

The complaint

Mr H is unhappy that HDI Global SE-UK will only pay a reduced amount for a fire claim under his commercial property owners insurance policy, due to him being underinsured.

What happened

Mr H took out buildings insurance online for his commercial premises. The buildings sum insured was £250,000.

In 2019 he made a claim to HDI after a fire damaged part of the premises. HDI asked Mr H to obtain quotes to repair the damage.

It appointed a loss adjuster to investigate the claim. The loss adjuster calculated that the reinstatement value of the buildings was £1,090,000. HDI said as Mr H had only insured the building for 22.94% of the value at risk, it would only pay 22.94% of the repair costs.

After deducting the £250 excess, HDI offered Mr H £2,216 to settle the claim based on repair quotes provided by him.

Mr H complained to HDI. It didn't change its decision. It said under the terms of the policy it was entitled to apply "*average*" to the claim under an "*average clause*". This means that where the sum insured is inadequate, the insurer can reduce its liability for a claim by reducing the settlement proportionally.

Mr H brought his complaint to this service. Our investigator upheld the complaint. She didn't think HDI had acted fairly in reducing the settlement. She recommended that HDI should settle the claim in full less the policy excess.

As HDI didn't agree, the matter has been referred to me.

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.

HDI has pointed out that the original sale of this policy was conducted via a broker who recommended the policy to Mr H. The sum insured was selected by Mr H before the broker approached HDI. The broker in question doesn't seem to be linked to HDI in any way which means that HDI isn't responsible for the sale the broker made or any errors that might have occurred during the sale process. In this decision I'm only looking at the complaint against HDI as insurer.

I'll usually think it's reasonable for an insurer to apply the average clause if the policyholder was asked to confirm the total replacement/rebuild cost, given clear guidance as to how to calculate that figure and clearly told about the consequences of providing incorrect figures. In this case because of the way that the policy was sold to Mr H, HDI wasn't responsible for the questions Mr H was asked or for giving him guidance. But it was responsible for making

him aware that he might only get a reduced settlement if he was under-insured. So I've looked at the documentation provided to Mr H by HDI to see whether it met that requirement.

Mr H was sent a Schedule setting out the main terms of the cover. This simply states that the buildings sum insured was £250,000. Along with this was a Statement of Fact setting out the information from Mr H on the basis of which HDI had offered cover. There was an important warning at the start of the Statement of Fact. It said:

"When taking out insurance wholly or mainly for purposes related to your trade, business or profession, you have a duty under The Insurance Act 2015 to make a fair presentation of the risk. This means that you must disclose every material circumstance which you and/or your senior management and/or anyone responsible for arranging your insurance know or ought to know. Alternatively, you must disclose sufficient information which would put the insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances. You are expected to carry out a reasonable search in order to make a fair representation of the risk and will be deemed to know what should reasonably have been revealed by the search."

Your duty of fair representation applies at the start of the policy, at renewal and when any variation of the policy is arranged. If you fail to make a fair representation, the insurer may refuse to pay your claim or reduce the settlement amount, depending on the circumstances."

The Statement of Fact then set out various questions asked of Mr H and the answers he'd given. The questions covered such things as whether he'd ever had an insurance policy cancelled by the insurer. There were no questions in that document about the sum insured. So I don't think the warning set out above was sufficiently clear to put Mr H on notice that any claim he made for loss or damage to the building might be reduced if the building sum insured was less than the full reinstatement cost.

The other document provided by HDI was the policy itself. At the beginning of the policy was similar wording to the above warning. But again I don't think the context was sufficiently clear for Mr H to link it to the amount insured.

On page 21 of the policy HDI explained how it would settle claims. It stated:

"Basis of Settlement Clauses

1) Average

*If the **Property** covered by this Policy shall at the time of the **Damage** be collectively of greater value than the Sums Insured then the **Insured** shall be considered as being their own insurer for the difference and shall bear a rateable share of the **Damage** accordingly."*

I think it's particularly important to be very clear when explaining an average clause because the insurer's position will be counter-intuitive to many people. Unless they've had the position explained to them, policy holders may assume that it's up to them if they want to insure their property for less than its full value at their own risk and they may think the only consequence would be that they would only be paid up to the policy limit in the event of a total loss. That appears to have been the impression Mr H had.

Looking at the above average clause I don't think the consequences of under-insurance were explained in sufficiently clear terms that Mr H should have been aware that in the event of a claim HDI might be entitled to rely on the average clause to reduce the amount payable. I also don't think it was adequately highlighted to Mr H by being buried on page 21 of the 37 page policy document. For that reason I don't think it was fair for HDI to rely on the average clause. But it can rely on the sum insured as a total limit as this was clearly pointed out.

Putting things right

To put things right I think HDI should settle Mr H's claim subject to the policy limit. I also think in order to treat Mr H fairly HDI should add simple interest at 8% on the amount it should have paid out from the date of the claim to the date of settlement.

My final decision

I uphold this complaint and require HDI Global SE-UK to settle Mr H's claim in accordance with the terms of the policy, but without making any adjustment for under-insurance plus simple interest* at 8% on the amount it should have paid out from the date of the claim to the date of settlement.

*If HDI Global SE-UK considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 March 2021.

Elizabeth Grant
Ombudsman