DRN-4011285

The complaint

Mr M and Ms T complain about Ageas Insurance Limited's handling of a claim made under their home insurance policy.

What happened

The long and often complex background to this complaint is very well known to both Mr M and Ms T and Ageas. So, I'll give only a brief summary of the main points here. I'd like to assure Mr M and Ms T and Ageas that I have read and carefully considered all of the relevant information and evidence we have relating to this case.

At the relevant times, Mr M and Ms T had a home insurance policy underwritten by Ageas. This covered their home and its contents, amongst other things.

Mr M and Ms T made a claim in November 2011 after noticing damage in their garden affecting their garage, swimming pool and hard landscaping.

Ageas appointed a loss adjuster to assess the claim. In March 2012, the loss adjuster wrote to Mr M and Ms T to confirm that remedial works would be completed by January 2013.

However, in January 2013, Ageas told Mr M and Ms T their claim was to be declined.

Mr M and Ms T tell us Ageas gave two different reasons for this. They initially said the damage wasn't covered at all, but later said Mr M and Ms T had misrepresented the facts when they bought the policy because they didn't declare a history of subsidence at the property.

At this point, Mr M and Ms T took advice from a barrister (I'll refer to him as Mr W). And, to summarise, Ageas eventually concluded they had been mistaken and accepted the claim.

Mr M and Ms T say they asked for a cash settlement so that they could get the work carried out themselves, but Ageas decided to appoint contractors to carry out the remedial work to the relevant parts of the property.

The work eventually began in Autumn 2014, around three years after the claim had been made. Almost two years later, in mid-2016, Ageas announced that the necessary works were complete.

It's important to say, at this point, that from the outset Mr M and Ms T were taking advice from a qualified civil engineer (I'll refer to him as Mr C).

It was Mr C's view that the remedial works carried out by Ageas' contractors were unlikely to resolve the issues with subsidence in Mr M and Ms T's garden. In his view, it was necessary to install a land drain under the garden to divert groundwater away from the affected areas.

Ageas didn't accept this and didn't install a land drain. They thought the problems were likely to be solved by the removal of a number of trees close to the affected area of the garden.

Soon after the repairs has been completed in 2016, Mr M and Ms T say they noticed that cracks were reappearing in their pool surround and patio – and that their garage (at the back of the garden) was damp. They also noticed damage to a retaining wall at the back of the garden.

Mr M and Ms T say that by around late 2017, the loss adjuster appointed by Ageas had accepted that the remedial works previously carried out had not been entirely (if at all) effective. They agreed to try to deal with the damp in the garage. And to monitor the cracks in the hard landscaping.

At a site meeting in early 2019, Mr M and Ms T say the loss adjuster accepted that more work needed to be carried out, including the installation of a land drain. But they say nothing then happened for another year or so.

We've been provided with a document dated July 2020 and titled "*Specification and Schedule of Repairs*", which sets out the work now needed to be done to stabilise Mr M and Ms T's garden and to repair the damage to the garage and areas of hard landscaping.

As I understand it, Ageas and Mr M and Ms T are now agreed on that schedule of works and believe it will provide effective and lasting repairs to the garden. It includes the installation of land drains and a scheme of underpinning, amongst other things.

There is one caveat to that. Ageas are not proposing to carry out any works to repair the retaining wall at the back of the garden. They say the damage to that wall predates Mr M and Ms T taking out their policy with Ageas and so is not covered.

Mr M and Ms T believe the damage has mainly occurred since 2011 – and largely as a result of Ageas failing to carry out effective remedial works after they made their claim in November 2011.

To date, the remedial works set out in the (mostly) agreed schedule have not yet started. It's now more than 11 years since Mr M and Ms T first made their claim to Ageas.

In that time, Mr M and Ms T have made a number of complaints to Ageas. They weren't happy with the response to those complaints, so they brought them to us.

In summary, they want us to:

- set a timeframe for Ageas to complete the necessary remedial work;
- instruct Ageas to accept responsibility for repairs to the retaining wall and the driveway in front of the garage;
- require Ageas to cover the fees now payable to Mr W and Mr C; and
- award reasonable and adequate compensation for Mr M and Ms T's trouble and upset caused by the delays, loss of utility (of the pool, garage, garden and rear entrance to the property), poor communication and poor handling of the claim.

