

The complaint

Mr and Mrs P are unhappy that Ageas Insurance Limited declined a claim they made under their home insurance policy for subsidence.

Mr P has primarily dealt with the claim and complaint, so I'll refer to him only.

What happened

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

- Mr P's house was built in 2005. In 2019, he first noticed cracks developing. He took advice from G, a structural engineer.
- G thought the cracking had been caused by subsidence due to nearby trees.
- Mr P got in touch with Ageas about the damage. It appointed C, a loss adjuster, who arranged various investigations, including soil testing, arborist advice and monitoring. C said the foundation was too shallow and declined the claim.
- Mr P complained about this. Ageas said the foundation depth amounted to poor design and maintained the claim should be declined.
- Our investigator thought the complaint should be upheld. She didn't think Ageas had shown which standards applied at the time the house was built. And Mr P had shared certificates showing the house construction was approved by building control and a structural warranty provider. She wasn't satisfied this supported Ageas' position. She also recommended Ageas pay £750 compensation.
- Mr P agreed but Ageas didn't. It reiterated that the foundation depths were too shallow to meet the relevant standards – and the depth recommended in the original construction drawings.

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 caused by subsidence, subject to a number of terms of conditions. Ageas accepts the damage was caused by subsidence. It's relied on one of the terms to decline the claim. The term says:

We won't pay for damage caused by faulty materials, poor design or poor workmanship. This includes any work on your buildings that didn't meet building control regulations when the work was completed

In a nutshell, Ageas thinks the foundation was poorly designed – and that caused the subsidence problem. It points to the original construction drawings, the standards of a

certain builder of new homes, N, and other standards to support its position. The onus is on Ageas to show the foundation was poorly designed in order to rely on the term above.

There's been much disagreement about the foundation depth at Mr P's home. I'll explain below why I don't think it's necessary for me to go into detail about some of the points which have been made about this.

I understand the original drawings recommended a depth of 1,000mm, although that was subject to the site conditions and building control agreement.

The first investigation C arranged for Ageas indicated a depth of 400mm under the damaged area of the house. Mr P explained why he and G didn't think that was right. C agreed to arrange another investigation and that supported what Mr P had said – it showed the foundation in the relevant area was 800mm deep.

Ageas remained concerned that this depth was less than that recommended originally. But I note this was a recommendation only – and the actual depth was to be agreed once the specific conditions of the site and the agreement of building control had been sought. I'm also aware that Mr P considers the full depth was achieved originally, but changes to the ground level may make it appear otherwise now.

Mr P has shown the house received a certificate of completion from the local building control office. And he notes the building control inspector monitored the construction throughout its various stages prior to providing the certificate – as is usual practice.

At the time of construction, I understand building regulations required a minimum foundation depth in clay of 750mm. The judgement of those involved in the construction is to be used to determine how much deeper, if at all, the foundation ought to be. Building control has signed off the construction, including the foundation depth, as meeting building regulations.

Ageas has also referred to standards of a certain builder of new homes, N. Under these standards, Ageas says the foundation should have been significantly deeper than it is. N's standards are relevant here because N provided a structural defect warranty for Mr P. He's shown N signed off various stages of construction, including 'excavation', 'substructure', and 'completion'. That means N was satisfied the way the house was built, including the foundation, was consistent with its standards and it was prepared to provide insurance should a defect in construction arise.

Whilst Ageas has argued that N's standards weren't met, the evidence shows N considered they were. I understand an inspector representing N monitored construction at the key stages in order to provide the sign off documents – again, this is usual practice.

I haven't seen any evidence to suggest Ageas engaged with building control or N to explore the matter further. So I take the certificates at face value.

Overall, this means Mr P received certification from building control and N to show that the standards required by both organisations had been met during construction – including the depth of the foundation. Whilst I recognise Ageas has its concerns about the foundation depth, I think it was reasonable for Mr P to rely on the certificates provided by these two organisations to satisfy himself that his house had been built to the appropriate standards. Both organisations are credible and reliable sources of expertise in home construction, so I'm satisfied their opinions carry considerable weight. And I think it was reasonable for Mr P to see things the same way.

No other relevant standards have been put forward by Ageas. So I'm not persuaded Ageas has shown the policy term relating to poor design by applies – or that it would be fair to rely on it to decline the claim.

To put things right, Ageas should now accept the claim. The remaining terms and conditions of the policy will apply.

I also think Ageas should pay Mr P compensation to reflect the distress and inconvenience he has unnecessarily suffered during the claim.

I'm satisfied it was reasonable for Ageas to carry out the investigations it did. Many of them helped to understand the cause of damage and will be useful when determining what the next steps for the claim are.

But it took much longer to do this than I'd usually expect. And there were gaps in claim progression and communication during that time. That means it took longer than it should have done to reach a decision about the claim. And, for the reasons above, I don't think that decision was the right one.

So all things considered, the claim has been subject to significant and avoidable delays. I'm satisfied that's caused a great deal of distress and inconvenience to Mr P. I think £750 is reasonable and proportionate compensation in the circumstances.

My final decision

I uphold this complaint. I require Ageas Insurance Limited to:

- Accept the subsidence claim, subject to the remaining terms and conditions of the policy.
- Pay £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 30 August 2022.

James Neville
Ombudsman