

The complaint

Ms R has complained about the way Ageas Insurance Limited handled a claim she made under her home insurance policy for subsidence.

Reference to Ms R includes her representative.

What happened

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

- In 2017, Miss R got in touch with Ageas about crack damage to her home. Ageas appointed a loss adjuster, C, to handle the claim.
- C said the damage had been caused by subsidence and accepted the claim. It identified a number of trees and shrubs as the cause of movement, some of which was removed or reduced. Movement continued.
- By June 2021, concerned at the lack of progress, Miss R appointed D, a chartered structural engineer. D said they had identified a number of relevant matters, including drainage defects and the need for further detailed ground investigations. C and D held a site meeting and began discussing how to progress the claim. C accepted the drainage defects were a contributory factor to the subsidence movement and some further investigation may be needed. But no other progress was made.
- Miss R complained and Ageas responded in February 2022. It agreed to carry out drainage repairs, continue monitoring, pay D's fees, confirm D was in agreement with the next steps for the claim, and pay £250 compensation. The matter was referred to this Service. An investigator said Ageas' response was fair.
- In the meantime, the claim continued, but further problems arose.
- Another site meeting was held between C and D to discuss the extent of further investigations and drainage work. By June 2022, C said it was prepared to repair the already-surveyed drainage by lining, survey other areas of drainage, and investigate two trial holes. D said C had previously agreed to a greater extent of investigation and drainage work – and what C had proposed was inadequate.
- C then refused to deal directly with D on the basis D wasn't an FCA registered loss assessor. Miss R clarified that she had engaged D as a structural engineer. C said it wouldn't deal with the claim at all if D was involved.
- As a result, Miss R asked D to carry out the drainage repairs and further investigations and paid around £6,000. They revealed further drainage problems. Ageas then said it had closed the claim due to the continued involvement of D.

- In October 2022, Ageas offered to pay Miss R around £2,500 toward her costs and consider the remaining drainage work further – once she shared the reports from the investigations. And, as subsidence movement continued due to the remaining vegetation, it would prepare a “more robust repair scheme” to stabilise the property.
- Miss R shared the reports with Ageas. It said the defective drains *hadn't* contributed to the subsidence movement – they had been damaged by the subsidence movement. As a result, their repair wouldn't be covered under the subsidence claim.
- Ageas explored the option of a root barrier for many months, before finding it wasn't practical to install one. It agreed underpinning would be required and outlined plans. It also noted the damage had spread to the rear extension, and agreed to cover crack repairs, but it didn't think the underpinning needed to include the extension. D described the plans as “limited, inadequate and insufficient to properly remedy the subsidence” but didn't put forward an alternative plan.
- Miss R raised a second complaint about the way Ageas had handled the claim. It didn't provide a response, so Miss R asked this Service to consider the matter.
- In March 2024, Ageas offered to pay for an appropriately qualified independent engineer to report on the cause of damage and the proposed underpinning scheme.
- Our investigator looked into what had happened from the first complaint response, in February 2022, and taking into account key developments in the claim in 2024. She thought Ageas had caused avoidable delays, upset and inconvenience during that time, and asked it to pay £750 compensation as a result. She also thought it should pay more for the investigations and drainage work. And she thought the offer of an independent review was fair in the circumstances.
- Ageas disagreed and said, in summary:
 - It wouldn't pay more than it had already offered for the investigations and drainage work, because D had carried out unnecessary investigations which went beyond what had been agreed with C.
 - It hadn't threatened to close Miss R's claim – it just said it wouldn't deal with D any longer.
 - D hadn't provided evidence and reports to support its position, despite charging around £24,000 for professional fees. Nor had they provided an alternative repair scheme or similar to challenge what Ageas had proposed.
 - It agreed to pay £750 compensation.
- Miss R also disagreed and said, in summary:
 - Ageas hadn't had the cause of the subsidence problem investigated by a structural engineer. And it hadn't put forward a credible repair scheme to put right all of the damage, including to the rear of the property.
 - The claim began in 2017. Miss R's house has deteriorated considerably since then and she is now in her eighties. As a result, Miss R was right to turn to D for structural engineering advice – and to take legal advice. She would like to be reimbursed for these costs.
 - Despite Ageas accepting what D said about the drainage, it then refused to deal with D or support Miss R with having the drainage repaired.
 - Miss R has no confidence Ageas will appoint an appropriate engineer. D is an experienced structural engineer, with considerable knowledge of the property,