Our investigator looked into it and thought Mr M and Ms T's complaint should be upheld. She asked Ageas to pay for repairs to the retaining wall and driveway. And to pay all of Mr C's fees (some of which Ageas had already paid) and Mr W's fees, but only in relation to the work he carried out when the validity of the claim was in question. And to pay Mr M and Ms T £3,500 in compensation for their trouble and upset.

Neither Ageas nor Mr M and Ms T agreed with the proposed outcome, which is why the complaint has been referred to me for a final decision.

Ageas don't think they should be responsible for repairs to the retaining wall. They also think some of the delay in the settlement of the claim isn't their fault.

In particular, they say their initial response to the reported damage was reasonable, in all the circumstances, even if the repairs proved not to be entirely effective in the end.

They say the remedial work now proposed is far more extensive than that proposed by Mr C at the outset, so accepting his views earlier – and implementing the works he suggested - wouldn't have solved the problem in any case.

And they've said it's extremely difficult to find contractors to carry out the proposed remedial works.

Mr M and Ms T were disappointed that we hadn't set a timetable for completion of the remedial works. They think that will inevitably lead to further delay.

They also think we should specify exactly what Ageas need to do to reinstate the retaining wall, in essence because it can't be repaired and needs to be rebuilt.

Mr M and Ms T were also disappointed that we hadn't asked Ageas to pay all of Mr W's fees. And they think the compensation our investigator proposed is, in their own words, "derisory".

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.

First of all, I should make it absolutely clear that this complaint is not about the now proposed remedial work. Fundamentally, Ageas and Mr M and Ms T agree about what needs to be done to tackle the subsidence in the garden. They also agree about the repairs that need to be carried out. And they reached that position before this complaint was brought to us.

The one exception is in relation to the retaining wall – and I'll return to that below. I'll also make clear below what I think about the repairs to the driveway, although I understand the parties have also reached an agreement about that.

The complaint issues Mr M and Ms T brought to us were about: Mr C's remaining fees; Mr W's fees; the driveway; the retaining wall; the delays and poor service; and the compensation for Mr M and Ms T's trouble and upset. I'll deal with those issues in that order.

Mr C's remaining fees

It appears to be accepted by all involved that Mr C's advice in this case has been useful. It's also allowed Mr M and Ms T to understand the problem and the various solutions that have, over the period in question, been proposed to deal with it.

So, I'm satisfied Mr and Ms T were entitled to seek that advice – and, when it proved (more or less) correct, to ask Ageas to pay for it. As I say, I don't believe Ageas are disputing that. And I understand they have paid out for all the relevant invoices they've received so far.

Mr M and Ms T say there are other payments to Mr C still outstanding. I'm sure Ageas will

consider any relevant invoices and will pay out if they clearly cover advice relevant to this particular claim.

I'm also sure Mr M and Ms T will appreciate that I have to allow Ageas the opportunity to review any such invoices, to ensure they are reasonable and relevant to this claim. Otherwise, I could justifiably be accused of requiring Ageas to issue then with a blank cheque.

Mr W's fees

I know this will disappoint Mr M and Ms T, but I agree with our investigator's view on this particular point.

On balance, I'm satisfied that Mr M and Ms T were entitled to seek legal advice when the validity of the claim was questioned – and to expect Ageas to pay the bill for that legal advice *if* Ageas then changed their stance on the claim (which they did).

In essence, Mr M and Ms T had to obtain that advice, which was about a legal matter – the application of the Consumer Insurance (Disclosure and Representation) Act (CIDRA) - in order to secure a fair outcome for themselves in this case. If they hadn't, it seems to me, Ageas would very likely have maintained their position and declined the claim.

So, I'm going to require Ageas to pay Mr W's fees for the advice provided about that matter specifically and at that particular stage of the claim.

After that, once the claim was accepted by Ageas, it seems to me that the reasonable and pertinent support and advice Mr M and Ms T needed was technical rather than legal. I know Mr W has provided further advice – for example about what Ageas' obligations were (and why) after the claim was accepted.

I have no doubt that was comforting and/or of interest to Mr M and Ms T, but I'm satisfied that advice didn't change the course of the claim in any significant way. Once they accepted the claim, Ageas knew – as did everyone else – that they were obliged to remedy the covered damage. The real question, at that point, was *how* that should be done (which brings us back to Mr C's role and advice), not *whether* it should be done.

