

## **The complaint**

Mrs C is unhappy that Covea Insurance plc declined a claim she made on her home insurance policy for damage caused by subsidence.

## **What happened**

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

- Mrs C got in touch with Covea in 2020 after she noticed damage to the side extension and front porch of her home.
- Covea appointed a loss adjuster. It accepted the cause of damage was subsidence due to nearby trees. But it declined the claim because it said the design of both structures was defective or faulty.
- Mrs C accepted the porch construction was defective due to its shallow foundation. But she didn't think it was fair for the extension to be considered defective. She took advice from an engineer, who I'll refer to as V, which supported her position.
- Covea maintained it was fair to decline the extension claim. It said the foundation was 1,300mm deep. But based on the guidelines of a builder of new homes, N, it thought the foundation ought to have been 1,570mm deep. It noted roots and desiccated clay to a depth of 2,000mm. But it thought a foundation in line with N's guidelines would have been sufficient to prevent movement within this 430mm layer.
- V made a number of points, which I'll summarise:
  - N's guidelines would suggest a slightly shallower foundation depth of 1,535mm in these circumstances. But regardless, Mrs C's extension wasn't built by N, so N's guidelines aren't relevant.
  - Tree roots were found to a depth of at least 2,000mm. So even if the extension had been as deep as N's guidelines suggest, subsidence damage would have occurred anyway.
  - The extension complied with the Building Regulations of the time and received approval from Building Control.
  - The extension was built in 1997 and had stood without structural problems for over 20 years before the subsidence problem arose. This isn't in keeping with a defective or faulty design.
- Covea's position didn't change, so Mrs C referred her complaint to this Service. Our investigator thought it should be upheld. He wasn't persuaded Covea had shown the foundation was defective – or that a deeper foundation in line with N's guidance would have made a difference.
- V told us Mrs C accepted what our investigator had said and queried three points:
  - Should she receive compensation for the distress and inconvenience?

- Covea had initially refused to renew the policy but has since agreed to do so. However, it says it can only do so through a broker, but it won't tell Mrs C which brokers it works with. Can this situation be resolved?
- V charged Mrs C for his engineering advice. Should she be reimbursed for it?
- After discussion with both parties, our investigator updated his findings:
  - He maintained it was unfair for Covea to decline the claim. It should now accept the claim.
  - Had it done so earlier, Mrs C would have been spared a great deal of avoidable distress and inconvenience. Covea should pay £500 compensation.
  - And she wouldn't have had to turn to V for technical engineering advice. His £825 fee should be paid by Covea.
  - Whilst Covea can't recommend a broker to Mrs C, it should take a pragmatic approach to helping her access a Covea policy through a broker. To do this, it could send her a list of brokers it works with or put her in touch with one who knows the background to this problem and can help resolve it.
- An agreement wasn't reached with Covea. So the complaint has been referred 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.

- All parties accept the porch damage can fairly be declined by Covea, so I won't consider it further. This dispute is about the extension, so that's what I'll focus on.
- The policy covers damage caused by subsidence, subject to a number of terms and conditions. Covea has accepted the extension has been damaged by subsidence.
- Covea has relied on a policy term to decline the claim. It says Covea won't pay for loss or damage caused by: "*faulty design or workmanship*".
- I understand Covea considers the depth of the foundation amounts to faulty design. As it's relying on an exclusion, the onus is on Covea to show why it would be fair to decline the claim.
- Covea has referred to guidelines by a builder of new homes, N. N's guidance only applies when construction is under the supervision of N as part of a new home. That wasn't the case for Mrs C's extension. So, the extension didn't need to comply with N's guidelines and they're not relevant here.
- There has been much discussion about whether the damage would have occurred even if the foundation had been built to N's guidelines. But since those guidelines aren't relevant, I don't think further consideration needs to be given to this point.
- It's agreed the extension was subject to Building Regulations. Requirement A2 says, in summary, the building should be constructed so that ground movement caused by soil shrinkage won't impair its stability. Covea questions whether this point has been met because there's been subsidence as a result of clay shrinkage.
- I'm not persuaded taking requirement A2 as literally as Covea 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 faulty and the damage wasn't covered by the policy. The regulation document goes on to say that A2 will be met by following the recommendations and guidance in subsequent sections. So I think A2 is a broad aim, followed by more specific information about how to achieve it.

