

The complaint

Miss H complains about HDI Global Specialty SE's handling of her property insurance claim for subsidence.

What happened

In 2013, Miss H made a subsidence claim after noticing some cracks in her property. HDI accepted the claim. Its engineer thought the subsidence damage was caused by a nearby tree, which was owned by the Local Authority.

Despite HDI's attempts to persuade the Local Authority to remove the tree, it didn't do so.

HDI's engineer found the property was continuing to move, and recommended that the front and right-hand side of the property should be underpinned. Although there were some other cracks elsewhere in the property, he didn't think they had been caused by subsidence.

Miss H didn't agree with this. She provided her own report from a structural engineer, who thought all external and internal walls of their property needed to be underpinned. HDI didn't agree. It thought the additional work was either preventative or unnecessary. Unhappy with this, Miss H brought a complaint to this service.

My ombudsman colleague issued a final decision on 14 December 2016. Given the two conflicting expert reports, she thought HDI should appoint and pay for a third structural engineer to assess the damage, and decide what damage was caused by subsidence, and what repairs were necessary for that damage.

Shortly after this, an arborist (Mr C) carried out an inspection. Mr C found that three trees (Oak, Beech and Ash) were impacting the property. He recommended their complete removal.

HDI arranged for a third structural engineer (that I'll call 'G') to assess the damage, and make recommendations.

G completed its inspection in June 2018. It thought the subsidence damage had been caused by the three nearby trees (which were owned by three separate third parties), and recommended they be removed. It said if the third parties didn't give their agreement to have the trees removed within eight weeks, then an engineered solution should be implemented.

The Oak was removed in January 2019, but the other two weren't. HDI wanted to carry out further monitoring over the 2019 growing period. This was in order to provide further evidence to the remaining two tree owners that their trees were still causing movement even though the Oak had been removed. In June 2019, Miss H refused to allow further monitoring to take place, and instead wanted HDI to implement an engineered solution. HDI refused and so Miss H brought a new complaint to this service.

I issued a provisional decision on 18 December 2020. Here's what I said:

"Mr C recommended that all three trees be removed. He also said a root barrier had been considered and rejected as impractical. But Mr C thought further information was needed via monitoring in order to determine the response of the building to any initial tree control measures.

In June 2018, G carried out its inspection. It thought the Oak and Ash trees were causing the foundation movement at the rear of the property, and the Beech tree was causing the foundation movement at the front. G agreed with Mr C that the three trees needed to be removed. It said if tree removal wasn't achievable, it would be necessary to implement an engineering solution, which could be underpinning or a root barrier, or a combination of the two.

G explained there was a range of opinion within the industry as to whether a root barrier can provide an effective long-term solution to root-induced subsidence. It thought a root barrier at the front of the property would be impractical, but could be considered as a possible solution at the rear. However, it acknowledged that roots may grow around, under or through the barrier. Consequently, it said underpinning is generally the preferred solution where there are large seasonal movements and removal of the implicated trees isn't achievable. It thought it was unnecessary to underpin the internal walls as well as the external ones.

G concluded by saying that if the third-party tree owners didn't give their agreement to remove the trees within a reasonable period (it suggested eight weeks), then arrangements should be made to implement an engineered solution. It also said that as the damage at the rear of the property was essentially cosmetic, consideration should be given to a root barrier, though it again acknowledged that underpinning would provide a surer solution. Finally, G said the monitoring should be re-started to assess the impact of the weather on the shrinkage taking place, and to allow the effectiveness of any tree management to be confirmed.

Unfortunately, there was some delay after this because the ownership of one of the trees hadn't been established.

In January 2019, the Oak tree was removed. The owners of the Beech and Ash trees didn't agree to their removal.

HDI arranged for further monitoring to take place after the removal of the Oak tree. This was to establish the impact of the tree's removal on the property during the 2019 growing period (summer). Unfortunately, in June 2019, Miss H refused to allow further monitoring to take place. She thought HDI needed to implement an engineered solution at that point, given how long the matter had been ongoing.

I do sympathise with Miss H. She had been experiencing subsidence in her property since 2013, and thought HDI weren't complying with G's recommendations to implement an engineered solution after eight weeks. HDI says it wanted the monitoring to take place over the summer and anticipated it would finish around October 2019. However, it seems it didn't make this clear to Miss H at the time. She thought the monitoring was going to be continuing indefinitely whilst HDI continued to try and obtain the agreement of the two remaining tree owners to have their trees removed.

It seems to be accepted that the Beech isn't going to be removed, and therefore underpinning will need to take place at the front of the property. HDI appears to think that the owners of the Ash tree may agree to its removal, if there's evidence to show that it's

still causing subsidence damage following the removal of the Oak.

However, given the length of time that matters have been ongoing, I think it's unfair to expect Miss H to wait for yet more monitoring to take place, and then for HDI to enter into further potentially protracted legal correspondence with the owner of the Ash tree.

G made it clear back in June 2018 that if the owners didn't agree to the removal of the trees within a reasonable period, then arrangements should be made to implement an engineered solution. Consequently, I think HDI should have abandoned its attempts to have the Beech and Ash trees removed back in 2018, and implemented an engineered solution once the Oak tree had been removed.

Having said that, I accept that some monitoring may need to take place, to establish the impact of the removal of the Oak tree. I say that because both Mr C and G thought monitoring would need to take place to establish the effectiveness of any tree management that takes place. Also, G had presented two possible engineered solutions for the rear of the property (root barrier or underpinning), and thought underpinning would be the preferable option where there is large seasonal movements and removal of the implicated trees isn't achievable. Since then, the Oak tree has been removed. If that has reduced the movements, underpinning may not be required, and a root barrier may now be the preferred option.

