

complaint

Mrs T has complained that Great Lakes Insurance SE has unfairly declined a claim she made on her home insurance policy for damage to her front porch caused by subsidence.

background

I issued a provisional decision in October 2020 explaining that I was intending to uphold Mrs T's complaint.

Here's what I said in my provisional decision:

"background

There have been other businesses involved in this complaint who acted on behalf of Great Lakes. For ease of reference, I'll refer only to Great Lakes by name in this decision, even when referring to the actions of its agents. Similarly, Mrs T has brought her complaint through a representative. But I'll only refer to Mrs T in this decision, even when referring to arguments put forward by her representative.

Great Lakes is the underwriter for Mrs T's home insurance. In 2018 Mrs T contacted Great Lakes to report damage to her front porch. It was showing signs of cracking and pulling away from the main property. Great Lakes appointed a loss adjuster, specialising in subsidence, to visit the property and assess the damage.

Following the loss adjuster's initial visit further investigations were undertaken, in the form of a trial hole excavation, to establish the depths of the foundations of the porch. These showed the ground the porch was founded on was clay, and the depth of the porch foundations was 300mm. The presence of tree roots at a depth of 1200mm was also noted. Based on this Great Lakes declined Mrs T's claim, relying on an exclusion in her policy for damage occurring as a result of defective design or workmanship. To support its position, Great Lakes pointed to building regulations, and guidance from an industry recognised warranty provider and building control specialist, as examples of how deep the foundations ought to have been.

Mrs T has complained about the decision to decline her claim. She says the porch has stood for 30 years without any issues, and that damage only occurred after the long, dry summer of 2018. She says her porch wasn't subject to building regulations or the requirements of the warranty provider, so a judgement cannot not be made beyond a reasonable doubt that the damage is due to faulty workmanship.

One of our investigators looked into Mrs T's complaint. She didn't think Great Lakes had acted unfairly by declining the claim. She accepted that Mrs T's porch didn't need to adhere to building regulations or the requirements of the warranty provider. But she said these were examples of what would be considered good industry practice at the time – and that Mrs T's porch foundations were significantly shallower than this. She agreed that nearby trees and the hot summer likely contributed to the damage. But she didn't think it was most likely the primary cause.

Mrs T didn't accept our investigator's opinion. So, because no agreement has been reached the complaint has been passed to me to decide.

my findings

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'm currently intending to uphold it. I'll explain why.

My role here isn't to establish the cause of damage to Mrs T's porch beyond a reasonable doubt. What I need to decide is whether Great Lakes has reached a claim decision that is both in line with the terms and conditions of Mrs T's policy and is fair and reasonable in the particular circumstances of her claim.

To do this, I've considered the evidence and arguments provided by both sides, including any expert reports or opinions. I've also considered the information which Great Lakes suggests amounts to good industry practice for the construction of the foundations, and the terms and conditions of Mrs T's policy.

Great Lakes has declined Mrs T's claim based on an exclusion in her policy which states:

"WHAT IS NOT INSURED

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Loss or damage arising from defective design, defective materials or faulty workmanship."

Great Lakes established that the foundations for the porch are 300mm deep. Its subsidence expert says placing the foundations at such a depth exposes them to the effects of frost and climatic/volumetric changes in the soil – which can damage the building/structure. Great Lakes has pointed to technical requirements set by an industry recognised warranty provider and building control specialist which state that foundations on low shrinkability clay should be at least 750mm. Another of Great Lakes subsidence experts – a Chartered Engineer – states that this would increase for medium and high shrinkability clays and if there are nearby trees – which there are in this case. Based on this, Great Lakes' position is that the foundations of the porch are clearly defective and that while the hot summer has contributed, the damage to Mrs T's porch has occurred primarily due to the defective design of the foundations.

I understand why Great Lakes' has highlighted the technical requirements of the warranty provider. But there's nothing to show that Mrs T's porch was subject to these standards at the time it was built. I say this because it wasn't built as part of a new home and I've seen nothing else to suggest that the builder was required to follow these standards. So, I don't think it's fair to judge the construction of the foundations of the porch against standards which do not apply.

Great Lakes has also accepted that Mrs T's porch was exempt from building regulations. But again, it suggests that these offer an example of good industry practice. I've thought carefully about this point. I think it would be reasonable to consider the relevant guidance/best practice available at the time the foundations were constructed. I should be clear, that this doesn't mean there was a requirement to meet building regulations. But I think the regulations do offer a good indication of the foundation depth that would have been appropriate – even though the regulations themselves do not apply.

At the time the porch was built, building regulations generally required a minimum foundation depth of 900mm when building on clay. So, arguably, the foundations of the porch should have been built to a greater depth than 300mm.

Mrs T has argued that the porch has stood for 30 years without issues. She says the problems only started after the long, hot summer of 2018. She's also highlighted that the nearby trees were already fully mature at the time the porch was constructed.

I've thought carefully about everything both sides have said and provided. I accept Great Lake's argument that the nearby trees should have been taken into account when designing and building the porch foundations. But I think it's worth highlighting that between construction of the porch and 2018, there have been several 'subsidence event' years. So, logically, if defective foundations were the dominant cause of the damage, it would likely have occurred sooner than it did. In my view, it doesn't seem fair or reasonable to suggest that foundations which have been effective for around 30 years have suddenly become defective.

More importantly, the tree roots, which are thought to be causing the subsidence, were discovered at 1200mm. That means that even if building regulations (which don't apply here) had been followed, the roots would still be at a significant depth below the foundations of the porch. This suggests to me that there would likely have still been a subsidence problem with the porch, even if the foundations had been built to 900mm.

The policy term Great Lakes relied on to decline the claim is about damage arising from defective design, materials or workmanship. But I've established the standards Great Lakes took into account when declining the claim aren't applicable to the porch. And Great Lakes hasn't provided any alternative standards which the foundation should have complied with.

Great Lakes also accepts the porch wasn't subject to building regulations, although it suggests the regulations (as examples of good industry practice) should have been considered and then followed. But even if the porch foundation had met those regulations, I think it's likely the porch would still have suffered a subsidence problem. And I've not heard any arguments, or seen any evidence, to the contrary from Great Lakes.

Based on the evidence available, I think it's likely that designing the foundation to a depth more in line with good industry practice wouldn't have prevented the subsidence problem. So, I don't think it's fair to say the damage has arisen from defective design – and that means it's not fair for Great Lakes to decline the claim by relying on the 'defective design' policy term."

I said I was intending to uphold Mrs T's complaint and to direct Great Lakes to deal with the subsidence claim, subject to the remaining terms and conditions of the policy.

I asked both sides to send me any further evidence or arguments they wanted me to consider before I reached my final decision.

Both sides have since responded to say they have nothing further to add to my provisional decision. So, I'm moving forward with this, my final decision.

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable in the circumstances of this complaint. And in the absence of any new evidence or arguments, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

my final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mrs T's complaint.

Great Lakes Insurance SE must deal with the subsidence claim, subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 27 November 2020.

Adam Golding
ombudsman