- so they should be appointed. It would be unfair for Ageas to appoint a new engineer, with no knowledge of the property.
 - D is yet to provide an alternative repair scheme because they consider further extensive investigations are required in order to do so. Such investigations will be expensive. And Party Wall matters also need to be considered.
 - The further drainage damage defects found in 2022 are yet to be repaired.
- As an agreement wasn't reached, the complaint has been passed to me.

My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- It's important to start by setting out the scope of this complaint. The first complaint was considered separately by this Service, so I won't reconsider it. That means my consideration will begin immediately after the February 2022 complaint response.
- Normally I would consider matters up to the latest complaint response. But Ageas didn't provide a response to this complaint. That's very disappointing, especially given this claim had become a long running and complex dispute. There have been key developments in the claim in 2024, so I'll consider matters up to the present time.
- There's no dispute the subsidence claim is covered by the policy. The claim was accepted in 2017 and Ageas has been taking steps to resolve it ever since. There are a number of points to consider about the way Ageas has been doing that since February 2022, so I'll look at each separately.

What are the next steps for the claim?

- This is the main point of the complaint. The claim began in 2017 yet, by 2024, repair work is yet to begin. And there remains uncertainty about the cause of subsidence and how to put it right.
- C said the subsidence was caused by clay shrinkage due to nearby vegetation. In order to stop the subsidence movement, it said various shrubs and trees should be removed or reduced. Some of that has happened, but not all of it. Negotiations with the relevant owners has been exhausted, so there seems no realistic prospect of having more removed. And, given how long the claim has been going on for, I don't think it would be reasonable to prolong it by trying further negotiations. I think Ageas has recognised this because by late 2022, it said C would arrange a 'more robust repair scheme',
- D said the defective drainage may be contributing to the movement and C accepted that. Repairs to those defects have been carried out. Whilst further defects have been found, I don't think they've been identified as contributing to the movement.
- In summary, after seven years of handling this claim, Ageas hasn't stopped the subsidence movement – and damage continues. I don't think this position is in dispute. Nor do I think it's in dispute that the way forward is to stabilise the property with an engineering solution and that means a scheme of underpinning.

