complaint

Mr F's complaint is about a claim he made on his home insurance policy for subsidence damage to his home in 2018. He is unhappy with the delays in dealing with the investigation of the claim and that it was declined.

The policy is underwritten by Aviva Insurance Limited and it is responsible for dealing with Mr F's claim and this complaint.

background

In August 2018 Mr F contacted Aviva because cracks had appeared in the walls of the extension to his bungalow. Aviva sent out a firm of loss adjusters to inspect the damage. It found that the pattern and type of cracking suggested that the damage had resulted from subsidence of the site. It said the most likely cause of the subsidence was the shrinkage of underlying soils due to seasonal variations in moisture content, which will have been exacerbated by the moisture extracted by nearby vegetation. It was detailed that there were two trees and a hedge close enough to have an effect on the moisture levels of the soil beneath the foundations.

The loss adjuster ordered some investigations into the ground conditions under Mr F's home. These were done in September 2018. It was shown that Mr F's home was built on shrinkable clay and that clay was dehydrated. This analysis was based on samples taken at 0.8m and 1.6m below ground level. The dehydration of the clay meant it had reduced in volume and caused the property to move downwards. Tree and shrub roots were also found in samples taken between 0.8m and 2m below ground level. The report also detailed the type and size of the foundations; a strip foundation of 0.8m depth.

It was not until December 2018 that Aviva communicated its findings and decision to Mr F. It declined the claim. It said industry guidelines at the time the extension was built (in early 2015) required it to have foundations of at least 0.9m deep given the type of soil present and if the trees and shrubs in the vicinity were taken account of, the foundation depth should have been increased to 1.6m.

Aviva said that its engineer was of the opinion that had the extension been built with foundations of the correct depth the damage would not have occurred. As the foundations were shallower than 0.9m, it said the claim was defeated by the faulty design and poor workmanship exclusion.

Mr F was not happy with that decision and raised concerns with Aviva. It rejected the complaint as it was satisfied its decision to decline the claim was correct.

Mr F had his own investigation into the foundations conducted, including photographic evidence, which showed the foundations were deeper than the 0.9m Aviva had referred to being required. He informed Aviva of this and raised concerns about inconsistencies in the ground conditions report. Aviva didn't ask Mr F for a copy of the new evidence he had told it he had, didn't comment on the inconsistencies Mr F believed he had found and told him he would need to contact this service if he wanted to pursue the matter further. So Mr F referred his complaint to this service.

One of our investigators considered Mr F's complaint and proposed that it be upheld. She wasn't persuaded that the foundations being shallower than building regulations required

was material to the damage caused to Mr F's home. This was because the ground investigations had found tree roots down to 2m, far deeper than the foundations had needed to be. So she was satisfied the ground beneath the foundations would have been desiccated, whether they were 0.8m or 0.9m deep. Therefore, she recommended that Aviva reconsider the claim without applying the exclusion it had.

Aviva didn't accept the investigator's conclusion. It pointed out the extension was only four years old when it became damaged. It also highlighted that although there were roots, the ground was only desiccated down to 1.6m. As such, Aviva maintained that had the foundations been built adequately, the property wouldn't have been damaged.

As agreement couldn't be reached between the parties, the complaint was passed to me for consideration.

relevant building regulations

Building regulations requires that the '*building shall be constructed so that ground movement caused by- (a) swelling, shrinking or freezing of the subsoil … will not impair the stability of any part of the building.*'

'*In clay soils subject to volume change on drying ('shrinkable clays', with Modified Plasticity Index greater than or equal to 10%) , strip foundations should be taken to a depth where anticipated ground movements will not impair the stability of any part of the building taking due consideration of the influence of vegetation and trees on the ground. The depth to the underside of foundations on clay soils should not be less than 0.75m on low shrinkage clay soils, 0.9m on medium shrinkage clays soils and 1.0m on high shrinkage clay soils, although these depths may need to be increased in order to transfer the loading onto satisfactory ground, or where there are trees nearby.*'

I issued my provisional decision on this case on 24 January 2020. In that decision I set out my conclusion and reasons for reaching them. Below is an excerpt.

'*Aviva has said that it considers the foundations for Mr F's extension were inadequate. There is a dispute about the depth of the foundations in this case – Aviva says they are 0.8m deep and Mr F says his inspection show them to be over 0.9m deep. Building regulations state that for the type of clay Mr F's home is built on the foundations should be a minimum of 0.9m deep. So the 100mm of foundation depth could, in theory, make a difference in the outcome of this complaint. However, taking all of the evidence in this case into account, I don't think it does. I will explain why.*

As detailed above, whilst there is a minimum foundation depth required under building regulations for Mr F's extension which, if his investigations are right, the foundations comply with, that isn't the end to the matter. Consideration also needs to be given to any other influencing factors on the site. In the case of shrinkable clay that includes trees and shrubs that are nearby. In 2014 when the extension was built, assessment should have been done of the amount of water the two nearby trees and hedge would need once they were mature. The effect of that water consumption on the underlying soil then needed to be factored into the design of the foundations. Whilst the hedge, if kept at its existing height might not need more water as time progressed, it is likely the two trees would.

