

complaint

Mrs S is unhappy that Covea Insurance plc has declined her claim for subsidence, under her buildings insurance policy.

When I refer to Covea, I'm also referring to any of their appointed agents or representatives.

background

In 2003, Mrs S had a single storey extension built to the right-hand side of her house, and a conservatory built at the rear.

In September 2015 she noticed that the extension and the conservatory were coming away from the house, and cracks had appeared. She also had a problem closing the windows because of the movement. She notified Covea and made a claim for subsidence.

Covea appointed an expert to visit Mrs S' house and assess the damage. Following this visit in December 2015 and the expert's report, Covea declined the claim. They said the foundations for the extension and conservatory were insufficient. The claim was declined as a result of poor workmanship.

Mrs S appointed her own expert, who contacted Covea in September 2016. He asked them to reassess the claim as he felt there were leaking drains at the house that had contributed to the movement of both structures. He also said that he thought the foundations were adequate at the time of construction to cope with the load bearing pressures.

Covea responded to say that the leaking drains could be considered but there wasn't any proven link to the subsidence that had been caused. They said that any repairs carried out wouldn't extend to the extension and conservatory.

Another expert spoke to Covea in January 2017, on behalf of Mrs S. They asked Covea to repair the drains under the policy and to monitor the house following the repairs, to see if the movement stopped. Covea responded to Mrs S explaining that, although the drains had failed a pressure test, they were serviceable and were not the cause of the movement to the extension and conservatory. They continued to decline the claim on the grounds the movement was caused by poor workmanship, not subsidence.

But Covea did agree to revisit Mrs S, which they did in April 2017. A further report was conducted and said the foundations of both structures had a defective design. The original decision to decline the claim was upheld.

Nothing happened until Mrs S raised a complaint with Covea in April 2018. The complaint was about the leaking drains not being repaired and the subsidence claim being declined. Covea agreed to repair the leaking drains under a separate part of Mrs S' buildings insurance policy, but they didn't change their decision on the subsidence aspect.

Because of this, Mrs S raised a further complaint in August 2018. She said because Covea had accepted liability for the repairs to her drains they should also accept that the leaking drains had contributed to the subsidence. But Covea didn't agree. They said it was accepted the drains needed repairing, but there wasn't anything in any of the reports to suggest the damage to the drains had caused the subsidence. So, while they accepted the drain repairs

under another part of the policy, they didn't agree any liability for the subsidence and maintained poor workmanship and defective design was the cause of the movement.

Mrs S brought her complaint to our service. Our investigator didn't uphold it. She said that the foundations weren't in line with the building regulations at the time for the extension. And she said that, although building regulations weren't applicable for the conservatory, they had to be considered along with general industry good practice. The investigator thought that the foundations weren't as they should be for the conservatory either, and her opinion was that it was fair for Covea to decline the claim for the reasons they had.

Mrs S didn't agree. She said the extension build had been signed off by a building inspector from her local authority in 2003, which suggested the foundations were okay. She wanted Covea to accept that the leaking drains had caused some of the damage, and for them accept some of the liability for the repairs needed to the foundations.

As Mrs S didn't agree, it's been passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I won't be asking Covea to do anything more. I'll explain why.

Covea have relied on a 'General Exception' in Mrs S' policy to decline the claim for subsidence. This exception states:

'Any loss, damage or liability caused by or arising from:

...

- Faulty design or workmanship or the use of faulty materials.'*

I need to decide if Covea have acted fairly in declining Mrs S' claim for this reason. And in this case, I think it has.

Extension

The reports provided confirm the foundations of the extension were constructed to a depth of 1100mm below ground level. The foundation was 250mm thick and had a projection of 170mm. Importantly, the foundations were constructed on loose fill ground, or 'made ground'.

The Building Regulations in force at the time do not specify what the foundation depth should be for a structure of this sort. But they do provide guidance on what the structure should be able to withstand if there is any ground movement. Section A2 of the Regulations are relevant to ground movement and say that *'the building shall be constructed so that ground movement caused by-*

...

