

The complaint

Mr E is unhappy a claim made under his home insurance policy has been declined by HDI Global Specialty SE (HDI).

What happened

Mr E has a home insurance policy with HDI. A neighbouring wall collapsed onto Mr E's wall, and he made a claim to HDI.

HDI said the damage was caused gradually, and it wasn't sudden or unforeseen. And as gradual damage is excluded under Mr E's policy, HDI declined the claim.

One of our investigators looked into things and upheld the complaint. She said she accepted the neighbours wall was damaged gradually, but Mr E's wall was damaged suddenly by the impact when it finally collapsed. So, she didn't agree the damage to Mr E's wall was gradual or that it would be fair for HDI to rely on this exclusion.

The investigator also noted HDI had said the damage wasn't covered under accidental damage on Mr E's policy as they said it wasn't sudden or unforeseen. But she said Mr E had contacted HDI, the neighbours and the council to try to prevent damage happening, and he couldn't have done anything further. So, she said it wasn't fair for HDI to decline the claim under the accidental damage cover.

HDI responded to say they didn't agree as the damage was foreseeable due to the gradual collapse of the neighbouring wall. HDI were also concerned that this would leave them open to ongoing further foreseeable damage whilst the neighbouring wall remains in a precarious state.

As an agreement couldn't be reached, the case was passed to me to decide.

I reached a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I've reached a different outcome to our investigator, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

HDI partly declined Mr E's claim on the basis they say the damage was caused gradually, and Mr E's policy has the following exclusion:

“Wear and tear

Any loss or damage caused by wear or anything which happens gradually including deterioration, settlement or shrinkage.”

I accept the neighbouring wall was damaged gradually and over time, but the damage caused to Mr E's wall was when the neighbouring wall eventually collapsed. So, whilst the neighbouring wall suffered gradual damage, I don't agree that Mr E's did. Therefore, I agree with our investigator that it wouldn't be fair or reasonable for HDI to decline the claim on this basis.

However, for a claim to be covered under the policy an insured event needs to have occurred. And the only potential insured event which might apply would be accidental damage. This is defined in the policy as:

“Unexpected physical damage caused suddenly by an identifiable external means and is not deliberate.”

HDI also says that the damage to Mr E's wall wouldn't be covered under the accidental damage cover as it wasn't unexpected. Our investigator accepted that, but she said that as Mr E did everything he could, then HDI should still cover the claim under accidental damage.

Whilst I appreciate it will come as a disappointment to Mr E, I'm not minded to agree with our investigator.

From the information provided, it is noted that Mr E contacted the insurer around a year before the collapse as he was concerned about the neighbouring wall. He wanted the insurer to repair it to prevent the inevitable collapse and consequent damage to his wall. But the neighbouring wall wasn't the responsibility of Mr E's insurer, and there was no damage identified to his property at the time, so nothing further was done at that point.

I recognise Mr E continually checked the condition of the wall and contacted the neighbour and the council, who both declined to do anything further. And I do appreciate the position Mr E has been put into, his wall has been damaged by the collapse of a neighbouring wall.

However, the neighbouring wall has been damaged gradually, and it was foreseen and expected that it would eventually collapse, and this would cause damage to Mr E's wall. So, the definition of accidental damage under Mr E's policy hasn't been met, so no insured event has occurred.

Whilst Mr E contacted the neighbour and council who declined to do anything, this doesn't mean that it then automatically falls to HDI to deal with the claim outside the policy cover. I have to be fair to both parties, and there is no insured event which has occurred under Mr E's policy, and I don't think it would be fair or reasonable to direct HDI to deal with the repairs outside the policy cover in these particular circumstances.

So, unless anything changes as a result of the responses to my provisional decision, whilst I don't think it's fair or reasonable for HDI to decline the claim based on the gradual damage exclusion, I don't think HDI is acting unfairly by declining the claim on the basis no insured event has occurred.

Mr E has more recently said to this service:

"Since we raised this issue, we have had more damage to our patio/garden area due to our neighbours (sic) inability to fix the original issue."

Whilst I don't think HDI has acted unfairly by declining Mr E's claim, I note from all the information provided that Mr E does appear to have a separate Family Legal Protection policy (underwritten by a different insurer), and this does mention pursuing damage caused to his property. Whilst I can't comment on whether Mr E would have a valid claim with that insurer as this claim and complaint relates solely to HDI, it may be of benefit for Mr E to contact his Family Legal Protection provider to see if he has any other cover in the first instance."

So, I wasn't minded to uphold the complaint.

The responses to my provisional decision

HDI didn't respond to the provisional decision.

Mr E responded but he didn't agree. He said that he first contacted the insurer when the neighbours wall started to collapse resulting in the bottom corner of his wall being undermined.

Mr E said a loss adjuster turned up and didn't complete a thorough inspection. Mr E said that based on this, HDI said there was no damage, so Mr E sent them photos. In the interim Mr E contacted the neighbour and council. When more of the wall was damaged, HDI eventually agreed to send another loss adjuster and the previous and new damage was shown to them. Mr E says he couldn't have foreseen the wall would collapse and cause damage to his wall and he let HDI know as soon as it did.

Mr E also said HDI has now refused to renew his insurance policy.

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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, whilst I appreciate it'll come as a disappointment to Mr E, my final decision remains the same as my provisional decision.

As I outlined in my provisional decision, I don't think it's fair for HDI to decline the claim based on the wear and tear and gradual damage exclusion. This is because it was Mr E's neighbour's wall which was damaged gradually which led to the eventual collapse, and consequent damage to Mr E's wall.

However, the only other insured event which potentially could provide cover is accidental damage. But I'm still not persuaded it has been shown that the claim meets the requirements for accidental damage as defined.

I accept the damage was sudden, but it's being unexpected that I think defeats the claim. The neighbour's wall deteriorated gradually over time and resulted in the eventual collapse and inevitable damage to Mr E's wall.

I note what Mr E says about reporting of the damage when he noticed it. But I still think that it was foreseen, and Mr E was aware of the likely collapse of the neighbouring wall and the inevitable damage this would cause. The information provided indicates the second loss adjuster appointed by HDI was told by Mr E that he had contacted the insurer around a year before when damage was noticed to the neighbouring wall. The insurer had asked if there was damage to Mr E's property at that time but there wasn't at that stage. The insurer advised to call back if any damage later became apparent.

When the wall then eventually collapsed, Mr E then called the insurer back and the first loss adjuster was appointed. So, whilst Mr E has questioned why he'd ask his insurer to repair the neighbour's wall, it appears he did this to try and prevent the likely collapse and inevitable damage to his wall, but the neighbouring wall wasn't the responsibility of Mr E's insurer. So, I'm persuaded, on balance, Mr E was already aware damage was likely to be caused, so it wasn't unexpected which is a requirement for an accidental damage claim.

Whilst I recognise Mr E holds his neighbour negligently responsible and contacted the neighbour and the council who refused to do anything, it doesn't mean this then automatically falls to HDI. As mentioned in my provisional decision, Mr E does have Family Legal Protection (underwritten by a different insurer), so he may wish to approach them to see if they are able to provide any assistance.

For the reasons outlined, I'm not going to direct HDI to do anything further.

Mr E has also mentioned that HDI has now refused to renew his insurance policy. However, as advised by our investigator, as this is a new issue, Mr E would need to raise this as a new separate complaint with HDI in the first instance.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 December 2023.

Callum Milne
Ombudsman