

The complaint

Mr and Mrs S complain that HDI Global Speciality SE declined a claim they made under their buildings insurance policy for subsidence.

Reference to HDI includes its agents and representatives.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr S got in touch with HDI in July 2022 after noticing cracks on the wall of the extension. It appointed a loss adjuster to consider the claim.
- The loss adjuster inspected the damage and arranged for ground investigations. In summary, they said the following and declined the claim:
 - The extension damage had been caused by subsidence due to nearby trees – an Ash and a fruit tree.
 - The foundation was 500mm deep but should have been 1,750mm. As a result, the foundation design was faulty.
 - The damage likely started before the policy began.
- Mr S said the extension had been built in 2003 and would have had to conform to building standards of the time. He hadn't noticed any damage until 2022. Mr S complained but the loss adjuster maintained its position.
- Our investigator didn't think HDI had acted fairly. She said it hadn't shown what the foundation depth ought to have been at the relevant time, so it hadn't shown why the foundation was faulty. Nor was she persuaded the evidence showed the damage had begun before the policy. She asked it to consider the claim further.
- Mr S agreed with this. HDI didn't. It sent us a copy of British Standards for foundation design and said it was relying on the opinion of its claim technician who said the foundation was faulty. It also noted the guidelines of a builder of new homes, N, which suggested the foundation ought to have been deeper at the time the extension was built, particularly if the trees were in place then.
- Our investigator wasn't persuaded to change her mind. She said HDI hadn't pointed to anything in particular within the Standards to support its point about the foundation depth. And she noted that the guidelines of N aren't relevant here.

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.

- The policy covers damage caused by subsidence, during the period of insurance, but

not when caused by faulty design. There's no dispute the damage was caused by subsidence. So the question for me is whether HDI can rely on either of the reasons raised to decline the claim. The onus is on HDI to show it can do so.

- The first reason relied upon is to do with the timing of the damage. The loss adjuster said it was "likely to be pre inception of this policy" seemingly because of some brackets on the side of the extension that have been painted several times over the years. However, they haven't gone so far as to say when the policy began or why these brackets are a sign the subsidence problem began before that time.
- The policy documents I've seen show it renewed in June 2022 and Mr S made the claim soon after. He says damage began in summer 2022 and I haven't seen anything to challenge that. So, based on the information available to me, it seems the damage began at least a year into the policy.
- In these circumstances, I'm not satisfied it would be fair to decline the claim based on the timing of the damage.
- The second, and main, reason relied upon is the depth of the foundation. HDI says its faulty because it's not deep enough.
- The ground investigations showed the extension has a 500mm deep foundation built on clay. Roots emanating from a fruit tree were found beneath the foundation. I haven't seen any evidence to challenge these findings, so I accept them.
- The extension was built in 2003. In order for HDI to show it was faulty, I would expect it to provide evidence of relevant regulation and/or best practice from that time – and show how it wasn't met. I would also expect it to show how this caused the current subsidence, especially bearing in mind the structure had stood without problem for nearly 20 years at the time it became damaged.
- HDI has mentioned the guidelines of N. But there's nothing to suggest the extension was built under the supervision of N, so I don't think its guidelines had to be followed by the builder. That means N's guidelines aren't directly relevant here.
- HDI has also pointed to British Standards on foundation design from 1986. Whilst these might not strictly be Regulation, I'm satisfied they're a credible source of generally accepted best practice that still applied in 2003. And therefore it would be reasonable to take them into account.
- As the loss adjuster pointed out, those Standards say a foundation in clay should be built to a depth below the zone where shrinkage and swelling due to seasonal weather changes, trees, shrubs, and other vegetation are likely to cause appreciable movement. The loss adjuster says this means the foundation ought to have been 1,750mm deep, but it's unclear how it has reached that opinion. Despite our investigator asking for this information, HDI hasn't explained itself.
- I don't think it would be fair to take the overarching aim of the Standards literally. To do so could mean that *any* claim for subsidence in a clay soil due to trees could be considered to be the result of a faulty foundation design and declined. The Standards set out vast amounts of guidance. So I think it's important for HDI or its loss adjuster to set out exactly what part(s) of the guidance within the Standards hasn't been met. But it hasn't done so.

- HDI said a report provided by Mr S supported its position. That report was prepared by a chartered surveyor. They said the extension would have required Building Regulation approval at the time it was built. That wasn't obtained, but HDI doesn't seem to have looked into why that might be. The surveyor goes on to say that insulation would need to be provided in order to comply with Building Regulation from the time – but the foundation appeared compliant. So rather than supporting HDI's position, I think it undermines it.
- A chartered surveyor says they think the foundation would have complied with the relevant approval process at the time. HDI has partially relied on irrelevant standards and, when turning to relevant ones, hasn't pointed to any specific part of them that hasn't been met. Nor has it explained why it thinks the foundation depth ought to have been 1,750mm. So whilst HDI says its claim technician considers the foundation faulty, it's failed to point to any objective information to explain why.
- I also take into account into that the structure had stood for around 20 years before suffering damage. If the foundation had been faulty from the outset, one might have expected it to have suffered damage sooner. HDI hasn't explained why this isn't the case, which again undermines its position.
- Bearing in mind the onus is on HDI to show the foundation design was faulty, I'm not persuaded the information it's provided has done so. As a result, I think it acted unfairly when it declined the claim. To put that right, it should now accept the claim.

My final decision

I uphold this complaint.

I require HDI Global Speciality SE to accept the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 11 December 2023.

James Neville
Ombudsman