

The complaint

Mr M and Miss W are unhappy with Ageas Insurance Limited's (Ageas) handling of a claim made under their buildings insurance policy.

Any references to Ageas include its agents.

What happened

Mr M and Miss W bought their house in 2018 and knew there had been a historic subsidence claim to the rear of the house. They say some six months after they moved in, they saw signs of cracking at the front of their home. They contacted Ageas who said the cracking wasn't related to subsidence, so no further action was taken.

In 2021, Mr M and Miss W contacted Ageas again about the cracking, saying it had worsened. This time, Ageas carried out an inspection which included investigating a trial hole at the front of the house. Ageas said the foundations at the front of the house weren't sufficiently deep to support the extension, which had been built as a carport in 1996 and converted before Mr M and Miss W bought the house. Ageas declined their claim, relying on the defective workmanship clause of the policy.

Mr M and Miss W appointed an arborist and structural engineer. The structural engineer dug a trial hole on the side wall of the extension and found foundations bearing onto solid clay at 850mm deep. The arborist considered the foundations were sufficiently deep and identified a number of trees that were likely to be the cause of the subsidence. Both experts concluded the property suffered significant cracking to the front and side of the house, and the adjacent trees were the primary cause of the subsidence.

Ageas continued to decline the claim, so Mr M and Miss W asked us to look into what happened. One of our investigators did so and said Ageas hadn't demonstrated which of the building regulations it considered the extension hadn't complied with. When Ageas went on to provide building regulations, our investigator didn't agree it was acting fairly. On this basis, she thought the claim should be considered subject to the remaining policy terms. Ageas didn't agree, so this matter has been passed to me for consideration.

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.

In the first instance, I think it's helpful for me to reference the exclusion Ageas is looking to rely on.

“What is not insured...

d) defective design or faulty workmanship or the use of defective materials or inadequate construction of foundations...”

In order for me to decide Ageas had acted fairly in declining their claim, I need to be satisfied Ageas has shown the foundations of Mr M and Miss W's house are defective in their design or inadequately constructed.

It doesn't seem to be in dispute Mr M and Miss W's home is moving, and that when Ageas visited in January 2021, they didn't note any cracking to the flank wall. However, this was noted as being present later that year when the arborist and structural engineer instructed by Mr M and Miss W inspected the property. Ageas' inspection identified the front wall had been built on a concrete slab at 200mm below ground level. But when the structural engineer dug a trial hole adjacent to the side wall extension, they found concrete blocks and foundations onto solid clay at excess of 850mm. The inspection by Ageas found evidence of roots as deep as 1.5m. So, there's some inconsistencies between the experts as to whether the foundations were defective or inadequate.

With this in mind, it falls to Ageas to demonstrate it can fairly rely on an exclusion set out in the policy. Ageas indicated the extension hadn't complied with building regulations in place when the extension was built as a carport or later converted. Our investigator asked Ageas to support this by providing a copy of the regulations it was relying on. Ageas provided a number of documents. The first two documents were guidelines applied by an organisation involved in the building of new homes. As the extension wasn't built as a new home or by that organisation, I'm not persuaded either of those guidelines apply here. I don't think Ageas can reasonably rely on these.

Ageas also sought to rely Approved Document A. But this Document came into effect from 2010, and the extension was built before then, so I again don't consider it can be relied on. Finally, Ageas provided copies of Building Regulations from both 1965 and 1991. Neither document specifies a particular depth that the foundations must reach, so again I don't think Ageas can rely on these documents alone to support their view the foundations are not deep enough.

Ageas hasn't shown the extension hasn't complied with building regulations. I'm also mindful the extension stood for a number of years before showing signs of movement. Both the arborist and structural engineer appointed by Mr M and Miss W identified nearby trees as being the likely cause of the subsidence, with roots being identified as far as 1.5m deep, so beyond the 1m depth Ageas quoted during our investigation (albeit this was in relation to some documents I don't consider apply here). As Ageas has not provided evidence that persuades me the foundations were insufficiently deep, it follows that I don't think it acted fairly in declining this claim.

To put things right, I require Ageas to reconsider Mr M and Miss W's claim, subject to the remaining policy terms.

I can also see that the way Ageas has handled this claim has had a huge negative impact on Mr M and Miss W. They've told us this has caused significant worry, not only about the condition of their home but also to their financial situation in terms of how they might arrange repairs. I don't agree Ageas was fair in declining the claim and agree it should pay £300 compensation for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint. To put things right I require Ageas Insurance Limited to:

- Reconsider Mr M and Miss W's claim, subject to the remaining policy terms
- Pay them £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss W to accept or reject my decision before 22 June 2023.

Emma Hawkins

Ombudsman