

The complaint

Mr and Mrs P complain that Admiral Insurance (Gibraltar) Limited declined a claim they made on their home insurance policy for damage caused by subsidence.

Mr P has primarily dealt with things so, for simplicity, I'll refer to him only.

What happened

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

- Mr P got in touch with Admiral about damage to his extension. Admiral appointed a loss adjuster, S, to consider the claim.
- S said the damage had been caused by subsidence as a result of nearby vegetation. But it declined the claim because it thought the foundation design was faulty. It said it wasn't deep enough and damage had occurred a matter of months after construction.
- Mr P didn't think this was fair and complained. He said the local council had inspected throughout construction of the extension, including 17 visits, and had issued a Certificate of Completion for it.
- Admiral said the subsidence had been caused by faulty workmanship. It said if the appropriate design standard had been applied, subsidence wouldn't have happened. It didn't comment on the Certificate of Completion.
- Our investigator thought the complaint should be upheld. He said the Certificate of Completion was sufficient to show the structure met Building Regulations. And Admiral hadn't provided any supporting information to show the foundation was inadequate. To put things right, he said Admiral should accept the claim and pay £250 compensation.
- Mr P agreed but Admiral didn't. In summary, it said:
 - The extension foundation should have been designed in accordance with BS8004. It says the foundation depth should be below the zone where shrinkage due to vegetation is unlikely to cause appreciable movement.
 - Given the extent of damage, and its timing so soon after construction, this wasn't achieved.
 - Guidance by a builder of new homes, N, should have been taken into account. If it had, the foundation would have been 2.9m deep, and there would have been no subsidence.

- The Certificate of Completion isn't evidence the foundation was competently designed – it's simply evidence a defective design was inappropriately sanctioned or overlooked.
- Responsibility for ensuring Building Regulations rests with the builder, not the local council who provided the Certificate.
- Our investigator wasn't persuaded to change his mind. He thought Mr P was entitled to understand he'd taken reasonable steps to ensure the structure was adequate by having it inspected and certified by the local council. And Admiral had relied on irrelevant and/or broad guidance to say the foundation wasn't deep enough.
- Admiral asked for more time to respond, which our investigator granted, but it didn't reply and the deadline for doing so elapsed. As an agreement wasn't reached, the complaint has been passed to me.

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.

- The policy covers damage to the property caused by subsidence – but not damage caused by “faulty design, inadequate or inaccurate plans or specifications, faulty materials or poor workmanship”.
- There seems to be no doubt the damage has been caused by subsidence. Admiral declined the claim because it said the foundation design was faulty. The onus is on Admiral to show it would be fair to decline the claim for this reason.
- To do that, I'd usually expect an insurer to set out the relevant standard(s) that applied at the time of the construction, how the foundation was constructed – and why that didn't meet the relevant standard(s). I'd also expect it to consider any surrounding information, such as a Certificate of Completion.
- I recognise the damage happened a number of months after the structure was complete. I'd usually expect a structure to stand for much longer than that. So I can understand why Admiral was concerned that the design may have been faulty.
- But the timing alone isn't sufficient to show a faulty design – a particularly hot and dry summer could be enough to cause an otherwise sound structure to become damaged. So it's important for Admiral to provide the information set out above in order to support its position.
- Admiral, through S, may have carried out a ground investigation to establish the depth of the foundation. But, if it has, it hasn't shared the investigation results or commented on the foundation depth. So it hasn't shown how deep the foundation is.
- Admiral has relied on N's guidance to say how deep it thinks the foundation ought to be. But, as our investigator has explained, the purpose of N's guidance is to provide standards for its own builders to follow – it's not regulation that must be followed by all builders. Mr P's extension wasn't built by N, so N's guidance isn't relevant here.

- Admiral has mentioned BS8004. I accept it's relevant here and its general purpose is to support good foundation design such that damage due to clay shrinkage, amongst other things, is unlikely to happen.
- But I'm not persuaded taking that as literally as Admiral has suggested would produce a fair outcome. It would amount to concluding that *any* claim for subsidence caused by clay shrinkage meant the foundation was inadequate and the damage wasn't covered by the policy. BS8004 contains extensive, more specific guidance, but Admiral hasn't pointed to any of that to support its position.
- Building Regulations were also relevant here. Mr P has a Certificate of Completion from the local council Building Control, to show the extension was built in accordance with Building Regulations. He has an email from the Building Control Manager to confirm the certificate means that "as far as reasonably possible ... the work complies with the Building Regulations".
- In my view, that's compelling evidence to show the extension likely met Building Regulations. And I think it also means Mr P was reasonably entitled to rely on the Certificate to show he'd taken reasonable steps to ensure the structure was built to an appropriate standard.
- Whilst Admiral isn't persuaded the Certificate is evidence of meeting Building Regulations, I'm not satisfied that's supported by what Building Control or the Certificate says – or what Mr P was entitled to understand it meant. But even if the Certificate was meaningless, Admiral hasn't set out how it thinks Building Regulations weren't met. So even if I were to disregard the Certificate entirely, that doesn't help to support Admiral's position.
- Overall, for the reasons given, I'm not persuaded Admiral has shown the foundation design was faulty or that it would be fair to decline the claim. As a result, I'm satisfied it should now accept the claim, subject to the remaining terms of the policy.
- Had Admiral accepted the claim, rather than unfairly declining it, the claim would have progressed much sooner. That means there's been an unfair delay dealing with the claim. I'm satisfied that's caused Mr P avoidable distress and inconvenience as he's been living with the damage and waiting to find out how it will be put right. I think £250 compensation is a reasonable remedy in the circumstances.

My final decision

I uphold this complaint.

I require Admiral Insurance (Gibraltar) Limited to:

- Accept the claim, subject to the remaining terms of the policy.
- Pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 11 April 2024.

James Neville
Ombudsman