

The complaint

Mr and Mrs D complain that HDI Global Specialty SE treated them unfairly by voiding their home insurance policy after they made a subsidence claim, and by declining to renew the policy despite overturning its avoidance decision. They say this has led to increased insurance costs.

What happened

In April 2020, Mr and Mrs D made a claim for damage to their detached garage. HDI's loss adjuster concluded the damage was subsidence, and the cause was nearby trees on the neighbouring commercial property.

In August 2020, HDI declined to renew the policy on the basis there was already subsidence damage to the garage before the policy was taken out, and because there was a holiday rental in the boundaries of the risk address.

Mr and Mrs D obtained a policy with a different insurer, but with subsidence cover excluded. They then obtained a policy from another insurer, including subsidence cover, but with the garage excluded. This further policy was obtained after they paid £600 for a survey, to demonstrate their house wasn't suffering from subsidence. The policy is also more expensive than their HDI policy, and it has a higher subsidence claim excess.

In October 2020, HDI concluded Mr and Mrs D had made a misrepresentation when taking the policy out. HDI said it was told the property hadn't previously suffered from subsidence, and had it been informed of the previous subsidence, it wouldn't have offered cover. So, HDI voided the policy and declined the subsidence claim.

Mr and Mrs D disagreed they had made a misrepresentation. They said when the policy was purchased, they were asked if the 'house' had suffered from subsidence, not the 'property', so they were correct in answering 'no'. Mr and Mrs D also provided evidence from the comparison website which had asked the questions.

HDI agreed a misrepresentation hadn't been made, and it overturned its decision to void the policy and decline the subsidence claim. It also offered £250 compensation for the upset caused.

However, HDI still declined to offer renewal terms. HDI noted that the holiday rental can only be accessed via Mr and Mrs D's driveway. It said even though it reinstated the policy, the risk of the holiday rental remains; and this risk isn't within its acceptable criteria for home insurance cover. So, HDI said it can't offer renewal terms. Because Mr and Mrs D were unhappy with the renewal decision, they contacted our service.

Although HDI overturned its decision to decline the claim, the claim hasn't since progressed. This is because Mr and Mrs D are pursuing the third-party responsible for the trees, in the hope their garage repair costs will be covered by that third-party.

One of our investigators has considered the complaint. He didn't think HDI needed to offer renewal. However, he thought the misrepresentation concerns should have been handled better, and he noted a few other service issues. He recommended HDI pay £450 compensation, in total.

HDI accepted our investigator's assessment. But because Mr and Mrs D disagreed, their complaint was passed to me to decide.

I issued a provisional decision, explaining that I intend to reach a different outcome to our investigator. In my provisional decision, I set out the following:

- The Association of British Insurers (ABI) has published guidance on the continuation of cover for domestic properties following a subsidence claim. The guidance says the insurer should normally continue to provide cover where the repair has been carried out under its direction, or with its approval.
- Whilst Mr and Mrs D had, in the first instance, chosen not to pursue a claim under their HDI policy, I was persuaded they were acting with HDI's approval and in its interests, by attempting to pursue the third-party first. I hadn't seen they had withdrawn their claim. But rather, HDI had agreed to keep its file open.
- I also hadn't seen HDI had made Mr and Mrs D aware that by choosing to pursue the third-party in the first instance, rather than a claim under their home insurance policy, they would lose the benefit of the ABI guidance in terms of continuation of cover. As per the guidance, HDI should have communicated its intentions as early as possible. Not doing so, meant Mr and Mrs D were unable to make an informed choice about which avenue to pursue first.
- So, I concluded that I saw no fair reason why the ABI guidance wouldn't apply, in respect of HDI needing to continue cover.
- I also wasn't persuaded the holiday rental access presented a change of risk that's so fundamental, it warrants refusal of cover despite HDI's obligations under the ABI guidance.
- I accepted that, as per HDI's underwriting criteria, it doesn't offer cover for properties used for business purposes. However, Mr and Mrs D's residential property isn't used for business use, but rather, the holiday rental simply has a right of access via the shared driveway. I understood the holiday rental to have its own title deeds and address, and its own insurance. I didn't consider the shared driveway to be a particularly unusual circumstance.
- The holiday rental existed when the policy was first taken out, so there hadn't been a change of risk. I accepted HDI only discovered the holiday rental after the claim was made, but I noted Mr and Mrs D had accurately answered the questions they were asked when taking their policy out.
- HDI says it can't offer cover due to the risk of holiday rental guests being involved in an accident on the residential property. I considered it likely that HDI could negate the risk of such claims being made against it, by placing an endorsement on the policy excluding such incidents from being covered.