Aviva, using commonly accepted industry guidance, has calculated the foundations needed to be 1.6m deep to cope with the effect of the trees and hedges. It hasn't provided a copy of

its calculation, but given there were two trees and a large hedge within a metre or two of the side of the extension, I am inclined to accept that a significantly deeper foundation depth would have been needed. That said, Aviva should provide a copy of its assessment and calculation in response to this provisional decision.

Our investigator found that the depth of the foundation would not have been relevant because there were roots at 2m below ground level. Aviva in response said that the desiccation only went 1.6m down. I can't agree with either of these statements.

The ground investigations tested the moisture content of the soil at 0.8m and 1.6m. Both samples were desiccated. No deeper samples were tested, so it is inaccurate to say the desiccation only reached down to the depth the foundation should have been dug. I also find it unlikely that, given there were roots down to 2m, and possibly deeper, the soil below 1.6m was not desiccated albeit we don't know to what degree.

I have considered the fact that there were roots in the soil sample from 0.8m depth to the end of the sample taken at 2m. Our investigator considered that the presence of roots beneath the correct depth the foundations should have reached means that the property would still have subsided. Aviva's engineer disagreed with this conclusion.

Buildings are designed to cope with a certain amount of ground movement because ground conditions will vary throughout the year. During the summer soils will have a lower water content and possibly shrink a little and during the winter water content will increase causing the soil to recover to its full volume – this is called cyclical movement and doesn't normally cause damage. It is only when the degree of movement exceeds the buildings ability to cope that damage becomes apparent.

In this case it has been evidenced there were tree and shrub roots from 0.8m down that were removing water from the soil. If all (or most) of those roots were below the foundations, there could be a significant amount of dehydrated soil, resulting in movement, beneath the foundations. The deeper the foundation was built, the less soil there would be beneath it being influenced by the roots. Aviva's engineer has said that he doesn't think there would have been movement if the much deeper foundations had been built. None of the evidence I have seen shows the engineer's conclusion is wrong.

Overall, I can only conclude that the foundations on Mr F's extension don't appear to have been designed to deal with the effect of the trees and hedge that were close to it, which they should have been. This would be considered poor design. I am also persuaded that the poor design did allow damage to occur that would otherwise not have. As such, I don't consider Aviva inappropriately applied the exclusion for poor workmanship or faulty design to defeat the claim.'

Aviva didn't respond to the provisional decision.

Mr F didn't accept my conclusions. He said some of the information about vegetation was incorrect and he considers the insurer already had it in mind to decline the claim early in the process of assessing it.

In addition, Mr F has said that the foundation depth documented by Aviva is incorrect – it is actually 200mm deeper than reported. He thinks Aviva should be made to investigate this matter further and dig a deeper hole to investigate the foundations. Furthermore, he believes the foundation depth needed was miscalculated by Aviva because his extension is timber

framed and has a lighter construction roof. He has calculated the necessary foundation depth himself using NHBC guidelines and he believes the foundations are adequate.

my findings

I have considered all the available evidence and arguments from the outset, including Mr F's recent submission, to decide what's fair and reasonable in the circumstances of this complaint.

When considering complaints such as this one where the matters are technical, we place a heavy reliance on the expert evidence available to us. The geotechnical investigations involved a trial pit 1m deep being dug beside the foundation of Mr F's extension. This means the trial pit was deeper than Mr F is saying he believes his foundations to be. So I don't consider a deeper trial pit would allow anything new to be discovered. I see no reason to discount the findings of these investigations and if Mr F believes they are wrong, it would be for him to provide expert evidence to evidence that.

I have also noted what Mr F has said about the construction of the extension and the vicinity of vegetation to it. Again, evidence would need to be provided showing the factors used by Aviva in its calculation were wrong. None has been provided. In addition, even if I were to accept Mr F's calculation was correct, his conclusion that the foundations are sufficiently deep is based on them being deeper than the evidence currently available shows them to be.

I know this will disappoint Mr F, but his further submissions have not persuaded me to change my conclusions. I am satisfied the evidence provided shows that Aviva was not wrong to apply the exclusion for poor design/workmanship to defeat Mr F's claim.

my decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 13 April 2020.

Derry Baxter
ombudsman