the conservatory step and the main house. That had been insignificant, but now appeared to be worsening.

RSA appointed loss adjusters, who spoke to Mr and Mrs D and visited the site. They produced two reports in August 2022 and subsequently commissioned a further report from a company with technical expertise.

On the basis of those reports, RSA declined the claim. In short, they concluded that the cause of the damage to the conservatory was inadequate foundations, which meant there was no cover provided by the policy.

Mr and Mrs D didn't agree and made a complaint to RSA. But RSA maintained their position, saying that because of the foundation depth and the ground conditions, the conservatory was "*doomed to fail*".

RSA said the claim was therefore excluded under the policy term which said cover would not be provided where damage was the result of "*poor or faulty design, workmanship or materials*".

Mr and Mrs D weren't happy with this outcome and brought their complaint to us. Our investigator looked into it and thought RSA hadn't acted fairly and reasonably towards Mr and Mrs D.

He said RSA shouldn't have declined the claim on the basis that the foundations were defective. And he said RSA should re-consider the claim in line with the remaining terms and conditions.

RSA disagreed and asked for a final decision from an ombudsman.

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.

There's no dispute here about the terms of the policy. They say, in effect, that RSA won't provide cover where the cause of the damage is poor building – and that would include inadequate or defective foundations.

Our approach in this kind of case is to say that, as long as those policy terms are clear, it's fair to decline a claim on the basis of defective foundations if (and only if):

- (a) the foundations were in fact built poorly, according to the standards in place at the time; **and**
- (b) it was the poor build that caused the damage for which the claim is being made.

In this case, Mr and Mrs D didn't have the conservatory built. It was there when they purchased the house. Mr D's told us he believes it was built around 20 years ago. RSA haven't disputed that.

That means we don't have any evidence from the builder about their planning and design of the conservatory. Nor were Mr and Mrs D given any plans or design notes when they bought the house.

The conservatory is small enough that it didn't have to comply with building regulations. However, that doesn't mean the builder shouldn't have taken into account best practice and guidance at the relevant time. Or that RSA should now pick up the bill for repairs to a conservatory that was built badly and, as they put it, "*doomed to fail*".

I'm satisfied that the building regulations and accompanying guidance, at the relevant time, suggested that it would be best practice to have strip foundations at a depth of at least 500mm (below ground level).

But they also said that consideration should be given to deeper foundations where there was clay soil which was liable to shrinkage, and/or trees nearby which might extract moisture – and cause the soil to shrink (even more).

The technical report commissioned by RSA's loss adjuster says that the foundations to the conservatory are 500mm deep (demonstrated by evidence from two trial pits dug at relevant points around the conservatory). Although it appears that in some places at least (but not all), whilst the foundations are 500mm thick, they start at some distance beneath ground level.

The report also says that the soil type is heavy clay -and it references a number of trees nearby, both inside the boundary of the property and just beyond it (the boundary at that part of the property is relatively close to the house).

Although building regulations didn't apply in this case, I'm nonetheless satisfied on balance that the foundations to the conservatory – at 500mm deep in places – weren't built in line with best practice and guidance at the time. On that type of soil – and with significant vegetation nearby – it's more likely than not that the builder should have put deeper foundations in place.

As I've already set out above though, RSA can't fairly decline the claim on that basis alone. The onus is on them to demonstrate that the relevant exclusion applies. And so, they would also have to show that it was the defective foundations that were the proximate cause of the damage to the conservatory.

Of course, it's RSA's contention that the defective foundations *are* indeed the cause of the damage. Mr and Mrs D suggest that, on the contrary, the damage has been primarily caused by extreme weather patterns in recent years, which will have caused the clay soil at their property to shrink – in particularly dry and hot periods - and expand – in periods of very heavy rainfall.

Mr and Mrs D's explanation of the cause of the damage is supported by some of the evidence. I'll explain.

For one thing, we know that weather patterns have in fact become more extreme in recent years (and since they bought their house). This may have led to greater shrinkage / re-expansion in the soil at the property. And I note RSA haven't carried out any monitoring of the movement in the conservatory to assess whether the issue is seasonal or periodic.

Secondly, according to Mr D's account (which RSA haven't disputed), the conservatory was built around 20 years ago. The conservatory – on its existing foundations – has seemingly sat there quite happily for most of that period, only beginning to show signs of movement since around mid-2022.

Mr D also told RSA the survey they'd had carried out before buying the house noted some minor movement in one corner of the conservatory but said this was insignificant and not on-going. Mr D has provided a copy of the survey which conforms his account.

And it's further support for the idea that the conservatory stood - without movement, on its existing foundations, in the same soil, with the same surrounding vegetation - for the best part of 20 years before any significant problems began.

That would in turn suggest that some other factor has impacted the conservatory in the last few years and caused the movement and damage that is now evident.

RSA's loss adjuster's reports, in August 2022, said the cause of the damage was as yet unclear – though they did say that it *may* be defective foundations (in which case there would be no cover). Hence the commissioning of the expert technical report (September 2022).