- HDI had, initially, relied on the pre-existing subsidence damage to the garage when declining to offer renewal. However, having accepted Mr and Mrs D hadn't made a misrepresentation about the damage when taking their policy out, as per the ABI agreement for handling claims involving pre-existing subsidence damage, HDI is responsible for covering the damage. Furthermore, declining renewal due to a subsidence claim it's responsible for, is contrary to the ABI's guidance on the continuation of cover following a subsidence claim.
- I said, to put matters right, I intend to decide HDI should offer Mr and Mrs D a like-for-like policy based on their previous HDI policy (but it can apply a policy endorsement relating to holiday rental guests, if it considers it appropriate). I also said the policy should be priced based on Mr and Mrs D being existing policyholders, rather than new customers with a subsidence history.
- I set out that Mr and Mrs D had incurred the following costs for alternative insurance since 1 September 2020, totalling £1,883.83:
 - £668.50 for the initial policy which excluded subsidence cover, less a refund of £493.48 after a policy covering subsidence was obtained. So, £175.02.
 - £1,108.81 for the second policy, which included subsidence cover for the house (but not the detached garage).
 - £600 for a survey, to enable them to obtain subsidence cover for their house.
- I said HDI would need to reimburse Mr and Mrs D the difference between the price of their new HDI policy and £1,883.83. Plus, 8% simple interest per annum on this amount, from 1 September 2020 (for ease) to the date of settlement.
- I noted Mr and Mrs D's existing policy would likely renew by the time this matter was concluded with our service. Therefore, I said HDI should also reimburse the amount they pay to renew their current policy (less any refunded premiums they receive when it's cancelled).
- I explained, if Mr and Mrs D are successful in their negotiations with the third-party, they will need HDI's approval of the proposed repairs, so cover can be maintained. Equally, if those negotiations aren't successful, they can revert to HDI, so it can continue considering the claim under their home insurance policy.
- I also said, if HDI would prefer to investigate the damage and take responsibility for the repairs itself, so it can have confidence in the repairs and control over the time taken, then it needs to let Mr and Mrs D know so they can stop pursuing the third-party and continue their claim.
- I acknowledged the loss adjuster's initial report contained several inaccuracies, and confusion was caused when HDI incorrectly thought some information had come from Mr and Mrs D. I accepted these matters had caused inconvenience and a degree of upset.
- I was satisfied that HDI's misrepresentation concerns weren't handled as well as they should have been. I said HDI had unfairly placed the emphasis on Mr and Mrs D to demonstrate what questions they had been asked; and HDI wrongly assumed different questions had been asked to Mr and Mrs D's detriment.

- As explained throughout my provisional findings, I didn't consider HDI had treated Mr and Mrs D fairly in respect of the renewal; and they were left with little time to source alternative cover.
- I explained that, in view of the distress and inconvenience caused to Mr and Mrs D, I intend to award them £500 compensation. If HDI's original £250 offer had already been paid, a further £250 would be due.

Mr and Mrs D accepted my provisional decision, but HDI set out points in response. I've also since had various exchanges with both parties, to gather the information I require to finalise my decision. I won't repeat all that information here, but I will address the points I consider relevant in my below findings.

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.

Where evidence is inconclusive, incomplete or contradictory, I've reached my decision on the balance of probabilities. This means I've determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

I'll set out my findings under the following six headings: the ABI guidance and the cause of damage; the ABI guidance and withdrawal of the claim; the ABI guidance and unusual circumstances; a new HDI policy; putting the renewal right; and compensation.