Again, I'm sure Mr M and Ms T will appreciate that I couldn't reasonably conclude that an insurer, if in dispute with a customer, is obliged to pay for any and all (legal or other) advice that customer chooses to obtain, just as long as the insurer in the end accepts the customer's argument. That would expose insurers to potentially excessive costs over which they have no control at all.

If I were convinced that Ageas, in this case, were going down a path which proved erroneous and it was only the intervention of Mr W that put them back on a course that was fair to Mr M and Ms T, then I might take a different view.

But I don't think that is the case here. Ageas may have made errors, but in essence, once the issues around the validity of the claim were settled, it wasn't primarily Mr W's legal advice that brought Ageas to the repair schedule they have now agreed with Mr M and Ms T.

I am very much aware that Mr W has said that it would be difficult – it not impossible – to invoice separately for the advice about the validity of the claim.

That's not really something I can comment on, although it appears to me that in principle Mr W might reasonably be able to work out how many hours he spent on each piece of

advice and/or each element of each piece of advice. I'm sure Mr W, given his profession, has great experience of accounting in detail for the time he spends on his client's cases.

All that I can do is require Ageas to consider any invoices – for that specific advice about the validity of the claim – that Mr M and Ms T provide. If Mr M and Ms T can't do that, then I can't reasonably require Ageas to make any payment towards those costs.

Repairs to the driveway

It appears that this issue – which was live when Mr M and Ms T brought their complaint to us – is now settled to both parties' satisfaction.

In short, Ageas have accepted that further repairs to the driveway *are* required and *are* covered under the policy. An earlier cash settlement paid to Mr M and Ms T was to cover previous damage, which is not the same as the damage which now needs repair.

Given that the parties are agreed on next steps on this issue, I needn't go into great detail here. But because this issue did form part of the complaint made to us, I should just confirm that the agreement which has now been reached seems perfectly fair and reasonable to me.

The retaining wall

It appears that all parties are agreed that the retaining wall at the back of the garden has fallen into a state of chronic disrepair / collapse. And that it needs substantial work to be restored or rebuilt altogether.

Mr M and Ms T say that Ageas should pay for that work. Ageas say the damage to the wall pre-existed the inception of the policy and so isn't covered.

We reasonably regularly see cases where damage (which *is* covered because it's caused by an insured peril) may have pre-existed the inception of an insurance policy, but then continues and/or gets substantially worse over the period after the policy is taken out.

In such cases, assuming no exceptions apply, we take the view that the insurer should usually cover the cost of remedying the damage which has occurred during the lifetime of the policy. And if the only way the insurer can repair that (new) damage is to also the repair the old (pre-existing) damage, then they should also repair the older damage.

Our position is to a great extent reflected in the line taken by the Association of British Insurers (ABI) on subsidence claims where the damage may be on-going over different periods of insurance cover. So, the insurance industry itself accepts that best practice is for insurers to accept claims in these kinds of cases and circumstances.

In this case, there is no dispute that the damage to the wall has been caused by an insured peril (subsidence or landslip). If Ageas are to fairly decline this part of the claim, they would need to show that the damage currently in evidence happened – and then stopped – before the policy was taken out.

Otherwise, the damage has continued into the lifetime of the policy and the principles set out above will apply – Ageas should cover the damage which occurred during the lifetime of the policy. And if to do that effectively they need to repair old damage too, then they should also carry out those repairs.

Ageas say the wall had some cracking before the policy was taken out and have provided evidence which seems to support that.

However, I don't think Ageas could reasonably suggest that the damage didn't continue during the lifetime of the policy. I should mention here that Mr M and Ms T took out insurance with another provider several years ago, so the policy with Ageas came to an end.

But the cracks in the wall are now much more significant than they were in 2011. And there are several expert survey reports carried out through the lifetime of the policy which clearly demonstrate that the damage was on-going – and getting worse - in the relevant period.

So, I'm satisfied the damage has been on-going during the lifetime of the policy - and that Ageas therefore have an obligation to carry out the repairs. And, on the face of it, it seems to me that the damage which occurred during the lifetime of the policy can't practically be repaired without repairing any pre-existing damage.

