

The complaint

Mr and Mrs M complain about the way Ageas Insurance Limited (“Ageas”) has handled a claim for subsidence.

What happened

Mr and Mrs M made a claim for subsidence damage in 2019 when they noted damage to the rear of their home. Ageas declined the claim due to a defective design exclusion in the policy, saying the property’s foundations were too shallow.

In 2020, following site investigations, Ageas found that the cause of the movement was root induced clay shrinkage and, following further tests, Ageas said the foundation depth didn’t meet NHBC guidelines – so there was a defect in the way the property had been built which meant there was an applicable exclusion in Mr and Mrs M’s policy.

Mr and Mrs M referred their complaint to this service and although the investigator didn’t uphold the complaint, she said Mr and Mrs M could provide new evidence if they were able to, and that Ageas would need to consider this.

Mr and Mrs M proceeded to appoint a surveyor to carry out further investigations into the depth of the foundations. They did this at their own expense. They believed the report showed rootlets at a depth greater than the foundation depth, indicating that the subsidence would’ve occurred even if the foundations had been the correct depth. Mr and Mrs M put their expert’s report to Ageas to consider, but it said this didn’t make a difference to its decision to decline the claim, because the report didn’t say whether the roots were active or whether the ground was desiccated at the greater depth.

Unhappy with Ageas’s response, Mr and Mrs M referred a second complaint to this service. Our investigator considered the issues, but didn’t think the complaint should be upheld. She commented that there wasn’t enough information in the new report to suggest that the subsidence would’ve occurred even if the foundations were adequate.

Because Mr and Mrs M didn’t agree with our investigator’s assessment, the complaint has now come to me to decide.

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 looked carefully at the new evidence provided by Mr and Mrs M since their initial complaint was referred to this service.

Ageas’s position was that mass concrete footings were 700mm below the ground rather than the 2000mm required under the NHBC guidelines for building near trees.

Mr and Mrs M’s report identifies roots at a depth of 1.7m and 3m below ground, but it doesn’t show that those roots would’ve caused the subsidence to occur even if the foundations were

adequate. This is because some of the roots were desiccated – having had all the moisture removed. The report identifies some of the roots as Oak and the remainder were not identified, but it doesn't comment on whether the Oak roots were active or at what depth they were found. This doesn't persuade me that the subsidence would've occurred irrespective of the depth of the footings.

I know Mr and Mrs M will find this frustrating, particularly as they believe the first investigator who considered their complaint suggested that if they could prove roots existed deeper than the recommended foundation depth then the subsidence was inevitable and their complaint would be upheld. But I've looked at the first case they brought to this service and I can't see that the original investigator gave any such assurances. She mentioned that they could get their own investigations carried out and that Ageas would need to consider any reports they provided. And it's not enough to say that roots were found at a certain depth, if we don't have evidence to show the roots were active at that depth, and therefore would've caused the subsidence to occur even if the foundations were the right depth.

So I don't consider Ageas to have acted unreasonably in declining the claim, on the grounds that the defective design exclusion applied.

However, Ageas didn't provide an adequate level of customer service when dealing with Mr and Mrs M's claim. It caused a delay in initially considering their report, and didn't give Mr and Mrs M a response to the new evidence submitted, until this service became involved.

So I consider Ageas needs to compensate Mr and Mrs M for the poor service they received. And I'm satisfied that £75 is fair and reasonable compensation in the circumstances, bearing in mind the length and impact of the delays.

Putting things right

Ageas Insurance Limited must pay Mr and Mrs M £75 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and require Ageas Insurance Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 27 April 2023.

Ifrah Malik
Ombudsman