- So the dispute about the next steps for the claim is essentially about the extent of underpinning required. This is because there's disagreement about which vegetation has caused the movement, which damage has been caused by the movement, and therefore how much underpinning is required to deal with it.
- Usually in a case such as this, I would have at least two different professional opinions about the relevant matters. It would then be my role to consider which opinion is the most persuasive. But in this case, I effectively don't have any.
- On the one hand, C has prepared a plan for a partial underpinning scheme. D has raised a number of concerns about it. For example, that the scheme is really just an outline proposal – it's not a detailed scheme, prepared by a structural engineer or similar, that could be used by a builder to schedule and carry out the work. In addition, it doesn't take into account the damage to the rear extension or the relevant Party Wall considerations. So, as it stands, it's not a credible scheme and its effectiveness can't accurately be judged. I'm persuaded by D's professional opinion.
- On the other hand, D hasn't prepared a scheme of their own. I understand this is because they say further, expensive investigations would be needed. And, as Ageas hasn't agreed to fund them, the costs would fall to Miss R with no guarantee they'd be reimbursed. Whilst this is an understandable reason for not preparing a scheme, it means there isn't a scheme to challenge Ageas' – or for me to direct Ageas to adopt.
- In these circumstances, I'm satisfied Ageas' suggestion to appoint and pay for an engineer to take the next steps is a reasonable one. I know Miss R would like that engineer to be D. But I think given the disagreements that have arisen between D and C already, there's a risk of further disagreement and prolonging the claim even further. Introducing a new, independent engineer, would draw a line under the disagreements and move the claim forward productively in my view.
- Ageas has agreed the engineer would be 'appropriately qualified'. To give Miss R confidence in their professional standing, I would expect them to be a chartered structural engineer with considerable experience of preparing and overseeing underpinning schemes to address subsidence movement. And for them to be independent, I wouldn't have expected them to have routinely worked for or with Ageas and/or C in the past.
- The next steps are for Ageas to collate a list of three such engineers and share them with Miss R for her to choose one. That would give her an opportunity to look into the professional standing and experience of them, if she wished to. Then for Ageas to agree with Miss R a letter of instruction for the engineer. The details of that I think can be agreed between the parties. But the key points are as follows:
 - The engineer is to determine the cause(s) of subsidence to the property.
 - To do this, they can review any existing claim information and propose further investigation as they consider necessary to determine the cause(s).
 - The engineer is then to prepare an underpinning scheme that will provide a lasting and effective solution to the cause(s) of subsidence.
 - To do this, they can propose further investigation as they consider necessary to achieve that solution.
- With these steps complete, Ageas can set out how it proposes to settle the subsidence claim for Miss R. Ageas is entitled to retain the advice of C if it wishes. Similarly, Miss R is entitled to retain the advice of D if she wishes. But I would expect

all parties to respect the professional opinion of the independent engineer. And Ageas has been clear it won't pay for any fees incurred by D from this point onwards.

How much should Ageas pay for the drain repairs and investigations?

- This aspect of the complaint has arisen, in part, because C and D discussed, and possibly made some agreements, at site meetings. Later, D said C hadn't kept to those agreements. C said the same of D.
- C accepted the drainage survey carried out by D showed defects. It said they could be repaired by lining and didn't require excavation as D had suggested. C agreed to pay for the lining work, surveying further sections of drainage and for two site investigation trial holes – which came to around £2,500. D said this was inadequate and fell short of what C had agreed.
- I don't know what was said at the site meetings. But D set out its proposals in detail. I note they're a chartered structural engineer, so I have no reason to doubt their professional opinion about the appropriate level of investigation and drainage repairs. I haven't seen something similar from C. So I'm more persuaded by D's recommendations than C's.
- C and D were in discussion about the extent of repair and investigation. C refused to continue dealing with D. It also refused to deal with Miss R's claim at all because D remained involved. That meant it didn't agree to carry out any drainage and/or investigation work for her. At this point, it had been a year since D had highlighted the drainage defects and the need for further investigations. C agreed these steps needed to be taken – yet it wouldn't offer to do so because of D's involvement.
- This left Miss R without any support from C or Ageas, but knowing the next steps needed to be taken. As a result, I think it was reasonable for her to turn to D to do that and try to limit the impact on her property. She informed C of that, and invited it to become involved again, but it didn't do so. In these circumstances, I think she had no reasonable choice but to proceed with D.
- Ageas received a copy of the investigation reports. So it has access to the full extent of D's investigations and that can be used to help with the next steps for the claim. So it will be beneficial to the claim.
- Taking all of these circumstances into account, I'm not satisfied Ageas' offer of £2,500 treated Miss R fairly. It agreed work was necessary but didn't offer to do it. Whilst it didn't agree with the extent of work D suggested, it left Miss R with no choice but to turn to D – and didn't intervene when she told it that's what she was doing. Ageas also has the benefit of D's investigations.
- To put things right, I'm satisfied it would be fair for Ageas to pay Miss R the full cost of D's drainage work and investigation in full. That means paying a total of £6,235.20. If it's already paid any amount towards this, it can be deducted and only the remainder need be paid. If that's the case, Ageas should say so in response to this provisional decision, otherwise I shall award the full amount. Interest should be added, as Miss R has unfairly been without this money for a period of time.
- D's investigation identified further drainage defects which are yet to be repaired. C said these defects were damage caused by the subsidence movement – not a contributor to the movement. It said that meant the damage wasn't covered.

