

The complaint

Mr and Mrs P complain that HDI Global Specialty SE (“HDI”) unfairly declined a claim they made under their home insurance policy for subsidence related damage to their property.

What happened

In 2021, Mr and Mrs P noticed cracking in the walls of their conservatory, so they made a claim to their insurer, HDI.

Site investigations were carried out from November 2021 onwards, and the property was monitored for movement. After some time, Mr and Mrs P contacted HDI due to a lack of updates, to determine how their claim was progressing.

HDI contacted Mr and Mrs P’s broker to inform it that it wouldn’t be offering renewal terms, but Mr and Mrs P say they hadn’t been contacted by HDI directly. And they later found out that their claim had been declined. They made a complaint about the claim decision, and the time this had taken as well as the poor communication throughout, but also said that due to HDI not offering to renew their policy they were effectively blacklisted as no other insurer would provide them with cover for a reasonable price.

HDI said in its response to the complaint that the decision to decline the claim was correct due to the fact that the property had defective foundations that were too shallow and not in line with building regulations at the time the conservatory was built. And that this type of situation was specifically excluded under the policy.

Mr and Mrs P didn’t accept HDI’s response and referred their complaint to this service. Our Investigator considered it, and upheld it in part, saying the decision to decline the claim wasn’t unreasonable, but that HDI could’ve provided a better service to Mr and Mrs P. So it was recommended that HDI pay Mr and Mrs P compensation for the distress and inconvenience they experienced.

HDI accepted our Investigator’s view and agreed to pay the £200 compensation recommended, but Mr and Mrs P didn’t agree with what our Investigator had concluded. So the complaint has now come to me to decide.

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’ve decided to partially uphold this complaint. I’ll explain why.

I’ve reviewed the claim decision and the evidence in support of it. This includes the evidence confirming that the damage to the conservatory was caused by defective foundations.

The report provided explains that the trial hole revealed foundations at a depth of only 150mm below ground level, in clay soil. Tree roots were found at a depth of 650mm and the problematic tree species were identified. The report highlights that the most likely cause of

the movement at the property would've been shrinkage of the clay subsoil during dry weather conditions, most probably aggravated by the nearby vegetation.

Whilst the report comments that the foundations were *"very shallow by modern standards and...unlikely to have complied with building regulations at the time of construction"*, it doesn't specify what the relevant standards were at the time. So I've looked into this further.

Mr and Mrs P describe the structure as a "lean-to conservatory". Conservatories of less than 30 square metres in size are exempt from building regulations. Mr and Mrs P have estimated their conservatory to be around 20 square metres in size, which means that technically, there was no requirement at the time for the builder to lay the foundations to the depth set out in regulations. But I don't consider this to mean that the builder had no obligations – they would still have a duty to ensure that a reasonable structure was built which wasn't defective and would stand the test of time.

So I've considered what the builder would've known at the time of constructing the conservatory and what they should've done. The report provided shows that there were nearby species of trees that a competent builder would have taken into account when considering the potential depth of any foundations. This is because it would be known by a reasonably skilled builder that tree roots can cause problems with structures in certain soils if the foundations aren't adequate.

Although building regulations wouldn't strictly apply here, I've used them to consider what good practice would've been at the time. And how deep a builder exercising reasonable care and skill would've laid the foundations to account for nearby vegetation. Tree roots were found as deep as 650mm at Mr and Mrs P's property. And Mr and Mrs P have confirmed that the structure was built in 2009. Building regulations at the time recommended foundation depths of 750mm (minimum) in clay soils. If the foundations had been built in accordance with the relevant building regulations at the time, it's highly likely the tree roots wouldn't have affected the structure as the foundations would've been deeper than the roots found, and therefore would've likely maintained the stability of the structure.

The policy says it doesn't cover *"Loss or damage...to any part of the home affected that was not built to the correct building's regulations at the time of construction"*. This isn't an unusual term in insurance policies. And because the regulations at the time did specify that foundations for structures on clay soils should be a minimum of 750mm, I think this indicates what good practice would've been around the time the conservatory was built. And if these guidelines had been followed, despite the structure being exempt from building regulations, the foundations would've likely been deep enough to have prevented the damage occurring. The guidance recommended foundation depths far in excess of the depth of 150mm at which the foundations were actually laid. So I'm afraid I agree with HDI that the foundations were too shallow and were defective in this case.

And even if the precise depth mentioned in the regulations was not technically required, the foundations that were laid were still far too shallow for me to conclude that they were adequate for the structure in place, when considering the nearby vegetation and roots. It follows, therefore, that I don't consider HDI to have unfairly applied the exclusion which says it won't provide cover for structures not built to regulations.

Mr and Mrs P have said that they have effectively been blacklisted from the market as there's been a substantial increase in their insurance quotes. I'm afraid I can't hold HDI responsible for that, as insurers set their own prices based on the risk assessment they carry out. And because the property has suffered from ground movement, this can unfortunately impact the cover available and the prices offered for that cover. Whilst I appreciate it's an extremely frustrating situation, I also can't compel HDI to offer cover, because that's a

commercial decision it's entitled to make based on its particular risk appetite. Mr and Mrs P can contact the British Insurance Brokers' Association for help with sourcing specialist cover that might better suit their needs.

In relation to the service Mr and Mrs P received, I've looked carefully at the claim journey they experienced, and I agree with our Investigator that the service they received wasn't ideal. HDI didn't contact Mr and Mrs P directly in relation to its claim decision until Mr and Mrs P made a complaint. And its final response wasn't sent to Mr and Mrs P until May 2023, some 18 months after they made the initial claim. Whilst the time things took may have been in line with subsidence claims more generally, (because periods of monitoring can and often do span the seasons), I can't see that regular updates were provided. And Mr and Mrs P frequently had to chase HDI to find out about the progress being made.

Generally, I've found that communication could've been better throughout the claim. In addition to not providing meaningful updates, the email address HDI used to contact Mr and Mrs P was incorrect, despite it using the correct email address to send them their policy documents. So I think overall, Mr and Mrs P have experienced distress and inconvenience for which they should be compensated. I find £200 compensation to be reasonable in the circumstances, as this reflects that the poor service provided by HDI impacted Mr and Mrs P for some time, and chasing HDI for updates required a reasonable amount of effort on their part.

I appreciate the difficult situation Mr and Mrs P are left in regarding their future home insurance, and I empathise with them a great deal about this. But insurance policies aren't designed to cover every eventuality. And I'm afraid I don't agree that insurance companies should generally pay out for things that a home-owner wouldn't reasonably be aware of when they purchase the property, as in this case. Policies have exclusions which highlight which risks an insurer isn't willing to take on; and that's for each insurer to decide.

I understand that there are concerns around how to make the property stable as the foundations aren't adequate. Mr and Mrs P have said they may need to demolish their conservatory and some of the garage. But I'd recommend they seek expert advice about the options available, as this may not be necessary in order to strengthen the foundations and make the structure stable.

Putting things right

HDI Global Specialty SE should pay Mr and Mrs P £200 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and I require HDI Global Specialty SE to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 7 January 2025.

Ifrah Malik
Ombudsman