

The complaint

Mr Y complains that HDI Global Speciality SE (“HDI”) has unfairly handled a claim made on his residential landlord insurance policy.

Any reference to Mr Y or HDI refers to respective agents or representatives.

What happened

The background of this complaint is well known between parties. So, I’ve summarised events.

Mr Y insures a property he rents to tenants through HDI. He made a claim on his policy following water damage to his kitchen, and separate water damage to bathroom and living room. HDI accepted part of the claim, but a dispute arose about three separate issues:

- *Trace and access*: HDI refused to pay two invoices submitted by Mr Y (to the sum of around £2,475) as it said this cover would only cover leaks from pipes. Mr Y argued that the policy summary was not clear on this so this was unfair.
- *Loss of rent*: HDI had said Mr Y was underinsured and reduced the settlement of his claim from £6,450 to £5,224.50 (although elsewhere HDI has indicated a slight variance of this figure).

Mr Y said it had calculated this using incorrect figures. HDI said Mr Y had opted for £62,500 worth of cover over a 36-month period – which equates to £1,736.11 per month on loss of rent. It said Mr Y’s tenancy agreement showed he charged £2,150 per month and therefore his cover should’ve been set to £77,400 over the 36 months.

HDI said therefore Mr Y had paid lower premiums than he should’ve done. HDI calculated an average sum settlement – saying as he was around 81% insured, he should receive 81% of the settlement.

- *Local authority rates*: Mr Y said he’d sought to claim under the policy for council tax (£549) – and he said the term “*local authority rates*” was broad enough to cover it. HDI disagreed saying the definition of “*rates*” didn’t exclude council tax but it also didn’t include council tax. As it wasn’t specified, it considered council tax as a consequential loss, which is specifically not covered as the policy included an exclusion that said it wouldn’t cover “*Consequential loss 11. any indirect losses other than where specifically covered.*”

So, the complaint came to this Service. Mr Y explained he did not recall ever being asked about his rental income when taking cover. One of our Investigators looked into what happened, saying:

- *Trace and access*: the policy outlined trace and access would be covered to locate the source of a leak and repair any damage as a result of an escape of water from any tank, apparatus, pipe or fixed heating installation – and this isn’t what had happened here. She also considered the accidental damage aspect of the policy but said Mr Y hadn’t provided evidence to outline the cause of the damage – so there

was nothing further for HDI to do at this time.

- *Loss of rent*: our Investigator asked HDI to provide evidence about what questions it asked from the broker to provide about the rental income of the policy, as well as the answer received and the impact of this in regard to premiums had it known this information. HDI didn't provide anything. As HDI didn't engage she said she was unable to see if its approach was in line with what we'd expect. So, she upheld this part of the complaint and directed it to pay the full rent claim with 8% interest from the date any funds weren't paid until the date it settles the matter.
- *Council tax*: the policy states it would cover local authority rates on empty buildings subject to some requirements. She was satisfied the requirements were met and in the absence of the policy defining "local authority rates" she felt it was reasonable to include council tax. So, she said it would need to cover this with 8% interest.
- She also awarded £100 compensation for distress and inconvenience caused by HDI's actions.

HDI didn't respond. Mr Y disagreed, saying:

- *Trace and access*: The policy document was unclear and misleading on the subject. The requirement for an escape of water to stem from a tank, apparatus or fixed heating installation was a major exclusion that it should've drawn to his attention – and was a breach of its obligation to provide clear and accurate information.
- *Loss of rent and Council tax*: He accepted the findings.
- Mr Y more widely said he felt it would be fair for HDI to make a higher award of compensation due to HDI's approach and indifference in handling the complaint and to properly engage with his concerns.

The Investigator looked again but didn't change her mind. She said she couldn't award for complaint handling and that we weren't able to punish or penalise firms with an award. She invited Mr Y to provide anything further about the impact to him directly which she'd reconsider. Neither Mr Y nor HDI responded with anything further. So, the complaint has been passed to me for an Ombudsman's 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.

Having done so, I'm upholding the complaint. I'll explain why.

Given the nature of Mr Y's complaint I'll consider each of the matters in turn.

Trace and access

Mr Y wants to claim for trace and access work related to his chimney from which water caused damage to his property. And he's provided invoices for this work.

HDI has said it won't cover this loss as it isn't covered under the policy. So, I've looked at the policy terms, under the heading "finding a leak" it says:

"...the reasonable and necessary costs incurred with Our prior agreement to:

- a. locate the source of a leak; and*
- b. repair any **Damage** caused whilst locating the source of the leak,*

*following **Damage** caused by escape of water or oil from any tank, apparatus or fixed heating installation which is covered under this section of the **Policy**"*

Elsewhere in the policy it also refers to escape of water from any tank apparatus or pipe being covered under the policy.