There appears to be some potential disagreement between Mr M and Ms T (taking Mr C's advice) and Ageas about whether the wall can be repaired – in a lasting and effective way – or needs to be rebuilt altogether.

Mr M and Ms T have asked us to help avoid that potential future disagreement by stipulating that Mr C should be involved in specifying what works are now necessary.

I would imagine Ageas will want to take Mr C's opinion into account. He has been right before - about the causes of the subsidence and the means of remedying the problem. But I can't reasonably tie Ageas' hands, at this stage, by insisting they adopt a particular solution before they've even had a chance to fully assess the damage themselves and consider their options.

The complaint Mr M and Ms T made to us was that Ageas didn't accept that the retaining wall was covered under the terms of the policy. I've addressed that complaint point above – the damage *is* covered.

It's not for me now to dictate to Ageas exactly how they rectify the damage. They are entitled to assess this part of the claim and determine the next steps – in discussion with Mr M and Ms T, of course, and in a timely manner.

Delays and poor service

I accept that this was not a straightforward claim. And that it wasn't unreasonable at first to look at other potential causes of the subsidence. I also accept that contractors may not have been competing in great numbers to get the work.

However, complex and difficult though it may have been, it's now more than 11 years since Mr M and Ms T first notified Ageas of their claim.

I don't intend to go into great detail about exactly how each and every delay occurred. Suffice to say Ageas spent more than a year erroneously – as it turned out - arguing that the claim should be declined. There was no reason for the claim to be declined and therefore that was more than a year wasted.

It appears to have been around a year and half after that before the work actually began. I can't see any justification for that delay, especially given that the loss adjuster had assessed the claim and scoped out the necessary work (in at least enough detail to say when it would be completed by) at the outset.

The work took almost two years to complete. Again, that seems an unjustifiable delay, in any circumstances.

And the recurrence of the damage – after that initial (and ineffective) work was completed - was reported to Ageas in 2017. We're now in 2023 and the necessary remedial work hasn't yet begun. There is no justification for that delay.

Ageas say they've had difficulty finding contractors to do the work. But they have had at least one tender they declined, seemingly on the basis of cost. And, once Ageas had decided to carry out the repairs, rather than offer a cash settlement, they were obliged to get the necessary work carried out in a timely and effective manner.

It seems to me that Ageas' business, as an underwriter of insurance, is to properly equip themselves to deliver the promised service when a customer makes a valid claim.

Bluntly, if they can't find contractors – in Mr M and Ms T's area and/or for this kind of property or more generally - then they ought to consider whether they should be offering the relevant insurance cover.

In summary, Mr M and Ms T's claim has been subject to long, unnecessary and unjustifiable delays.

I can also see from the evidence we have on file that Mr M and Ms T have not always had timely replies – or replies at all - from Ageas or their agents when they've made perfectly reasonable enquiries about progress and next steps with the claim.

At times, the customer service Ageas provided has been well below the standard Mr M and Ms T had a right to expect.

Putting things right

I'll summarise what I'm going to instruct Ageas to do in response to this complaint. I'll then turn to the question of the amount of compensation Mr M and Ms T should be awarded.

Bearing in mind the arguments I've set out above, I'm going to require Ageas to:

- pay for any further fees put forward for Mr C's services in helping Mr M and Ms T deal with this claim (assuming Mr M and Ms T provide invoices or receipts and Ageas are satisfied these relate to this claim);

- pay for Mr W's fees in so far as they relate to advice provided to Mr M and Ms T about the validity of the claim (again, assuming Mr M and Ms T provide invoices or receipts and these clearly relate to the relevant advice about the validity of the claim);

- carry out the agreed repairs to the driveway in front of Mr M and Ms T's garage; and

- accept the element of the claim relating to the retaining wall and scope and carry out the necessary remedial work in a timely manner.

I know Mr M and Ms T want us to instruct Ageas to carry out the remedial work within a given timeframe. I can understand that, and I fully appreciate why Mr M and Ms T want us to ensure that there are no further unnecessary delays.

However, it's not for our service to act as surrogate loss adjusters or claims handlers. We can't entirely predict what will happen in the future as regards this claim. And I'm aware in any case that there are a number of issues still (legitimately) to be decided, such as how to best repair or replace the retaining wall.