Consequently, I think HDI should arrange for G to assess the current damage to the property, so it can establish the difference in cracks compared to its previous results. Given that two growing seasons have taken place since the Oak was removed and G last monitored the property, hopefully it will be able to establish whether further movement has taken place in that period without any further monitoring. However, if G says that further monitoring needs to take place to establish this, then HDI will need to be guided by its advice. Once G has the necessary results, it should advise HDI whether underpinning or a root barrier solution is needed at the rear, and HDI should comply with its recommendations.

To be clear, any further monitoring recommended would be to establish what engineered solution would be the most appropriate now that the Oak has been removed. HDI should not continue to try and persuade the remaining tree owners to agree to their removal.

I appreciate that Miss H wants HDI to arrange for the property to be underpinned, and has provided a further letter from her structural engineer in support of this. However, I think the above would be the fairest approach given the detailed investigations and findings of G in respect of the rear of the property, which I've outlined above.

I think Miss H has been caused a great deal of inconvenience as a result of the further delays in this claim, and so I intend to require HDI to pay her £1,000 compensation to recognise this."

I invited both parties to provide any further comments they wished to make, before I reached a final decision.

HDI responded to say it didn't agree with my provisional decision. It said the following:

- Mr C's report prepared in January 2017 was not in any way connected to my ombudsman colleague's decision dated 16 December 2016.
- The owner of the Beech tree accepts that their tree is causing movement to the front of the property, and has agreed to pay for the cost of underpinning the front. Any

attempts to have this tree removed ceased long ago.

- G thought the Ash tree at the tree at the rear was likely to have a far greater influence on the movement and should be removed, and acknowledged that the Oak was likely to be affecting the movement to a lesser degree. HDI thought it was reasonable to pursue removal of the trees, once monitoring had proven that seasonal movement was taking place. Although G had suggested an engineered solution should be implemented after eight weeks, it would be impossible to achieve tree removal in eight weeks given monitoring would need to take place before a tree owner would agree to its removal.
- Miss H delayed matters since 2017. G's appointment was delayed for 18 months, and meant that HDI were precluded from monitoring the property throughout the 2017 and 2018 growing seasons. And as Miss H refused to allow monitoring beyond June 2019, another year of data was lost.
- Its final decision made Miss H aware in August 2019 that if monitoring should resume in the next two weeks, it should have sufficient data to pursue removal of the offending tree.
- It thinks it should be allowed to monitor in 2021 and, if the data does not persuade the tree owner to remove the tree, it will proceed in line with G's recommendations.

Miss H responded to ask me to confirm that HDI had failed to comply with my ombudsman colleague's decision of December 2016. She also asked if I could consider increasing the scope of the report required to be provided by G to include recommendations to restore the property to its pre-incident condition, and investigate and report on the need for the internal walls to be underpinned.

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 remain of the opinion expressed in my provisional decision. I'll explain why.

HDI says that Mr C's report wasn't connected to my ombudsman colleague's decision from December 2016. I can confirm I was aware of that.

I've noted what HDI says about no longer attempting to persuade the owner of the Beech tree to agree to its removal.

Although HDI says that it couldn't have arranged for the removal of the trees in the eight-week timeframe given by G, it had already carried out monitoring and so had data to show the tree owners, so I don't agree that this would have been impossible.

I accept that Miss H did cause some delays. G's inspection was delayed for some time due to personal matters that were taking place for Miss H at the time. Though I don't agree with HDI that it was prevented from carrying out monitoring during the 2018 growing season. G's inspection took place in June 2018, so it seems to me that monitoring could have taken place during that year's growing season.

HDI's final response of August 2019 did say that if monitoring should resume in the next two weeks it should still have sufficient data to pursue the removal of the offending tree. But it

didn't give Miss H an anticipated end date. I understand that HDI thought monitoring would only be needed until October 2019, but I can't see that it advised Miss H of that.

Overall, whilst I appreciate Miss H did cause some delays in 2017 and 2018, it's still the case that the claim has been ongoing since 2013. G carried out its inspection in June 2018 and recommended that an engineered solution take place after eight weeks, yet this had still not been considered by June 2019.

That being the case, I remain of the opinion that the fairest outcome would be for HDI to arrange for G to inspect the damage to the property and advise on the most appropriate engineered solution. If further monitoring takes place on G's recommendations in order to establish the most appropriate engineered solution, then this data should not be used by HDI to try and persuade the owner of the Ash tree to agree to its removal.

Miss H thinks that HDI failed to comply with my ombudsman colleague's final decision of December 2016. That decision required HDI to appoint and pay for a structural engineer to assess the damage and conclude what damage was caused by the subsidence and what repairs were necessary. HDI did this.

Miss H has asked if I will require G to make recommendations to restore the property to its pre-incident condition, and investigate and report on the need for the internal walls to be underpinned.

G is a structural engineer, and will need to advise on the most appropriate engineered solution in respect of the subsidence. I would not expect them to make recommendations for repairs to return the property to its pre-incident condition. That can take place by HDI after the subsidence issue has been resolved and a lasting and effective repair has been implemented.

In G's previous report, it provided its view on whether the internal walls needed to be underpinned (it didn't think this was necessary). If its view changes after carrying out a new inspection, I'd expect it to make this clear in its report.

My final decision

My final decision is that I uphold this complaint. I require HDI Global Specialty SE to arrange for G to inspect the current damage to the property, and to advise on the most appropriate engineered solution to provide a lasting and effective repair. HDI should then comply with its recommendations.

I also require HDI to pay Miss H £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 12 February 2021.

Chantelle Hurn-Ryan

Ombudsman