- The policy covers damage to the buildings caused by subsidence. The policy definition of the word 'buildings' includes 'the home', which I think reasonably includes the drainage serving the home. The definition doesn't exclude it. I don't see any exclusion for drainage under the subsidence cover.
- As a result, Ageas should accept the claim for these further drainage defects to be repaired as part of the subsidence claim.

How much should Ageas pay for professional fees?

- Miss R has paid D around £24,000 for its professional fees in relation to structural engineering advice.
- Ageas agreed in the February 2022 complaint response it would pay for D's fees. It didn't specify over what timescale or for what work, but it went on to pay around £12,000 for all of D's fees incurred up to that time. It also said C would go on to confirm D was in agreement with the next steps for the claim. I think this reasonably gave Miss R the impression Ageas would continue to pay for D's fees.
- After that, C met with D on site and communicated with it about the claim. I haven't seen anything to suggest Ageas or C clarified that it wouldn't pay any further fees incurred by D – although it would have been clear that C's interaction with D was generating further fees. Later in 2022, C said it wouldn't deal with the claim if D was involved. It could have been clearer about the impact on D's fees, but I think this suggested it wouldn't pay for D fees beyond that time. Also in 2022, Miss R was left with no choice but to progress the drainage and investigation work with D. That necessarily incurred further fees.
- D's unpaid fees of around £12,000 are for work done from February 2022 to March 2023. Some of the fees appear to be for providing engineering advice in relation to the claim and attending site – with C and later to oversee the drainage and investigation work. Some of the fees appear to be general correspondence and providing advice to Miss R. Ageas says it would have expected to see more in the way of reports and engineering advice to justify the fees charged and I can understand its point of view – that's usually what happens. It hasn't agreed to pay anything further for D's fees.
- Overall, I'm satisfied Ageas gave Miss R the impression it would continue paying D's fees – and it only suggested otherwise when it refused to deal with the claim if D remained involved. It continued to communicate and meet with D, and took on board at least some of D's professional advice. And it left Miss R with no choice but to rely on D's professional support. However, not all of the fees appear to be necessarily incurred and/or supported by reports and the like. So, I think the fair and pragmatic outcome here is for Ageas to pay £6,000 towards the remaining fees, which is roughly half. Due to the pragmatic nature of the payment, I won't award interest.
- Miss R has also incurred legal fees of over £30,000 during this claim. Such fees aren't covered by the policy. Whilst Miss R is entitled to take legal advice if she wishes, the claim doesn't concern a legal matter, so legal expertise isn't required. And, if she was unhappy with how Ageas was acting, she was entitled to raise a complaint and refer it to this Service, at no cost to her. In these circumstances, I don't think it would be reasonable to require Ageas to pay anything towards the legal fees.