The ABI guidance and the cause of damage

HDI says Mr and Mrs D were of the view the damage had been caused *directly* by tree roots, rather than the roots of nearby trees causing subsidence. HDI also says Mr and Mrs D paid £600 for a survey which showed there wasn't any subsidence. Therefore, HDI doesn't consider the ABI guidance, for continuing cover after a subsidence claim, applies.

HDI also says it told Mr and Mrs D the damage would only be covered if it had been caused by subsidence, and the appropriate investigations would need to be undertaken. HDI says Mr and Mrs D initially agreed to its loss adjuster continuing the investigations, but in March 2021, they decided not to proceed with the claim as the third-party had now accepted liability.

I accept the ABI guidance only applies when there's been a subsidence claim. I also accept Mr D raised the possibility of tree roots directly damaging the garage, rather than tree roots causing subsidence. However, I've not seen anything that shows the damage was caused directly by tree roots. As I understand it, this was simply an alternative theory offered by Mr D, that wasn't based on any technical investigations or expertise.

In terms of Mr D's £600 survey, the report concludes the damage to the detached garage *is* indicative of subsidence. The report only concludes there's no such damage *to the house*. The purpose of the survey was so Mr and Mrs D could obtain subsidence cover for their house (but not their detached garage). So, HDI is wrong to rely on Mr D's report as evidence the garage damage wasn't caused by subsidence.

Whilst HDI says it hasn't been able to confirm the cause of the damage, its loss adjuster's May 2020 report concludes the damage is subsidence. There's no suggestion that further investigations are needed to confirm subsidence. It's only noted that investigations are needed to demonstrate the third-party's trees are responsible.

An arborist was subsequently appointed. I've only seen one page from the arborist's report. However, the page I've seen concludes the damage is consistent with, and related to, clay shrinkage subsidence. The report points towards the nearby trees as the cause.

So, although I accept the claim was put on hold in March 2021 after the third-party accepted liability, based on the information I've seen, HDI had by that point, already satisfied itself the cause of the damage was subsidence. I don't consider HDI is now being fair or reasonable by relying on Mr D's suggested and unsupported alternative theory.

Mr and Mrs D have also provided a structural report commissioned by the third-party's loss adjuster. Whilst the report explains the cause of the damage can't be confirmed by a visual inspection alone, it concludes the garage displays evidence of localised subsidence which has likely been caused by the nearby trees.

In view of the consistent conclusions in four reports, on balance, I'm persuaded the cause of the damage is subsidence and the ABI guidance applies.

The ABI guidance and withdrawal of the claim

HDI also says the ABI guidance doesn't apply, as it hasn't dealt with the claim. However, as explained in my provisional decision, I'm not persuaded the claim was withdrawn, but rather, Mr and Mrs D were acting with HDI's approval. As per the ABI guidance, the guidance applies when repairs are completed with the insurer's approval.

HDI says it isn't entirely accurate that Mr and Mrs D are acting with its approval. HDI says it was Mr and Mrs D's choice to pursue the third-party, and it wasn't for HDI to persuade them otherwise. I accept it was Mr and Mrs D's choice to pursue the third-party. I also agree HDI didn't need to try to persuade them to proceed with the claim instead. But nonetheless, the decision to pursue the third-party was in HDI's interests, and it agreed to keep the claim open in the meantime.

As noted in my provisional decision, HDI are free to proceed with the claim if that's what's required to maintain Mr and Mrs D's cover. That is still an option as repairs are yet to be undertaken. Mr D has maintained throughout that HDI can take responsibility for the investigations and repairs if it prefers.

In view of those circumstances, I remain persuaded Mr and Mrs D were, and are, acting with HDI's approval.

I also remain of the view that, if it was HDI's intention to deny Mr and Mrs D the benefit of the ABI guidance, due to them pursuing the third-party rather than their claim, then HDI ought reasonably to have put Mr and Mrs D on notice. If they had been put on notice, they may well have chosen to pursue the claim instead, at HDI's cost.