Land-slip or subsidence (other than subsidence arising from shrinkage), in so far as the risk can be reasonably foreseen,

will not impair the stability of any part of the building.'

There are further regulations that mention foundations being built on made ground. They advise caution and that the foundations should only be for lightly loaded structures that can tolerate the resulting settlements.

Further tests on the soil showed that tree roots were visible at a depth of 1400mm, and the made ground became firm soil at a depth of 2100mm. When this extension was built, the builder had a responsibility to ensure it was constructed to an appropriate standard – the building regulations from the time. I'd expect this to include ensuring the foundation was capable of supporting the structure for a reasonable period of time, bearing in mind the circumstances at the time it was built.

Considering the regulations in place at the time, and the nature of the soil that the foundations were constructed upon, I'm satisfied that they weren't built to a suitable depth to withstand the load bearing that was going to be applied.

I know Mrs S feels that the foundations for the extension were adequate at the time it was built, and she points to the structure being signed off by the local authority building inspector as proof of this. She has also provided a list of things the building inspector was required to check prior to signing the structure off. But I haven't seen anything that confirms the building inspector checked the depth of the foundations. And in any case, it isn't for me to decide on the actions of the building inspector – it's only for me to decide if I think Covea have acted fairly in declining the claim based on the information they have.

Conservatory

The reports provided confirm the foundations of the conservatory were constructed to a depth of 450mm below ground level. There was also mention of some adjacent vegetation that could be having an influence on the foundations and structure movement. Again, the foundations were constructed upon made ground.

Covea considered standards applied by a certain builder of new homes. They said this requires a minimum foundation of 900mm and, taking into account the nearby vegetation, recommends a depth of 1800mm. But these standards don't apply here. Mrs S' conservatory wasn't built as part of a new home – and the builder wasn't required to consider the standards for any other reason. The conservatory was also exempt from the building regulations.

That said, in my view it would be reasonable for the builder to take into account the relevant guidance and best practice available at the time of construction. Even though the builder wasn't required to meet building regulations, I believe the regulations do still offer a good indication of the type of foundation depth that would be appropriate.

At the time the conservatory was built, building regulations generally required a minimum foundation depth of 900mm. Whilst I don't have the foundation depth of Mrs S' house, I do have the foundation depth of the extension, which was constructed to a depth of 1100mm. So, it could be argued that the conservatory foundations ought to have been built to this kind of depth. But the conservatory foundations were at a depth of 450mm. The reports have shown that the soil became desiccated, or dry, at 1000mm. This indicates that the nearby vegetation might have influenced the movement of the conservatory. And I'm satisfied that, had the foundations for the conservatory been at a depth more akin to the extension, any potential problems with the vegetation and subsequent subsidence would have been

noticed. Remedial action could have been taken at that point. So, I'm persuaded that the foundations for the conservatory were defective.

Mrs S has confirmed that she initially noticed cracks in both structures in 2008, five years after both were erected. At that time, she asked the original builder to return, who confirmed the cracks were as a result of settlement, and proceeded to fill them in. Although it was a further seven years before further cracks and movement were seen, I'm not persuaded that the structures have ever had a sustained period of stability. The use of made ground alongside the depth of the foundations and the loads that they're bearing would suggest that the movement was inevitable from the outset.

I appreciate Mrs S' point that the leaking drains have now been repaired and that Covea should accept that those leaks contributed to the subsidence. But I haven't seen anything that confirms that. It was right for Covea to repair the drains, as Mrs S has that cover in her buildings insurance policy. But I can't say from what I've seen that the leaking drains were the cause of the subsidence. I accept that Mrs S' expert said that he thought the foundations were adequate and could cope with the load bearing being applied. But I'm more persuaded by the evidence and reports from Covea explaining that the depth of the foundations is inadequate, and that has led to the problems she has encountered.

So, for the reasons outlined above, I won't be asking Covea to take any further action.

my final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 22 February 2021.

Kevin Parmenter
ombudsman