

## **The complaint**

Mr K and Mrs K complain HDI Global Specialty SE ('HDI') have unfairly declined their buildings insurance claim.

All references to HDI also include its appointed agents.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them in full again here. Below is a list of the key events that led to the complaint.

- Mr K and Mrs K purchased the property in 2021.
- A conservatory was built by the previous owners in 2009.
- Around August 2022, Mr K and Mrs K discovered cracking in the walls of the conservatory, both internally and externally. They made a claim on their policy.
- HDI confirmed the cracking was due to subsidence. However, it said the conservatory's foundations were at an inadequate depth – and it was therefore inevitable for roots to encroach and weaken footings.
- HDI declined the claim. It applied an exclusion in the policy which says it will not cover damage arising from the use of defective materials, defective design, or faulty workmanship.

Our Investigator recommended the complaint be upheld and that HDI should now meet the claim in line with the remaining terms and conditions of the policy.

HDI disagreed with our investigator and asked for an ombudsman to review the matter. In doing so, it has provided further comments for me to consider.

## **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'm upholding the complaint for these reasons:

- In its reasoning, HDI referenced guidance from a provider of building warranties. The policy doesn't set out any requirement to adhere to these standards. And HDI have not provided anything that persuades me the conservatory was subject to them when it was built. So, I don't think this guidance is relevant here.
- The policy doesn't cover any loss or damage arising from defective design, defective materials or faulty workmanship.
- HDI confirmed the foundations of the conservatory were 770mm but have said relevant building regulations recommend a minimum depth of around 900mm.
- Although building regulations don't apply to all conservatories, this does provide a guide to the depths that need to be considered to keep the structure stable.

- However, I do consider the test of time to be relevant here. The conservatory stood for around 13 years without any issues. It was given Local Authority sign off at the time of construction and I've not seen any evidence that persuades me any issues existed that Mr K and Mrs K should reasonably have been aware of at the time of purchasing the property in 2021.
- I also note from HDI's investigations that roots were found at a depth of around 1,500mm. So even if the foundations had been deeper, it's more likely than not the damage would still have occurred.
- HDI have also referenced the conservatory wasn't built to the same depth as the main building, but I've not seen anything that persuades me it had to be. And HDI have not pointed to anything specific that shows this was a requirement.
- Considering everything I've set out above, I think it's more likely than not, if there were issues with the foundations, they would have presented themselves sooner. And I'm not persuaded HDI have acted fairly in this instance in applying the exclusion.

### **Putting things right**

To put things right HDI should now proceed to deal with the claim under the remaining terms and conditions of the policy.

### **My final decision**

My final decision is that I uphold Mr K and Mrs K's complaint.

To put things right I direct HDI Global Specialty SE to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 23 October 2023.

Michael Baronti  
**Ombudsman**