HDI has made the argument that it wasn't responsible for discussing the ABI guidance with Mr and Mrs D. HDI says that any underwriting matters would need to have been discussed between Mr and Mrs D and their broker. I don't agree with what HDI says here. Whilst the policy was taken out via a broker, the decision about continuing cover was HDI's responsibility. The ABI guidance applies to the insurer, not the broker.

So, having carefully considered the circumstances and arguments presented, I remain of the view the ABI guidance ought reasonably to apply, irrespective of whether it's the third-party or HDI that takes responsibility for the repairs.

The ABI guidance and unusual circumstances

The ABI guidance explains that, due to unusual circumstances, there will be times when an insurer can't continue cover. HDI maintains the holiday rental is an unusual circumstance.

The purpose of the ABI guidance is to ensure a policyholder can continue to obtain cover in the event of a subsidence claim and at a price that isn't prohibitive. The guidance explains that whilst an insurer cannot guarantee to maintain cover in all circumstances, it's good practice for the insurer to work with the policyholder, to identify action to manage any ongoing risks and maintain cover, wherever possible. Therefore, in my view, HDI is obligated to act fairly by taking reasonable steps to maintain cover.

HDI has questioned whether Mr and Mrs D's holiday rental is insured on the correct basis. It also says the boundaries are ill-defined and it has concerns it would remain responsible for any claims that result from incidents on the driveway. HDI also says on-line reviews for the holiday rental confirm Mr and Mrs D allow guests to use their garden. HDI says this isn't a risk that would be covered by the holiday rental's own insurance policy.

As I explained in my provisional decision, I don't find a shared driveway to be a particularly unusual circumstance. But, if, as HDI says, the holiday rental is within the boundary of the residential property, I accept that presents an unusual circumstance. I also find that HDI's point about holiday rental guests using the residential garden has some merit.

However, for me to decide HDI can fairly decline to offer renewal due to the holiday rental, I would need to be persuaded a policy endorsement doesn't sufficiently negate the risk, or that HDI can't work with Mr and Mrs D to manage the risk (for example, by them stopping access to their garden). I consider such steps to be reasonable and in the spirit of the ABI guidance. I haven't been persuaded HDI can't take such steps to maintain cover.

As explained to HDI in our exchanges after my provisional decision, it hadn't said anything that leads me to believe an endorsement isn't a reasonable workaround. I then went on to provide the holiday rental's insurance documents to HDI and invited its further comments about whether an endorsement can be applied to the residential policy, which sufficiently negates the risk posed by holiday rental guests. However, HDI didn't provide any further submissions about why an endorsement wasn't a workable solution. Instead, it asked Mr and Mrs D to complete a proposal form, so it could consider a new policy.

During our exchanges, HDI said it was in Mr and Mrs D's interests to obtain a policy that fully covers their needs and doesn't restrict cover. Although I accepted the point HDI was making, I explained it's for Mr and Mrs D to decide whether they prefer an appropriately priced policy that maintains subsidence cover for their home and garage, but with restrictions in terms of incidents involving holiday rental guests; or a higher priced policy with a different insurer, which excludes subsidence cover for their garage.

In conclusion, I've not been told anything that persuades me the risks posed by the holiday rental can't be managed by HDI and cover maintained.

A new HDI policy

In my provisional decision, I said I intend to decide HDI should offer Mr and Mrs D a like-for-like policy based on their previous HDI policy (subject to a policy endorsement in respect of holiday rental guests).

HDI said, due to the claim, Mr and Mrs D's broker wouldn't have been able to offer renewal terms. HDI said Mr and Mrs D would have had to approach another intermediary, and HDI would have considered terms manually on its open market product, subject to receipt and acceptance of a proposal form. So, HDI asked Mr and Mrs D to complete a proposal form. HDI noted the previous policy (via the broker) had high sums insured as standard, which wouldn't apply on a manual policy.

