

## **The complaint**

Mr and Mrs F complain HDI Global Specialty SE (“HDI”) unfairly declined their subsidence claim on their property insurance policy.

Any reference to HDI includes its agents.

## **What happened**

Mr and Mrs F renewed their property insurance policy covering their home and its contents in September 2021. In August 2022, they submitted a claim as they’d noticed their conservatory separating from their house. They say they saw cracks under the window, at the rear corner of their property and on the boundary wall.

HDI arranged for an inspection of the property. The report from the time said the cracks to the main building weren’t consistent with subsidence and instead were caused by thermal expansion of the masonry. But it accepted there had been movement to the foundations under the conservatory. It said this was caused by roots of an oak tree at a depth of 2.55 metres, drying out and shrinking the clay soil under the foundations.

HDI declined Mr and Mrs F’s claim. It thought their conservatory had been built sometime between 2003 and 2005 on foundations that weren’t deep enough considering the type of soil and the presence of the mature oak tree. It mentioned good practice and regulations at the time the conservatory was built, but it didn’t provide evidence of this.

Mr and Mrs F didn’t accept what HDI said and made a complaint. They highlighted the conservatory was built before they bought the property. And they didn’t think HDI had carried out a full investigation due to restrictions in digging trial holes on and around their property. They also pointed out that their neighbour’s property had been affected by subsidence.

As HDI didn’t uphold Mr and Mrs F’s complaint, they asked our service to look into things. Our Investigator upheld the complaint. She said HDI hadn’t provided anything to show the conservatory foundations weren’t built in line with good practice or relevant regulations. So she looked at the possible regulations from the time and considered whether foundations of one metre below the conservatory would’ve made a difference. Overall, considering the depth of the roots, she didn’t think deeper foundations would’ve prevented the subsidence from happening.

Mr and Mrs F accepted our Investigator’s assessment. HDI didn’t confirm whether it accepted or not by the extended deadline set. But it did send us internal correspondence explaining it didn’t have any evidence to show the foundations were too shallow.

Whilst our service has been looking into things, HDI contacted Mr and Mrs F around August 2023 to let them know it wouldn’t renew their insurance policy for another year. As Mr and Mrs F weren’t happy with this, HDI raised a new complaint. But as part of putting things right in this complaint, our Investigator instructed HDI to continue to provide subsidence cover. This was to ensure Mr and Mrs F are put in the position they would’ve been in if the claim hadn’t been declined.

As the complaint hasn't been resolved, it's been passed to me to decide.

### **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.

Based on what I've seen, I've decided to uphold this complaint. I'll explain why.

To decline Mr and Mrs F's claim on their policy, HDI has relied on the exclusion within its terms and conditions relating to subsidence. In summary, this says claims for loss caused by subsidence won't be covered if it arises from defective design, faulty workmanship or the use of defective materials. But I don't think it's fair for HDI to rely on this exclusion in this case – and I don't think it's fairly declined the claim.

HDI says the foundations under Mr and Mrs F's conservatory didn't meet the relevant standards at the time it was built – and that's for it to evidence. But it's not provided any information to our service to show this – or even what the standards were. So I'm not satisfied in this case that HDI has established the design or construction was defective.

In any event, even if the design or construction were defective, I need to be satisfied that was the reason for the damage Mr and Mrs F have now claimed for – and I'm not persuaded it is. I say this because, from the information HDI's given us, the roots from the oak tree were growing 2.55 metres underground. This is substantially lower down than the foundations would've gone even if they were built in line with what our Investigator found might have been good practice at the time. So I don't think deeper foundations would've made a difference in this case as it seems very likely to me that the subsidence would've happened anyway.

I think what's happened in this case would've caused Mr and Mrs F trouble and upset considering how long it's been since they first raised their claim and the level of damage to their property. So I think HDI should pay them compensation to make up for this.

Mr and Mrs F have asked whether HDI will reassess the damage to their main building as they're not persuaded the inspection that was carried out was thorough enough to conclude there wasn't subsidence damage to that part of the building. The report from the time concludes the cracks in the main building were due to thermal expansion of the masonry. And we haven't been given any evidence from either party to dispute this. So I haven't considered this point as part of this complaint. It's worth noting however, in settling this type of claim, HDI is responsible for ensuring an effective and lasting repair to the property.

### **Putting things right**

To put Mr and Mrs F in the position they would've been in if their claim hadn't been unfairly declined, I think HDI should:

- Accept the claim, subject to the remaining policy terms and conditions.
- Pay £200 to Mr and Mrs F to make up for the distress and inconvenience caused to them.

Mr and Mrs F have told us HDI refused to renew their policy around August 2023. I understand HDI is looking into this as a new complaint. And I don't have any information about why the renewal has been declined – so I can't comment on it here. But in order to put things right, Mr and Mrs F should be put in the position they would've been in had HDI assessed the claim fairly.

Had HDI initially accepted the subsidence claim and carried out repairs, I'd expect it to have continued insuring Mr and Mrs F's property under the ABI guidance (which it's signed up to), subject to its underwriting criteria. So I think it needs to ensure they continue to have access to subsidence cover on their property.

### **My final decision**

For the reasons I've given, I uphold Mr and Mrs F's complaint and direct HDI Global Specialty SE to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 27 December 2023.

Nadya Neve  
**Ombudsman**