

The complaint

Mr and Mrs D have complained about their home insurer Ageas Insurance Limited because it has declined their claim for subsidence to their conservatory, causing them to have to replace it.

Mr D has mainly dealt with matters, although sometimes he has been represented by his son. For ease of reading I'll mainly only refer to Mr D in this decision.

What happened

Mr and Mrs D took out a policy with Ageas in April 2021. Later that year they noticed mortar, in their conservatory was degrading and the gutter was running backwards. They had some repairs carried out, including replacing the gutter to resolve the alignment. In 2022 Mr D noticed the windows and doors in the conservatory would not open, and the new gutter was running backwards. Mr D contacted a builder, which said the conservatory was subsiding, it and the foundation needed replacing. Mr D made a claim to Ageas.

In a report of December 2022, Ageas' loss adjuster noted the floor had a relative drop in one corner of 50mm. It thought there could be subsidence. However, Ageas later declined the claim. In a final response letter of 11 September 2023 Ageas said it had monitored the property for five months, January to May 2023, and it was satisfied the property was not moving. It said the conservatory had suffered because rainwater, discharging from the gutter, had rotted the frame. Ageas said though that it would undertake further investigations.

Mr D sought further expert advice around this time. An engineer, H, assessed the conservatory. In a report of November 2023 he noted a 60mm drop in one corner of the floor, concluded the conservatory was suffering subsidence and that the subsidence had caused both the issue with the gutter and the damage to the conservatory's superstructure.

It was January 2024 before Ageas' contractor contacted Mr D to arrange a date for further investigations – a distortion survey – to be undertaken. A final response was also issued around this time regarding a complaint Mr D had made about delays. Ageas accepted there had been some delays and offered £100 compensation.

The further investigations were completed in March 2024. In April 2024 Ageas' loss adjuster declined the claim again. The loss adjuster said that, following the distortion survey, on the balance of probabilities, given the slope of the conservatory floor, subsidence had occurred. But it didn't agree that subsidence had affected the gutter or caused the superstructure damage. The loss adjuster said any subsidence was likely historical, pre-dating the start of the policy.

Mr D disagreed with Ageas. In June 2024 Ageas issued a further final response to Mr D, regarding concerns he'd raised about the visit in spring 2024 to complete the distortion survey. The letter confirmed the decline decision remained unchanged, but accepted there had been poor communication about the visit. Ageas offered £300 compensation.

In July 2024 Mr D brought his complaint to this Service. He maintained the conservatory had been moving during Ageas' period of cover.

Our Investigator, noting the final response from September 2023, explained we could only look at matters from that point forwards. In terms of Ageas' claim handling since that point, he felt it had been poor. But he was ultimately satisfied that Ageas' total offer of £400 (£100 in January 2024 and £300 in June 2024) was fair and reasonable compensation to make up for the upset caused.

Regarding subsidence he said Ageas had accepted there had been subsidence and had not shown there had been no movement during its period of cover. Having considered all the available expert evidence he felt there likely had been movement since April 2021 and that the subsidence had most likely caused the issues with the gutter. He felt Ageas should be dealing with the claim under the policy. He explained that as Mr D had undertaken work to replace the conservatory, due to its condition, Ageas would have to look into the cost of a like replacement, but allowing for changes such as required by building regulations if they applied. He said any settlement should include interest and that Ageas should also reimburse the cost Mr D had incurred for experts (also plus interest).

Mr D was happy with our Investigator's view. Ageas said it disagreed with it.

Ageas said the conservatory frame, in August 2022, only 16 months after Mr D's cover with it began in April 2021, was in an advanced stage of rot. It felt it was unfair for this Service to expect it show that no movement had occurred since April 2021, it was lack of maintenance which was the reason for damage. Ageas shared its August 2022 report with photos from that time.

Our Investigator, having considered Ageas' reply, wasn't minded to change his view. He said the August report supported his initial findings that the gutter had been damaged in 2021 and 2022 by subsidence movement. Meaning it was most likely there had been movement during the course of Ageas' period of cover.

Ageas didn't offer any further reply. Because Ageas did not agree with our Investigator's findings, the complaint was referred for an Ombudsman's 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.

I've set out quite a lot of detail in my background above. And I'm conscious of the expert evidence available in respect of this claim. But, whilst taking all of that into account, the overriding issue at the heart of this complaint is actually relatively straightforward.

In line with an industry agreement, and good industry practice, if subsidence movement occurred to Mr D's property, during the course of Ageas' period of cover, with Ageas being notified of the claim more than eight weeks after cover began, then Ageas should be accepting the claim. It may wish to involve the prior insurer to share costs – but that is a matter for it to do if it wishes. It does not stop Ageas from initially being reasonably liable for resolving the subsidence issue.

I note Ageas has conceded that subsidence has occurred at Mr D's property. Like our Investigator, I'm satisfied that movement was likely occurring during Ageas' period of cover. This is evident by considering all of the available expert evidence which is further supported by the detail about the guttering. Ageas' loss adjuster noted and accepted the guttering was

replaced (to resolve alignment issues) in 2021 and that when it visited the property for the first time in August 2022, it was again out of alignment. I've seen no good reason to make me think a significant change like that, occurring over such a relatively short period, was caused by something other than subsidence movement. In saying that, I bear in mind that when Ageas' loss adjuster was asked specifically about how damage might otherwise have reoccurred, it simply said "conservatories can also be subject to thermal movement". I don't find that bland comment, which lacks any detail or specific link to Mr D's conservatory, to be persuasive evidence.

