

The complaint

Mrs B has complained about HDI Global Specialty SE's decision to decline her claim under her Residential Property Insurance policy for subsidence to the house insured under it.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my decision.

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, subject to a number of terms and conditions. HDI has accepted the extension and conservatory have been damaged by subsidence.
- HDI has relied on a policy term to decline the claim. It says HDI won't pay for loss or damage caused by: "faulty design or workmanship".
- HDI considers the depth of the foundations to both the rear extension and the conservatory at Mrs B's property amounts to faulty design. As it's relying on an exclusion, the onus is on HDI to show why it would be fair for it to rely on this to decline the claim.
- HDI has referred to guidelines by a builder of new homes, N. N's guidance only applies when construction is under the supervision of N as part of a new home. That wasn't the case for Mrs C's extension or conservatory. So, the extension didn't need to comply with N's guidelines and they're not relevant here.
- It's agreed the extension was subject to Building Regulations. Requirement A2 says, in summary, the building should be constructed so that ground movement caused by soil shrinkage won't impair its stability. HDI questions whether this point has been met because there's been subsidence as a result of clay shrinkage.
- I'm not persuaded taking requirement A2 as literally as HDI has suggested would produce a fair outcome. It would amount to concluding that any claim for subsidence caused by clay shrinkage meant the foundation was faulty and the damage wasn't covered by the policy. The regulation document goes on to say that A2 will be met by following the recommendations and guidance in subsequent sections. So I think A2 is a broad aim, followed by more specific information about how to achieve it.
- At the time this extension was built, the document didn't specify a minimum

depth to meet the requirement. What depth was appropriate was a judgement call for the designer, builder and Building Control to make based on the site conditions.

- In any case, it's accepted that Building Control approved the foundation depth at the time of construction. The foundation depth is deeper than the minimum depth the Building Control Department at Mrs B's local Council has suggested was recommended at the time the extension was built. This indicates to me that consideration was given to the site conditions, including the presence and impact of vegetation.
- HDI doesn't think those considerations were sufficient. It says the tree or trees thought to be causing the current problem would have been clearly visible at the time of construction and their possible impact on the subsoil over time, taking into account their mature heights, wasn't reflected in the foundation depth.
- Even if this were the case, I think it's relevant to keep in mind that Building Control inspected the foundation, approved its depth and signed off the extension. So I can only conclude it was satisfied that relevant Regulation and guidance was satisfactorily taken into account. And, having received sign off from the relevant authority, I'm satisfied appropriate steps were taken to ensure the extension was built to the right standard.
- I also take into account that the extension had stood problem free for over 25 years at the time it suffered damage. And this doesn't suggest to me a defective design, bearing in mind there will have been a number of subsidence 'surge' events during that time. In those summers, the impact of very dry weather resulted in significantly more subsidence problems than usual. This extension seems to have resisted many such events, which doesn't support HDI's position that it was built to a defective or faulty design.
- Overall, I'm not satisfied HDI has shown the foundation design for the extension was faulty – or that it would be fair to decline Mrs B's claim even if it was.
- Turning now to the conservatory. At the time Miss B's conservatory was built (2013), the relevant Building Regulations required a minimum foundation depth of 650mm. However, I'm satisfied from what Mrs B has said that her conservatory was exempt from these Regulations. But I still think it's reasonable to expect the conservatory to have been built to a good standard and that meant taking into account relevant guidance and best practice of the time. Building Regulations are a credible source of such guidance. So whilst the conservatory wasn't subject to Regulations, I think it would have been reasonable to take them into account – including the minimum foundation depth.
- I've noted the Building Regulations in February 2013 recommended a depth of 0.9m for medium shrinkage and 1m for high shrinkage clay. And the depth of the conservatory foundations was 0.6m. I've also noted that the Glass and Glazing Federation produced a guide to good practice in 2012, which suggested a foundation depth of not less than one metre in clay soil subject to seasonal movement. It also said that if trees were nearby the depth of the foundations should take this into account. While the depth of the foundations of the conservatory was lower than the above depths, I've considered the expert found roots at 1.7m below ground level. So I've considered that even if the conservatory met the required standards from the Building Regulations or abovementioned good practice guide from when it was built in 2013, the subsidence would have

occurred regardless. This means I do not consider it is fair and reasonable for HDI to rely on the abovementioned exclusion for faulty design to decline Mrs B's claim for the conservatory either.

- I agree that HDI's unreasonable decision to decline Mrs B's claim caused her distress and inconvenience and £200 in compensation is appropriate for this.

Putting things right

I've decided to uphold this complaint and require HDI to do the following

- Settle Mrs B's subsidence claim for the extension and conservatory in accordance with the claim settlement terms in Mrs B's policy.
- Pay Mrs B £200 in compensation for distress and inconvenience.

My final decision

I uphold Mrs B's complaint and order HDI Global Specialty SE to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 March 2024.

Robert Short
Ombudsman