Claim handling and compensation

- Our investigator thought Ageas had caused avoidable distress and inconvenience within the scope of this complaint and suggested it should pay £750 compensation as a result. Ageas agreed to this. I understand Miss R doesn't think this sum goes far enough to put things right for her.
- I've looked over the history of the claim, within the scope of this complaint, in detail. But I won't set out each and every event or communication between the parties. Instead, I'll focus on what I consider to be the key points.
- At the start of the scope of this complaint in February 2022, Ageas' plan was to carry out the drainage repairs and monitor to see whether the combined impact of those repairs and the vegetation management undertaken had stabilised the property. As well as carry out further investigations. Broadly, that was consistent with D's suggestions, and I understand Miss R was happy to proceed that way. So I'm satisfied this was a reasonable plan to progress the claim at that point.
- However, the plan went astray during 2022. Initially because C and D couldn't agree on the extent of drainage repairs and further investigations. And then because C refused to deal with D – or progress Miss R's claim at all.
- C told Miss R it wouldn't deal with D directly because D wasn't FCA regulated. It said, *"if you wish to keep [D] involved, we would not be able to deal with the claim"* and said it wouldn't take any further steps until Miss R had agreed to continue the claim without D's involvement. Miss R said D was providing her advice as a structural engineer and Ageas could deal directly with her. Ageas insisted it couldn't continue with the claim if D was involved. Later, Miss R told C she would proceed with the drainage and investigation work recommended by D. She invited C to contact her if it wished to discuss the matter or inspect the work. It responded to say it had closed the claim because D remained involved.
- I think C treated Miss R very poorly on this point. D was quite clearly providing professional advice as a structural engineer. It wasn't acting as a loss assessor, nor was it claiming to be doing so. As such, it had no reason to be FCA regulated. Miss R was very clear with C that communication could be through her, but she felt entitled to take professional advice from D if she wished. I fully agree with her position. I can't understand why C acted in the misguided way it did. It was effectively saying that no policyholder is entitled to professional advice from anyone not FCA registered – such as engineers, surveyors, solicitors and the like. That's clearly wrong and risks causing significant detriment to policyholders. It also caused delays to the claim and left Miss R with no choice but to proceed with D. Ageas has recently said C didn't threaten to close Miss R's claim. That's also clearly wrong.
- Ageas later continued the claim. It offered to make a payment towards the work D had carried out and said it would take steps to stabilise the property. C began considering the installation of a root barrier. It's unclear why it chose this option.
- By July 2023, C said a root barrier wasn't possible, traditional underpinning would be required instead and a plan was proposed for that. C noted damage to the rear extension, but the plan didn't account for that. It doesn't seem to have shared the scheme with Miss R until November 2023.

- D said the plan was inadequate and insufficient to remedy the subsidence problem. Ageas seems to have accepted that because, by March 2024, it made the offer to introduce an independent engineer to take the next steps for the claim.
- Given the circumstances and events I've outlined above, it's quite clear Ageas has caused avoidable delays and communicated poorly – and that's led to Miss R suffering distress and inconvenience. That's disappointing in any claim, but especially one which has been going on for so long. As a result, Miss R has seen the damage to her home worsen whilst little tangible progress has been made during the near two and a half year scope of this complaint.
- All things considered, I'm satisfied compensation of £1,000 is fair and reasonable.

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.

- Both parties responded to my provisional decision in detail. I'll summarise their respective points, focusing on those I consider to be key to resolving this complaint.
- Miss R said she welcomed my provisional decision. But she asked me to consider a number of points about the next steps for the claim:
 - The appointed structural engineer should be truly independent of Ageas. To help with that, Miss R should be invited to propose five independent chartered structural engineers for Ageas to choose from.
 - The engineer should draw up a schedule of works and use that to undertake a tendering process and oversee the works.
 - Given my comments about the way C handled the claim, might it be appropriate for Ageas to appoint one member of its own staff to be Miss R's point of contact?
 - Could I confirm that Ageas should pay for all works and associated professional fees necessary to put right the subsidence problem, together with alternative accommodation?
 - Could I set out a timeframe for the next steps with the claim, how compliance with the final decision would be monitored, and what a suitable form of dispute resolution should be agreed between the parties?
 - Miss R is in her eighties and has no technical or legal background. So it doesn't seem reasonable to expect her to make decisions on any complex issues without the assistance of specialist advice. So could I consider setting out an allowance for an element of professional fees for her?
- Ageas said it agreed to appoint the engineer and pay £1,000 compensation. But it asked me to consider a number of points about D's fees and related drainage costs:
 - Ageas paid around £12,000 for D's fees as a gesture of goodwill but such fees wouldn't usually be covered under the policy.
 - Ageas didn't agree to pay any further fees of D's – and it hasn't received evidence of the work done to incur such fees. So it doesn't think it should have to pay anything further for them.
 - Ageas shouldn't have to pay for drainage repairs and investigations carried out by D as Ageas didn't get a chance to properly consider such work until sometime after it had been completed.