Mr and Mrs D highlighted that the maximum buildings and contents sums insured on HDI's proposal form were lower than their previous HDI policy, and insufficient for their needs. In response, HDI said it can only offer a quote on its open market product, and if the level of cover isn't sufficient, it can't provide a policy. HDI said there wasn't a workaround for this.

I don't find HDI's response satisfactory. Essentially, HDI is saying that if a policy is taken out via the broker in question and a subsidence claim is made, HDI can only fulfil its obligations under the ABI guidance, if that policyholder requires a level of cover below what they previously had.

Nonetheless, there's a need for me to bring this matter to a close, and there's little value in me making a direction which HDI can't fulfil. Therefore, I've set out two options for putting the renewal right, under the below heading.

Putting the renewal right

As set out in my provisional decision, Mr and Mrs D incurred £1,883.83 costs for their first year of alternative cover after their HDI policy wasn't renewed. They have also confirmed that their current policy renewed in October 2021 for £1,219.69.

Mr and Mrs D have also provided information from their current insurer which explains that, once the repairs have been finished and the garage has been monitored for 6-12 months, the insurer will consider including subsidence cover for the garage. It noted a structural engineer would first need to confirm that the repairs have been effective.

I'll now set out the redress options available to HDI, should Mr and Mrs D accept my final decision.

Option one:

If, on reflection, HDI can provide Mr and Mrs D with a like-for-like policy based on their previous HDI policy, then it can follow 'option one'.

HDI will need to:

- A. provide Mr and Mrs D with a like-for-like policy based on their previous HDI policy and sums insured (although it can apply a policy endorsement relating to holiday rental guests) – Mr and Mrs D *won't* need to pay the premium for the first year;
- B. price the new policy based on Mr and Mrs D being existing policyholders, rather than new customers with a subsidence history;

- C. reimburse Mr and Mrs D the difference between the price of their new HDI policy and the costs they incurred for the first year of alternative cover (£1,883.83);
- D. reimburse Mr and Mrs D the difference between the price of their new HDI policy and the costs they incurred for the second year of alternative cover (£1,219.69 less any refund they receive after the cancellation);
- E. pay 8% simple interest per annum on 'C', which for ease, should be calculated from 1 September 2020 to the date of settlement; and
- F. pay 8% simple interest per annum on 'D', from 16 October 2021 (the renewal date) to the date of settlement.

Option two:

If HDI maintains it can't provide Mr and Mrs D with a like-for-like policy, with the appropriate sums insured, then it can follow 'option two'.

The intention of this redress option is to compensate Mr and Mrs D for their *likely* increased insurance costs, for a fair and reasonable period. I consider such period to be a further two years, so four years in total, which would cover costs until October 2024. In my view, this provides a reasonable period of time for the repairs to be completed, monitoring to be undertaken (so the garage can be covered), and cheaper insurance to be sourced.

As explained by Mr and Mrs D's current insurer, a structural engineer's report will be needed before subsidence cover can be provided for the garage. So, given the previous survey cost for the house, I also consider it fair to include a further £600 to cover the likely cost of obtaining a report for the garage following the repairs.

This option is based on HDI not being able to provide a new policy. Therefore, the redress calculation will need to be based on the cost of the previous HDI policy, *i.e.* £137.18.

HDI will need to:

- A. reimburse Mr and Mrs D the difference between the price of their previous HDI policy (£137.18) and the costs they incurred for the first year of alternative cover (£1,883.83), *i.e.* £1,746.65;
- B. reimburse Mr and Mrs D the difference between the price of their previous HDI policy (£137.18) and the costs they incurred for the second year of alternative cover (£1,219.69), *i.e.* £1,082.51;
- C. pay 8% simple interest per annum on 'A', which for ease, should be calculated from 1 September 2020 to the date of settlement;
- D. pay 8% simple interest per annum on 'B', from 16 October 2021 (the renewal date) to the date of settlement;
- E. pay Mr and Mrs D the difference between the price of their previous HDI policy (£137.18) and the price of their current policy (£1,219.69), for year three, *i.e.* £1,082.51;

- F. pay Mr and Mrs D the difference between the price of their previous HDI policy (£137.18) and the price of their current policy (£1,219.69), for year four, *i.e.* £1,082.51;
- G. pay Mr and Mrs D £600, for their likely further survey costs, in order to obtain subsidence cover for their garage.

