

The complaint

Mr C is unhappy that UIA (Insurance) Limited declined a claim he made under his home insurance policy for subsidence.

Reference to Mr C or UIA includes the respective representatives or agents of either party.

What happened

The background to this complaint isn't in dispute, so I'll summarise what's happened:

- Mr C bought a house in 2019 and insured it with UIA. He got in touch with it after he noticed cracks appearing in the conservatory wall in April 2021.
- UIA appointed a loss adjuster, who inspected the damage and arranged for investigations to be carried out. It declined the claim, saying:
 - The conservatory foundation is 450mm deep and built on highly shrinkable clay. Oak tree roots were found to a depth of 1,900mm.
 - The foundation should have been at least 1,000mm if there were no trees and 2,500mm to take into account the Oak trees – so its design was defective.
 - So, whilst damage had been caused by subsidence as a result of clay shrinkage, this had arisen due to defective design, which isn't covered by the policy.
- Mr C complained but UIA maintained it was fair to decline the claim.
- Our investigator thought UIA had acted fairly. Mr C disagreed, so his complaint has been passed to me to consider.

My provisional decision

I issued a provisional decision in which I said:

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

The policy covers damage caused by subsidence *but not* when it arises from defective design.

I'm satisfied these terms are clearly set out in the policy. In my experience, most home insurance policies will contain similar terms, so I don't think they're unusual. And in principle, I don't think it's unfair for UIA to have this kind of term in its policy.

Mr C has questioned whether UIA has correctly identified the cause of subsidence. He's not persuaded the Oak tree roots are the cause of the problem and suggests climate change might be.

The loss adjuster appointed by UIA is a chartered civil engineer and a member of a relevant professional body. They relied on a visual inspection and investigation results to inform their opinion about the cause of subsidence. I haven't seen any opinions by similarly qualified or experienced individuals. So I'm satisfied UIA's view is the most persuasive.

But regardless of the underlying cause of subsidence, UIA thinks it's been brought about by defective design – in summary, it thinks the foundation is too shallow. The onus is on UIA to show it would be fair to rely on this reason to decline the claim.

Usually when I consider a complaint of this nature, I would expect to see evidence from the insurer to show *why* it thinks the foundation is too shallow. For example, when was the conservatory built, what standards did it need to meet at the time, and how did it fail to meet them.

All UIA has provided is confirmation of the foundation depth, and its opinion about what the depth should have been. There isn't anything along the lines I've mentioned to support its opinion. That means there isn't an objective assessment to persuade me that UIA has shown the foundation was designed defectively.

Without anything to show what the appropriate design standards were at the relevant time, I'm not satisfied UIA has shown it would be fair to decline the claim on the basis the foundation was defectively designed.

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.

Mr C accepted my provisional decision.

UIA didn't respond.

As neither party has provided any further comments, I see no reason to change my provisional findings.

My final decision

I uphold this complaint.

I require UIA (Insurance) Limited to accept the subsidence claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2022.

James Neville
Ombudsman