So, it's not for me to set a timetable for Ageas – or to specify penalties for them failing to meet any agreed timetable. That's simply not the role our service is empowered or equipped to perform.

Having said that, I would say that I sincerely hope Ageas will deal with the claim from this point onwards with as much speed as is practically possible.

And I'd add that if Mr M and Ms T aren't happy with the service Ageas provide and/or the speed at which they deliver it in future, they will be entitled to make a further complaint to Ageas - and then to us, if they aren't happy with Ageas' response.

I can't pre-empt the outcome of any such future complaint. We would, of course, have to look at that complaint on its own merits and in light of all the relevant circumstances.

But there is at the very least a possibility that if there were further unnecessary delays, Mr M and Ms T might reasonably expect more compensation for their further trouble and upset.

I'll turn now to the trouble and upset Mr M and Ms T have been caused by Ageas' errors in the handling of this claim – and the appropriate level of compensation for that.

Mr W put forward some submissions, via Mr M and Ms T, in response to our investigator's view on this case. And I can't find any fault with his summary of the trouble and upset Mr M and Ms T have been caused.

He said compensation was due for the inconvenience Mr M and Ms T had experienced, the loss of use – of their garage, pool, garden and rear access to the property – and the worry and upset they'd suffered.

I entirely agree with that summary. And, of course, I have to take into account that all of those factors have been present for far longer than they needed to be given the delays in dealing with this claim.

It was inevitable that the ground movement in Mr M and Ms T's garden – which of course Ageas did not cause – would lead to some loss of utility, some inconvenience and some considerable worry for Mr M and Ms T.

So, when I consider the compensation to be awarded now, I'm looking at how much longer that went on because of Ageas' failure to handle the claim in a timely or effective manner.

In considering compensation awards, we take into account the severity of the impact on the customer and the duration of that impact.

The guidance we publish on our website says that we consider compensation awards of between £1,500 and £5,000 to be appropriate where customers experience *sustained* distress (possibly affecting their health) and/or *severe* disruption to daily life, usually lasting for more than a year.

In my view, Mr M and Ms T have certainly suffered sustained distress, loss of utility and inconvenience as a result of Ageas' errors. And the unnecessary delays in the handling of this claim amount to much more than the year mentioned in our guidance.

When I consider the duration of the trouble and upset then, I'm drawn towards the top end of that £1,500 to £5,000 bracket.

When I consider the severity of the inconvenience and disruption though, I am drawn away

from the very top end of that bracket. Mr M and Ms T remained in their home, which itself was not under any risk. They had access to all the usual facilities of their home and didn't at any time have to move out or seek alternative accommodation.

In summary, I think the £3,500 suggested by our investigator is a fair and reasonable amount of compensation given the level of the additional inconvenience, stress and loss of utility which resulted from the delays in Ageas' handling of the claim.

I know this will disappoint Mr M and Ms T, who may have thought that around ten times that amount - or more - would be appropriate. I hope they will not think I'm downplaying or underestimating the concern and worry these events will have caused them.

I know it will have been very difficult to cope with the idea that their garden, pool and garage might be permanently unusable (if Ageas did not deal with the claim effectively) or might sooner or later slide down the slope altogether. But I have to decide what compensation is reasonable bearing in mind the considerations we outline in the guidance we publish.

Bearing that guidance in mind, it seems to me that an award of £3,500 – above the mid-point of the relevant bracket (as described above) is appropriate.

My final decision

For the reasons set out above, I uphold Mr M and Ms T's complaint.

Ageas Insurance Limited must:

- on receipt of relevant receipts or invoices from Mr M and Ms T, pay any further costs for Mr C's services in helping Mr M and Ms T deal with this claim;
- on receipt of relevant receipts or invoices from Mr M and Ms T, pay for Mr W's fees in so far as they relate to advice provided to Mr M and Ms T about the validity of the claim;
- carry out the agreed repairs to the driveway in front of Mr M and Ms T's garage;
- accept the element of the claim relating to the retaining wall and scope and carry out the necessary remedial work in a timely manner; and
- pay Mr M and Ms T £3,500 in total in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms T to accept or reject my decision before 14 April 2023.

Neil Marshall
Ombudsman