I'll now address the arguments HDI made in response to my provisional decision, about Mr and Mrs D's increased insurance costs, survey cost, and the need for it to approve repairs.

HDI says if Mr and Mrs D had closed their claim as it had suggested, their premium on other policies wouldn't have been affected by the possible subsidence claim. So, HDI says it's not responsible for Mr and Mrs D's increased insurance costs. However, their current insurer has confirmed there hasn't been a premium loading due to the claim. Therefore, I'm not persuaded the claim being open was the main reason for the higher insurance costs.

I accept that it's *possible* Mr and Mrs D could have found cheaper insurance with a different provider if the claim had been closed as withdrawn. But, on balance, I consider it likely they would have still been required to disclose the claim and the subsidence damage, which in turn, would have likely affected the cover and/or price offered. So, I'm not persuaded that withdrawing the claim would have necessarily led to cheaper insurance.

In any event, the claim was left open in agreement with HDI. So, I don't consider its argument here to be reasonable.

HDI also says it isn't responsible for Mr and Mrs D's decision to buy alternative insurance at a high price. However, Mr and Mrs D couldn't reasonably have left their *house* uninsured or without subsidence cover. Furthermore, I consider it more likely than not, that they tried to find the best price available to them. I say this because, at that time, they wouldn't have known HDI would be held responsible for their increased costs.

HDI also says that it was Mr and Mrs D's decision to commission a survey to show their new insurer their house was free from subsidence, and it isn't responsible for the cost of a survey requested by another insurer. I don't agree with HDI's position. The survey was required to obtain subsidence cover for the house. Given the subsidence to the detached garage, it's not unreasonable that a new insurer asked for this information. The survey cost wouldn't have been incurred had HDI renewed its policy.

In my provisional decision, I explained if Mr and Mrs D are successful in their negotiations with the third-party, they will need HDI's approval of the proposed repairs so cover can be maintained. HDI argues it isn't necessary for it to approve the repairs and it can't become involved. If the complaint is settled via 'option one', it will be for HDI to decide the level of involvement it needs in the repairs. If HDI doesn't find it necessary for it to approve the repairs as a condition of providing continued cover, then so be it.

It follows that if Mr and Mrs D's negotiations with the third-party aren't successful, or if the complaint is settled via 'option one' and HDI doesn't consider the proposed repairs to be sufficient, then it will be for HDI to continue considering the claim.

Compensation

In response to my comments about how HDI had handled its misrepresentation concerns, it noted the information it had, showed that when the policy was taken out, the question being asked was about the 'property'. HDI says it was later provided with information that showed the question *currently* being asked was about the 'house'. As such, HDI says it gave Mr and Mrs D the benefit of the doubt. I accept what HDI says here.

However, given HDI accepted Mr and Mrs D hadn't made a misrepresentation (even if that was on a 'benefit of the doubt' basis), my conclusion about HDI not treating them fairly, in respect of the renewal, remains the same. Bearing in mind the upset and inconvenience caused by HDI's decision to not offer renewal, overall, I remain of the view that £500 compensation is fair.

My final decision

For the reasons I've set out above, and in my provisional decision, I uphold this complaint. My final decision is HDI Global Specialty SE should:

- put the declined renewal right, by following redress 'option one' (A to F) *or* redress 'option two' (A to G) – as set out above under 'putting the renewal right'; and
- pay Mr and Mrs D £500 compensation, in total (if £250 has already been paid, a further £250 is due).

If HDI considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr and Mrs D how much it's taken off. If requested, HDI should also provide Mr and Mrs D with a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.

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

Vince Martin
Ombudsman