So, its evident to me that for this trace and access cover to become active, there must be damage caused by an escape of water from a tank, apparatus or fixed heating installation. I'm satisfied the policy is clear on this. And simply that isn't what happened here. This is a common term across policies of this nature – so I wouldn't consider this unusually restrictive.

Mr Y has put a lot of emphasis on the policy summary he received. He said this should be relied on in place of the full terms as he believes the summary indicates the trace and access would be covered.

My starting point on the summary is that it is that – a summary of terms. Mr Y points to wording that underneath "*We will also cover*" says:

- "*costs incurred to locate the source of a leak and repair any damage caused as a result following escape of water or oil*"

Mr Y says this suggests the escape of water is without qualification therefore his chimney water ingress should be covered. I simply disagree with him on this point. I don't believe the summary is misleading as he's suggested. And in any case the matter I am considering right now is whether it has handled the claim fairly – which I am. Any dispute he has with the seller of the policy about detail he was given during a sale would need to be addressed by them in the first instance. I also would comment here that I'm not satisfied there's any other peril under the policy that HDI should cover these costs under based on the information I've been presented with.

Loss of rent

HDI has said Mr Y was underinsured regarding his loss of income as I've outlined in the background above.

Mr Y's policy says it will apply a particular calculation in the event of underinsurance. HDI will be aware of this Service's approach to use of average clauses. There are laws and industry wide best practice about the responsibilities on insurers and consumers when starting or renewing a policy, so we think it's in line with those laws, best practice, and fair and reasonable in the circumstances to consider those responsibilities.

In these types of cases, we would typically look at the information the insurer wanted to know to set up and price the policy – and what it was told when determining if Mr Y had made a fair presentation of risk. And, if he hadn't, we would want to be satisfied that such a misrepresentation or incorrect information would've had an impact on HDI's decision to insure him and on what terms.

Our Investigator asked these questions of HDI going back many months and despite chasers we've been given nothing further in response. As a result, I'm satisfied that HDI has failed to show the impact as we've asked. So even if there was a misrepresentation or incorrect figures given by either Mr Y or a broker, I'm not satisfied HDI can take any steps to reduce the settlement and I will direct it as such.

Council tax

Mr Y has sought to claim for council tax under his policy. My starting point again is the policy terms. Under the heading “*Payment of rates*” this says:

*“Where **We** cover loss of **Rental Income**, **We** will also pay the cost of local authority rates on any empty **Buildings**, provided that:*

- a. the costs are solely incurred as a result of the tenant being able to frustrate the lease as a result of covered **Damage**; and*
- b. **We** will not cover any part of the **Insured Address** which were not tenanted at the time of the **Damage**. However, **We** will still cover **You** if a tenancy agreement had been signed in the 3 months immediately preceding the **Damage** and the agreement is cancelled as a result.”*

To my knowledge HDI hasn’t disputed parts a) and b) have been met. Simply that this cover for local authority rates does not extend to council tax payments.

HDI has given little in response to the Investigator’s assessment so I have little to go on. But on its face, local authority rate doesn’t have any set definition within the policy. And so, thinking about an everyday use of the phrase, council tax is set by local authorities and terms like bands/rates are used interchangeably online. As a result I’m satisfied in this particular case – and in the absence of much from HDI – that it needs to settle the council tax costs Mr Y is seeking. Alongside this it will need to pay him 8% simple interest from the date it was incurred until the date this is settled by HDI.

Compensation

I recognise Mr Y has shown great frustration with HDI’s complaint handling processes and said it failed to engage with him. As our Investigator has outlined these aren’t reasons this Service would direct a firm to make a payment – as we are not the regulator – we are not here to punish or penalise firms. In the absence of Mr Y providing anything further on this point to consider I’m not directing it to pay anything further beyond the £100 previously directed by our Investigator. I’m satisfied this fairly accounts for the mistakes caused on the part of HDI.

My final decision

I uphold this complaint and direct HDI Global Specialty SE to:

- Pay Mr Y £100 in compensation;
- Pay Mr Y the sum it previously reduced his loss of rent settlement by - alongside 8% simple interest from the date he received or was offered (whichever is earliest) the reduced settlement until the date this is settled by HDI;
- Settle Mr Y’s council tax for the period of loss – alongside 8% simple interest from the date he incurred these costs until the date this is settled by HDI.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr Y to accept or reject my decision before 9 January 2025.

Jack Baldry
Ombudsman