

The complaint

Mr R complains HDI Global Specialty SE unfairly declined his building warranty claim.

What happened

Mr R's new-build property is covered by a ten-year 'Checkmate Castle 10' building warranty policy. The cover started in August 2018.

Within the first two years of the policy, Mr R made a claim for water ingress via the rear wall of his integrated garage. The front of the garage is below the lounge, and the rear is below a flat roof balcony area. The rear garage wall is a retaining wall, with 1.3m below the external ground level.

During the first two years of the policy, the original builder is responsible for the cost of putting right 'physical damage' caused by its failure to comply with the 'requirements'.

The 'requirements' are contained within Checkmate's technical manual that was in force at the time of construction.

The policy defines 'physical damage' as a material change in the physical condition of the 'new home' from its intended physical condition.

The 'physical damage' definition includes 'major physical damage', which the policy defines as a material change in the physical condition of a load bearing element of the 'new home' from its intended physical condition which adversely affects its structural stability or resistance to damp and water penetration.

The 'new home' definition includes integral garages.

Mr R says, in an attempt to resolve the problem, the builder took several actions which were unsuccessful.

The builder went on to cease trading. So, under the policy terms, HDI became responsible for the builder's obligations. HDI's surveyor attended. His report set out the following observations:

- Water ingress was visible during his first visit. Images were also provided by Mr R that showed an area of ponding to the garage floor after heavy rainfall.
- A revisit took place following heavy rain, and some water ponding was found on the garage floor, and the blockwork was wet to touch. However, there were no damp smells or mustiness within the dwelling.
- Part of the external face stonework was visibly wet, suggesting excessive water ingress is finding a way into the cavity from the flat roof upstand/parapet detail, along with the cavity tray/below ground damp proof membrane ('DPM') not being correctly installed.

- The 'requirements' state garages should have a minimum weather resistance equivalent to that provided by 100mm masonry pointed both sides of the wall. Although there's some water ingress, it's the amount expected from that specification.

The surveyor's report noted that *if* the claim was valid, the following actions are required:

- Remove decking adjoining the rear parapet wall to inspect/repair any flat roof covering upstand and gutter outlet.
- Expose the cavity tray to ensure its correctly positioned and it's a continuous tray, replace if required and install clean weepholes.
- Expose the external below ground waterproof membrane to ensure it extends 150mm above ground level, carry out remedial works if required.
- Replace the flashband with a lead flashing, over the below ground waterproof membrane upstand.

HDI pointed towards the following requirements in the technical manual:

- *"Integral garage – ensure that it is finished internally to a reasonable, basic level of decoration appropriate for its intended use. It is weathertight (not necessarily watertight, 100mm brick wall) and where abutting the house incorporates a suitable cavity tray and flashing."*
- In respect of garages and small outbuildings – *"Walls should have the minimum weather resistance equivalent to that provided by 100mm masonry pointed both sides of the wall."*

HDI said the rear wall consists of two leaves of 100mm blockwork, with a 125mm cavity filled with reinforcement and concrete, and therefore, the thickness of the wall meets the 'requirements'. On that basis, HDI declined the claim.

Mr R referred his complaint to our service, and one of our investigators thought it should be upheld. She noted that as per the 'requirements', an integral garage has to be weathertight. She didn't think Mr R's garage was weathertight given the problem arose when it rained.

HDI explained that whilst there was some water seepage through the rear wall of the garage following heavy rain, the rain doesn't penetrate through the wall at the time and it's more likely to be from the adjacent ground being waterlogged.

HDI accepted there was some 'physical damage' which is causing some water seepage into the garage. HDI said, in order to repair the damage, it would need to conduct further tests to ascertain where the damage is. However, HDI said Mr R hasn't been able to demonstrate there has been a failure of the 'requirements', so there isn't a valid claim.

HDI reiterated a garage isn't required to be weathertight in the same way a habitable part of the home is, and there's no requirement for a non-habitable space to be watertight, whether it's integral or not. HDI said if the water was entering the wall of the habitable areas, there would be a valid claim. However, there's no internal water ingress to the habitable areas.

Our investigator wasn't persuaded to change her outcome. HDI asked for a final decision from an ombudsman, so Mr R's complaint has been passed 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.

Where evidence is inconclusive, incomplete, or contradictory, I've reached my decision on the balance of probabilities. This means I've determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

HDI has accepted that the issue meets the policy definition of 'physical damage'. However, for the claim to be valid, the damage needs to have been caused by the builder's failure to comply with Checkmate's 'requirements'.

Simply because the retaining wall meets the 100mm thickness requirement for a garage, and rainfall doesn't directly penetrate, it doesn't necessarily follow that the garage is weathertight if rainwater is entering the garage by other means.

Whilst the technical manual seeks to differentiate between weathertight and watertight in relation to an integral garage, I don't find its intentions to be sufficiently clear. Ultimately, the water is rainwater, and the ingress occurs when it rains or shortly afterwards. So, *on balance*, I'm not persuaded the garage can reasonably be said to be weathertight.

HDI's surveyor noted the level of water ingress is the amount to be expected from a 100mm wall thickness specification. But given he concluded excessive water was finding a way into the cavity via the flat roof upstand/parapet detail, or the cavity tray or the DPM hadn't been installed correctly, it's clear he considered there to be a construction defect.

Furthermore, irrespective of the water ingress, it follows that those potential defects would be a material change in the intended physical condition of the property. HDI hasn't said anything that leads me to believe those potential defects wouldn't be a breach of the 'requirements'.

It's evident from the emails I've seen, that HDI wrestled with whether the 'requirements' have been breached. It's fair to say the matter isn't clear. But having considered the information presented, *on balance*, I'm not persuaded HDI fairly declined Mr R's claim. I'm more persuaded he has a valid claim.

In the circumstances, I consider HDI ought reasonably to cover the investigations, and if necessary, the repairs, its surveyor proposed.

Because I'm not persuaded HDI has dealt with the claim fairly, and I've seen this matter has caused Mr R a degree of inconvenience and upset, I'm also awarding him £200 compensation.

My final decision

For the reasons I've set out above, I uphold this complaint.

My final decision is HDI Global Specialty SE should:

- cover the investigations, and if necessary, the repairs, its surveyor proposed (as detailed in the background section of this final decision); and

- pay Mr R £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 September 2022.

Vince Martin
Ombudsman