- At the time this extension was built, the document didn't specify a minimum depth to meet the requirement. What depth was appropriate was a judgement call for the designer, builder and Building Control to make based on the site conditions.
- In any case, it's accepted that Building Control approved the foundation depth at the time of construction. Notes show it visited several times whilst the foundation was being laid. It told the builder to increase the depth beyond the original design and to remove a nearby tree. This indicates to me that consideration was given to the site conditions, including the presence and impact of vegetation.
- Covea doesn't think those considerations were sufficient. It says the trees thought to be causing the current problem would have been clearly visible at the time of construction and their possible impact on the subsoil over time, taking into account their mature heights, wasn't reflected in the foundation depth.
- Even if this were the case, I think it's relevant to keep in mind that Building Control inspected the foundation, approved its depth and signed off the extension. So I can only conclude it was satisfied that relevant Regulation and guidance was satisfactorily taken into account. And, having received sign off from the relevant authority, I'm satisfied Mrs C took appropriate steps to ensure the extension was built to the right standard. I don't think she could reasonably be expected to do more.
- I also take into account that the extension had stood problem free for over 20 years at the time it suffered damage. V said this didn't indicate a defective design, noting there have been a number of subsidence 'surge' events during that time. In those summers, the impact of very dry weather resulted in significantly more subsidence problems than usual. This extension resisted many such events, which doesn't support Covea's position that it was built to a defective or faulty design.
- Overall, I'm not satisfied Covea has shown the foundation design was faulty – or that it would be fair to decline the claim even if it was. As a result, I'm satisfied it should now accept the claim.
- After the subsidence claim was declined, I can understand why Mrs C turned to V, an engineer, for technical advice. His comments set out clearly and persuasively why he thought the claim should be accepted – and they align closely with what I've said above. In my view, Covea should have accepted what V said. As a result, I'm satisfied it would be reasonable for Covea to reimburse the cost Mrs C incurred for V's engineering and technical advice. That's £825. It excludes any cost Mrs C may have incurred for V acting solely as a representative.
- Had Covea accepted the claim after considering the evidence, including V's comments, the current position would have been reached over a year ago. It's disappointing to see that, internally, Covea acknowledged its position was unlikely to be accepted by this Service – but it continued to decline the claim anyway. I'm satisfied Mrs C has been caused avoidable distress and inconvenience and I think £500 compensation would be reasonable redress in the circumstances.

- Lastly, I'm pleased to see Covea has acknowledged the industry best practice to offer continued subsidence cover to Mrs C. Because it doesn't sell policies directly to consumers, it has told her she must buy one through a broker – yet it won't let her know which brokers it has arrangements with. This has created an absurd situation which leaves Mrs C unable to access the policy Covea is prepared to offer.
- Covea should take the lead on putting this right by providing Mrs C with details of brokers through which she can arrange cover. I know Covea has concerns about providing advice when it shouldn't, but I don't think this amounts to advice. As our investigator outlined, there are a number of ways Covea can resolve this pragmatically. It should remember that Mrs C is its customer and work with her to ensure she can access a Covea policy including continued subsidence cover.

### **My final decision**

I uphold this complaint. I require Covea Insurance plc to:

- Accept the subsidence claim for the extension.
- Pay £825\* for the cost of V's engineering advice.
- Pay £500\* compensation.
- Provide Mrs C with details of brokers through which she can arrange cover.
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\*Covea must pay the award within 28 days of the date on which we tell it Mrs C accepts my final decision. If it pays later than this, it must also pay interest on the award from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 July 2023.

James Neville  
**Ombudsman**