- C confirmed any drainage defect was completely unrelated to the subsidence damage. Such costs aren't covered under the subsidence claim and Miss R can make a separate claim if she wishes.
 - It's not reasonable for Ageas to pay for work without having had the opportunity to properly investigate it.
- I've thought about what Ageas has said but I haven't been persuaded to change my mind. I explained in detail in my provisional decision the reasoning for my proposed award, including thorough consideration of whether D's fees and the related drainage and investigation costs should be paid. Ageas hasn't provided any new evidence or substantially new arguments, so I don't see any benefit in repeating sections of my provisional decision. I remain satisfied it addresses Ageas' points.
- Some of the points Ageas has made are inconsistent with the evidence I've seen. For example, Ageas previously said C thought: *"The damage to the drains is considered to be as a result of the clay shrinkage related movement"*. So it's clear Ageas was satisfied the drains had been damaged by subsidence. Yet in its response to my provisional decision, it says: *"Any drainage defect was completely unrelated to the subsidence damage"*. These two positions are clearly contradictory. Yet Ageas has provided no supporting evidence or explanation to justify such a significant change of position. In these circumstances, such points simply aren't persuasive.
- Miss R broadly accepted my provisional decision but asked me to specify more about the way the independent engineer would be selected, what their instructions would be, and how the rest of the claim should proceed.
- It may help if I explain the general purpose of this Service. In a nutshell, if a financial business and its customer have reached a deadlock, the role of this Service is to break that deadlock and then both parties can return to their prior relationship. Once a final decision is made, this Service won't have any ongoing involvement.
- In this case, Ageas is required to follow, amongst other things, relevant law, rules, guidance, best practice and the terms of the insurance policy – and that will influence the remainder of the claim. If a new deadlock is reached, Miss R is entitled to make a new complaint and refer it to this Service if she wishes.
- As a result, there's no need for a final decision to set out in detail all the next steps for the claim, including timescale, dispute resolution options, what should be covered, how the work should be carried out and by whom – or to monitor what Ageas does. And doing so can be unhelpfully restrictive for both parties, especially if the final decision is accepted by Miss R and becomes legally binding. So I won't do that.
- Ageas is paying for the independent engineer and knows what kind of qualifications and experience are required of the engineer in the circumstances of this claim. It hasn't disputed anything I said about the appointment of the engineer in my provisional decision. So I'm satisfied it understands what an appropriate appointment would be – and is well placed to suggest suitable engineers. So I think it's reasonable for Ageas to suggest three options for Miss R to pick from.
- Most policyholders have no technical or legal knowledge and don't need any during a claim. Particularly here, where an independent engineer will play a significant role in the technical aspects of the remainder of the claim. And Ageas is responsible for handling the claim promptly and fairly, acting fairly and reasonably, and providing a lasting and effective solution to the subsidence problem. So I don't currently see a

need for Ageas to fund professional advice to support Miss R during the remainder of the claim.

- Overall, for the reasons given above, I remain satisfied my provisional award is a fair and reasonable way to settle this complaint in all of the circumstances.

My final decision

I uphold this complaint and require Ageas Insurance Limited to:

- Appoint and pay for an appropriately qualified engineer, as set out above.
- Pay a total of £6,235.20* for the drainage repairs and investigations.
- *To this payment, add interest at 8% simple per annum, from the date(s) Miss R paid the invoice(s) to the date of settlement.
- Accept the claim for the further drainage defects as part of the subsidence claim.
- Pay £6,000 for D's fees.
- Pay £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 6 September 2024.

James Neville
Ombudsman