That report – no doubt intentionally – is long on facts but short on interpretation. However, what it does appear to show is as follows.

One – as above, the foundations are 500mm thick. At one trial pit site, that appears to start at around ground level. At another, the foundations seem to start at around 450mm below the surrounding ground level.

Two – the sub-soil is heavy clay, although to certain depths in the trial pits, there appears to be "*made ground*", which is "*medium compact... gravelly, silty clay*".

Three – there are roots up to 2mm thick in the soil around the trial pit where the foundations go to 500mm deep from ground level. And in the other trial pit, there are roots up to 5mm thick, but these are in the made ground and don't appear at the level deeper than the foundations.

Four – specialist analysis showed these roots to be from *Acer* species (roots up to 1.5mm), *Choisya* species (roots up to 1.5mm), and an unidentified shrub or climber (roots up to 3mm).

On the back of that report, the loss adjuster wrote to Mr and Mrs D to say their claim was declined. They said the foundations were 500mm deep - and so not constructed in line with good practice at the time.

They went on to say – and I think it's worth me quoting this directly and in full:

“... the foundations bear into a desiccated clay stratum caused by the presence of tree roots, which were identified as Acer spp. which are maples, including sycamore, Norway maple and Japanese maple. We also identified Choisyia....”

So, in essence, according to RSA (via their loss adjuster), they are entitled to decline the claim because the foundations weren't built in line with good practice *and* were insufficient to properly support the building *because* the clay soil was (predictably) desiccated *because* it had tree roots in it.

I don't think that rationale is supported by the evidence currently available in this case. I'll explain why.

First, there's no evidence we've seen to suggest the soil is desiccated. In fact, the technical report (in September 2022) says that the soil is made ground and “*medium compact*” gravelly silty clay to the same depth as the foundations. Beyond that depth, the soil is described as “*very stiff brown silty clay*”. So, it seems the soil isn't desiccated – at the very least not to the extent that it's crumbling and/or causing ground movement.

Second, the evidence relating to the roots, as it currently stands, appears not to support the idea that the roots are causing significant issues with the soil and/or the foundations.

The roots in one of the trial pits were no more than 2mm in diameter. In the other trial pit, they were up to 5mm in diameter. That's relatively small and it doesn't support a picture of tree or large shrub roots desiccating the soil.

There is also – I assume non-intentional – confusion in RSA's account of what the roots are. The specialist analysis showed *Acer* roots. RSA and/or the loss adjuster have correctly described this genus as including sycamores and maples. At other times, they've said the evidence shows sycamore roots in the soil.

I can see from the photographs of Mr and Mrs D's garden that they have at least one ornamental *Acer* planted in the part of their garden close to the conservatory. These are usually smaller trees, unlikely to cause much trouble in terms of ground movement.

There are larger trees beyond the boundary of the garden, a little further away. But the expert hasn't identified these – simply saying that they are deciduous. Nor is there therefore any indication of how far the roots might spread and/or what distance these trees need to be from a building to avoid impacting it.

So, there's no evidence at all of any sycamore (a much larger and more troublesome tree than an ornamental *Acer*) in the relevant area. If there were, one might have expected the roots to be considerably larger than those found in the trial pits. Those roots are very likely from the ornamental *Acer*(s) planted in Mr and Mrs D's garden.

The trial pit with the larger roots (to 5mm) showed no roots at all below the depth of the foundations. In the other pit, any roots below that level were less than 2mm in diameter. Again, that doesn't suggest a pattern of root growth that is desiccating the soil.

When I look at that available evidence then, it's impossible to justify coming to the conclusion that the roots in the relevant area have desiccated the soil and/or affected the foundations of the conservatory.

The roots are small. The slightly larger ones are all above the level of the bottom of the foundations. And there are likely no sycamore roots – nor indeed any roots from larger trees of any kind - in close proximity to the conservatory or its foundations.

And so, in short, I'm satisfied RSA have *not* established that the damage is due to the defective foundations (failing due to soil desiccation caused by trees) rather than due to extreme weather patterns, or indeed any other (as yet unknown) cause.

There's a lack of evidence at present to properly identify the cause of the damage. Or to allow RSA to conclude that building the foundations to 750mm, or even 1,000mm – as the building regulations and guidance suggested – would have prevented the current damage to Mr and Mrs D's conservatory.

Putting things right

I agree with our investigator then that RSA haven't justified declining the claim on the basis they set out in their declinature letter to Mr and Mrs D, and/or in their final response to Mr and Mrs D's complaint and/or their evidence and explanations to us.

It follows that I also agree that RSA should re-open and re-consider the claim, in line with the remaining policy terms.

My final decision

For the reasons set out above, I uphold Mr and Mrs D's complaint.

Royal & Sun Alliance Insurance Limited must re-open and re-consider Mr and Mrs D's claim in line with the remaining terms of their policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 September 2024.

Neil Marshall
Ombudsman