

The complaint

H and Mr and Mrs A complain about the way Ageas Insurance Limited handled a claim they made on their Landlord buildings insurance policy for damage caused by subsidence.

Mr S is a director of H, and so is eligible to bring a complaint on its behalf. Mr S and Mr and Mrs A – who are also policyholders - are also bringing this complaint via a representative.

For ease, I'll refer to the policyholders collectively as PH throughout my decision. But any reference to PH also includes comments made by their representative on their behalf.

What happened

In early 2022, PH contacted their insurer, X, to report what they thought to be subsidence related damage to a rental property.

X inspected the damage but said it had happened before the policy started, so it directed PH to their previous insurer, Ageas. Ageas insured the policy from July 2020 until July 2021. Ageas assessed the claim but in early 2023 it declined it. It said it didn't think any current damage was due to subsidence. It said there was no evidence of progressive subsidence movement at the property, so no damage had happened during the period it was on cover.

PH complained to Ageas, but it didn't change its position, so a complaint was brought to this Service.

Our investigator said based on the reports she'd seen; Ageas had made a reasonable decision to decline the claim. However, she thought the communication had been poor, and she recommended Ageas pay £100 to recognise the impact of this.

PH didn't accept that outcome. They said there are surveyors' reports which confirm subsidence, and their current insurer had confirmed it was subsidence damage, they just declined to cover the claim due to when the damage started. They said the report from Ageas was carried out by the same loss adjuster as their current insurer had used. So, it was illogical it would now say there was no subsidence when it had previously confirmed it.

PH also said neighbouring properties had been suffering from subsidence damage and it was common for terraced properties to be affected by the same episode of subsidence. PH said the neighbouring properties were being repaired by their respective insurers.

Our investigator didn't think it was reasonable to ask Ageas to cover the claim based on a report a loss adjuster carried out for a different insurer. Because PH disagreed, the complaint has been passed to me to make a final decision.

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.

As this is an informal service, I'm not going to respond to every point or piece of evidence PH and Ageas have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

PH's policy does provide cover for damage caused by subsidence, but like many policies it excludes loss or damage which originated before the policy came into force. Ageas has declined the claim as it says there was damage before the policy started, but also any current damage, noted during its cover period, isn't as a result of subsidence. So, I've considered if it acted fairly and reasonably in reaching this position.

There have been three reports carried out on the property for me to consider. One which was instructed by PH – from Y. One which was carried out by PH's current insurer X, and one carried out by Ageas. They all vary in their findings as well as their analysis of the property. Where this happens, my role is to decide which report or reports I'm more persuaded by. Having done so, I'm more persuaded by the report carried out by Ageas, and therefore, I find its decision to decline the claim was a reasonable one. I've explained why below.

Y's report concluded from the profile of the cracking: *"it is reasonable to confirm that the cracking is due to vertical movement of the foundations of the rear walls, and not shrinkage or inherent defect in the superstructure."*

Whilst the report doesn't specifically mention the word subsidence, I take from the above that is what the report is concluding. However, what this report doesn't comment on, is when this subsidence damage happened, and whether the damage is likely to be progressive [i.e. continuing now or happened during the policy term] or whether it is historic damage. So that report alone isn't sufficient for me to say Ageas acted unfairly in declining the claim.

Whilst report X wasn't commissioned by Ageas, I've considered it as I think it's relevant in deciding the outcome of this complaint. X's report confirms subsidence damage but mostly concluded this was historic. On the outside of the property, it noted a severe lean to the left flank wall – it thought this was historic movement [i.e. something that had happened a long time ago].

Around a bay window it noted cracking above and below the window openings, and it noted previous mortar repairs, concluding this suggested the movement had been ongoing for some time. It did note that this damage around the bay could be progressive, due to more recent cracking. But ultimately it concluded *"we are unable to confirm the precise cause of the current cracking and distortion to the property and further site investigations and a period of monitoring would be needed."*

So, X's report agrees with Y's findings that there has been subsidence damage to the property at some point but says further site investigations would be needed to confirm if the current damage was subsidence. So, to me, it doesn't conclude that the property *is* currently suffering damage caused by subsidence, only that it *might* be.

Ageas' report, done by the same loss adjuster as above also accepts there is historic subsidence movement, but unlike X's report, its conclusion is that any recent damage [i.e. damage that could be covered by the policy] hasn't been caused by subsidence. It said cracking to the bay window area [noted in X's report as potentially progressive] doesn't taper or give any pattern or direction of movement. It also said this cracking *"does not reflect the significant visible distortion to the bay."* It concludes this cracking is as a result of thermal movement and a repair to the mortar that it says was done to a poor standard. I consider this to be consistent with the photographs showing the mortar repair. This shows mortar covering an area of bricks in a haphazard fashion. So, I'm more persuaded by the Ageas report that it's more likely this damage isn't evidence of progressive subsidence which happened during 2020 and 2021 – the period it was on cover.

The Ageas report also says the current damage in other areas, in particular to the second floor, is as a result of lintel failure, not subsidence. It says the lintel has a visible drop which has pulled the brickwork above it down, resulting in the stepped cracking. This seems to be a reasonable explanation and conclusion made by someone suitably qualified. And isn't something that is covered by PH's policy.

So, having considered all of the reports, I'm most persuaded by Ageas'. It provides a more detailed discussion about the damage than the other two reports and gives greater reasoning and explanation around the current damage and its causes.

And so, I'm satisfied Ageas has acted reasonably in saying any subsidence damage at the property wouldn't be covered, as it is historic [i.e. happened before its cover started in 2020] and the policy excludes damage which happened before the policy started.

I'm also satisfied that any current damage [which may have happened during the cover period] hasn't been shown to be the result of subsidence, or anything else covered under the policy. So, Ageas has acted fairly and reasonably in declining the claim.

I accept PH's comments that it's the same loss adjuster firm that's been used for both reports, so it shouldn't reach different findings. But having reviewed the reports I don't think they are significantly different in their conclusions. They both conclude there is historic damage to the property. And X's report does mention some of the damage is likely to be caused by previous structural alterations, rather than subsidence. I think this supports the findings of Ageas in terms of some of the cause of the cracking – such as damage caused by lintel failure. The only point it differs on is whether some of the damage around a bay window is progressive. I'm more persuaded by Ageas' report on the findings on that point; that it's more than likely not a sign of progressive subsidence damage which Ageas should cover.

PH says that neighbouring properties have recently experienced subsidence and as they are terraced houses, it's likely theirs has been affected too. I haven't seen that concluded in the reports from Y or X. Ageas' report says subsidence can be very localised and having subsidence in one property doesn't necessarily mean another is impacted. In the absence of any other persuasive evidence on this point, I'm not persuaded subsidence at neighbouring properties means Ageas has acted unfairly in declining the claim.

Ageas does accept it communicated poorly with PH around the claim. I think £100 is enough to recognise the impact of any poor communication, so if it hasn't done so already, Ageas should pay £100 to resolve the complaint.

My final decision

My final decision is that Ageas Insurance Limited is required to pay £100 to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask PH to accept or reject my decision before 16 April 2024.

Michelle Henderson
Ombudsman