

## **The complaint**

Mr and Mrs R are unhappy that Covea Insurance plc declined a claim they made on their home insurance policy for damage caused by subsidence.

Mr R 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 R got in touch with Covea in 2022 after noticing damage to the carport, which he'd had built in 2014.
- Covea appointed a loss adjuster. They inspected the damage, carried out investigations, and declined the claim. In summary, they said:
  - The carport had a 600mm foundation. Below that was clay with high shrinkage potential.
  - Nearby trees had caused the soil to shrink to at least 1.6m.
  - Drawings showed a 750mm foundation depth, which the builder didn't comply with. But in any case, the foundation ought to have been much deeper to take into account the presence of the trees.
  - The policy doesn't cover damage caused by inadequate foundations and/or defective design. They thought this is what had caused the damage.
- Mr R didn't think this was fair. He said the carport had been designed and built by a professional team, including a competent local builder, an architect and a structural engineer. He also said the carport had been signed off by a Building Control consultant to say it complied Building Regulations. And he thought the foundation was 850-900mm deep.
- Our investigator didn't think Covea had acted fairly. He said it hadn't shown what specific regulation or requirement the design had failed to take into account. He asked it to reconsider the claim.
- Covea maintained it was fair to decline the claim based on the foundation depth. It quoted sections of Building Regulations and referred to guidance from N, a builder of new homes, which it said showed the foundation ought to have been over 2,000mm deep to resist the impact of the trees.
- Our investigator considered what Covea said but wasn't persuaded to change his mind. He didn't think N's guidance was relevant in this case. And as the carport had received approval from Building Control, he didn't agree it had failed to meet the requirements of Building Regulations. He also noted there was nothing else Mr R could reasonably have done to ensure the construction was to a reasonable standard. So, he asked Covea to accept the claim.

- An agreement couldn't be reached, so 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.

- Having done so, I agree with the position reached by the investigator, for the same reasons. I'll explain why.
- The policy covers damage, subject to a number of exclusions. There's no dispute there's damage.
- Covea has relied on two policy exclusions to decline the claim. They say Covea won't pay for damage caused by:
  - *"inadequate foundations which do not meet building regulations current at the time of construction". And/or*
  - *"faulty workmanship, defective design or use of defective materials".*
- I understand Covea considers the depth of the foundation is inadequate and amounts to faulty design. As it's relying on exclusions, the onus is on Covea to show why it would be fair to decline the claim.
- The first exclusion requires the foundation to be inadequate relative to the relevant Building Regulations. Covea has quoted a part of the Regulations which says, in summary, the building should be constructed so that ground movement caused by soil shrinkage won't impair its stability. It hasn't mentioned any Regulation more specific than that – for example, anything which might set out foundation depths or how they might be impacted by nearby trees.
- This is disappointing. I've previously told Covea my view on this in a number of decisions, yet it hasn't taken that into account – as it's required to do.
- I'll repeat my view. I'm not persuaded taking this Regulation as literally as Covea 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. The part of the Regulations Covea has quoted is a broad aim, followed by more specific information about how to achieve it. Yet Covea hasn't gone on to consider or quote any of that specific information.
- Covea says the foundation wasn't built to its designed depth. The evidence I've seen from its investigation says the foundation is 600mm – less than the 750mm depth set out in the drawings. Whilst Mr R says it's deeper than that, I have seen any investigation information to show that, so I'm more persuaded by what Covea has said. However, changing the depth from the drawing isn't necessarily a sign the foundation is inadequate and/or contrary to Regulation. Covea hasn't established why the depth was changed – or explained why that's not in line with Regulation.
- In any case, it's accepted that the carport received Building Control approval at the time of construction. The certificate says the requirements of Building Regulations have been met. So regardless of which Regulations Covea quote and what they mean, it seems clear that Building Control was satisfied the Regulations were met.

- Covea has suggested Building Control may have been negligent. But it's provided no evidence to support that position. For example, I haven't seen anything from Building Control to say it made a mistake or otherwise signed off the construction incorrectly.
- The evidence before me doesn't show the foundation was inadequate relative to Building Regulations. On the contrary, it was signed off as having met them. So I'm not satisfied Covea has shown the first exclusion applies.
- The second exclusion is essentially a broader version of the first. Whilst the first is specific about how to judge the adequacy of the foundation design, the second doesn't – it simply excludes damage caused by 'defective design'.
- But to judge whether the design was defective, I'd usually expect to see an insurer refer to specific regulations or similar, that applied to the structure at the relevant time, to objectively show why the design was defective. So in practice the second exclusion requires something similar of Covea to the first.
- I've explained above the position with Building Regulation, so I won't go over that again. The only other information Covea has raised, is a reference to guidelines by a builder of new homes, N.
- This is again disappointing because I've also told Covea my view about this a number of times – yet it hasn't taken that into account as it's required to do.
- I'll repeat my view. N's guidance only applies when construction is under the supervision of N as part of a new home. That wasn't the case here. The carport didn't need to comply with N's guidelines and so they're not relevant here.
- That means I'm not satisfied Covea has shown the second exclusion applies either. Whilst it's adamant that the foundation isn't deep enough, it simply hasn't done enough to show why either exclusion applies in the circumstances.
- And even if I were to agree an exclusion applied, which I don't, I would still have to consider whether it would be fair and reasonable in the circumstances for Covea to rely on it to decline the claim.
- Having received sign off from the relevant authority, I'm satisfied Mr R took appropriate steps to ensure the carport was built to a reasonable standard. I don't think he could reasonably be expected to do more. So I'm not persuaded it would be fair and reasonable to rely on either exclusion to decline the claim.
- Overall, I'm not satisfied Covea has shown the foundation design was inadequate relative to the relevant Building Regulations and/or was otherwise defective – or that it would be fair to decline the claim even if it was. As a result, I'm satisfied it should now accept the claim.

### **My final decision**

I uphold this complaint.

I require Covea Insurance plc to accept the subsidence claim, subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to

accept or reject my decision before 12 January 2024.

James Neville  
**Ombudsman**