Further our Investigator also explained this Service's approach in this type of situation. That we expect an insurer, wishing to disclaim liability for subsidence movement, on the grounds it pre-dated the policy, to show there was most likely no movement during its period of cover. I'm not persuaded Ageas has been able to show that here.

Ageas didn't undertake any site investigations until 2023. That was several months after the claim to it was made. Ageas has said, as the claim was made in 2022, it's unfair to expect it to show what was happening in 2021. But I don't think that is an impossibly unfair ask. I say that as I have seen insurers act proactively and decisively in order to gather key evidence which might support a position they may wish to take in that respect.

So Ageas hasn't shown there was most likely no movement occurring in 2021. With the available evidence actually showing its most likely that movement was occurring. Meaning Ageas is fairly liable under the policy for the subsidence claim Mr D made.

There is then, in terms of the extent of damage Ageas is reasonably liable for, the 'chicken and egg' argument to consider. Ageas says the conservatory frame was rotten and in a poor state of repair due to lack of maintenance, particularly regarding the gutter discharging rainwater directly on to the worst affected corner of the conservatory. This had caused the conservatory to move/slump. Mr D says the subsidence caused the issue with the gutter and any resultant damage.

I'm mindful of Ageas' expert view in this respect. However, I noted at the start of these findings that the gutter was repaired in 2021, with the new gutter then being affected in the same way just a few months later. Also that I haven't seen any persuasive, targeted assessment from Ageas which might suggest a likely reason, other than subsidence, for such damage occurring so quickly. Here, I'm mindful H provided a professional expert opinion on this. H explained that, to reach its decision it had considered the timeline of damage along with observations of other relevant experts. H's expert opinion was that the improper gutter alignment and damage to the conservatory's superstructure was caused by the subsidence movement. In contrast to the bland comments of Ageas' expert (detailed above), I find H's detailed report well-reasoned and compelling. I'm therefore persuaded that it's most likely the case that the gutter and damage was caused by subsidence.

So Ageas provided cover for Mr D from 2021 onwards. I'm satisfied that during the course of that policy, its most likely that subsidence to Mr D's conservatory occurred. I'm also satisfied that its most likely that the subsidence movement affected the superstructure of the conservatory and allowed rot to occur. It follows that I think Ageas is liable for dealing with the claim for all of the damage to the conservatory under the subsidence cover on the policy. And with Mr D having replaced it, that will mean covering its replacement.

As our Investigator explained, Ageas' liability where replacement is required, would extend to something reasonably like-for-like to the old conservatory. But, in making that decision, Ageas would have to make allowances for any differences or extra work required on account of building regulations which reasonably apply. To any settlement, Ageas will have to add interest, applied from the date Mr D paid for his new conservatory until payment is made.

If, when Ageas decides what it will pay to settle the claim with Mr D, Mr D is unhappy with its proposal, he would be able to make a further complaint. To Ageas in the first instance and then this Service. That's because this decision only considers whether Ageas is liable for the subsidence damage, including the rot it caused – it hasn't considered, beyond the need for a replacement, the details or quantum of what is fairly and reasonably required to settle that claim now liability is established.

I understand Mr D paid a builder for his professional opinion. I haven't detailed that professional's involvement much here, preferring instead to highlight H's findings, with H being an engineer. But I do think the builder's opinions and involvement were crucial at times in getting reviews undertaken by Ageas and, at the least, prompted Mr D to risk incurring the additional expense of involving H. I'm satisfied that, in the circumstances here, it's fair and reasonable for me to require Ageas to reimburse Mr D's costs incurred for obtaining professional advice from the builder and H. Any reimbursed costs should have interest added, from the date Mr D incurred the cost until settlement is made.

Finally I can see that this has been a difficult time for Mr D. Whilst Ageas promised, in its September 2023 final response letter, to undertake further investigations, that did not occur until the following spring. With Mr H, in the period in between, having struggled to get answers from Ageas. I can see that a lack of clarity following the visit, about whether a further visit would be needed and/or if the wrong test had been carried out, caused more frustration. I also appreciate it must have then been particularly disappointing for Mr D to learn Ageas was declining the claim again. Ageas' June 2024 final response, in my view, acted as a 'bookend' to this unsatisfactory period of poor claim handling.

I note Ageas has offered or paid a total of £400 compensation to Mr D. I think that is fair and reasonable in the circumstances here. I'm not sure if any or all of that has been paid to Mr D. For completeness I'll add in an award below requiring that any outstanding sums are paid.

Putting things right

I require Ageas:

- To accept the claim for replacing the conservatory under the policy cover for subsidence, dealing with it in line with the relevant terms and conditions.
- When dealing with the claim, to take into account the specifications of the old conservatory and what was likely needed to replace that on a reasonably like-for-like basis, including any building regulations which reasonably applied when the replacement was being put in place.
- To pay interest* on any settlement which may result, applied from the date Mr D incurred costs for replacing the conservatory until settlement is made.
- Upon receipt of evidence from Mr D as to his expert costs incurred, reimburse his outlay for obtaining expert advice. With interest* added to each reimbursed sum, applied from the date the cost was incurred until settlement is made.
- To pay Mr and Mrs D a total of £400 compensation – if part of that sum has been paid before, only any difference remaining will now need to be paid.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Ageas to take off tax from this interest. If asked, it must give Mr and Mrs D a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Ageas Insurance Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D and Mrs D to accept or reject my decision before 7 May 2025.

Fiona Robinson
Ombudsman