

## The complaint

Ms H, Mr T, and Miss T complain that HDI Global Specialty SE caused delays in dealing with a claim under their landlord insurance policy, and subsequently declined cover.

Where I refer to HDI, this includes its agents and claims handlers.

For ease of reading, I'll mainly refer to Miss T as she brought the complaint to our service.

## What happened

Ms H, Mr T, and Miss T own a property which they let out. In late 2021, there was a leak which caused damage to the flat below. They received a letter from the neighbour asking for payment of £860 for the repairs.

On 2 December 2021, Miss T submitted a claim to HDI under the public liability section of the landlord insurance policy. She followed up with further information on 6 and 14 December, as well as chasing a response to her claim on 20 December.

Meanwhile, on 6 December 2021, the neighbour sent a letter before action stating they'd sought advice from a legal firm and would be issuing proceedings in the small claims court if payment is not received by 21 December 2021.

As Miss T hadn't received a response from HDI and she was concerned about being sued, she spoke to the building management company for advice. They informed her that as the leak was coming from her property, she was liable for the damage and that the neighbour didn't have to wait for Miss T's insurer to respond before taking legal action. So Miss T paid the neighbour for the repairs.

Due to an error on HDI's systems, Miss T's emails weren't attached to her file until 29 December 2021. HDI contacted the neighbour on 7 January 2022 and let Miss T know. By this time, Miss T had already settled the claim and she informed HDI it was too late. She asked it to reimburse her the £860.

HDI declined the claim. It said that by paying the neighbour, Miss T had accepted liability and prejudiced its position. If she hadn't, HDI say it would've defended the claim against the neighbour on the basis that Miss T was unaware of the leak as it was hidden, so no negligence had taken place.

Miss T brought a complaint to our service, which our Investigator upheld. He said Miss T had taken appropriate steps to mitigate the loss when HDI failed to respond to her. He said HDI should pay the claim.

Whilst Miss T accepted this outcome, HDI didn't. So the 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.

The Financial Conduct Authority's "Insurance: Conduct of Business Sourcebook" ("ICOBS") requires insurers to handle claims promptly and fairly.

Looking at the timeline set out above, I'm not persuaded that HDI dealt with the claim promptly – particularly given the threat of legal action. HDI acknowledges that this was down to an error with its systems for which it is responsible.

But HDI rely on the following policy condition:

*"In respect of any claim against You, We will not make any payment if You make any admission of liability, payment, offer of settlement or incur any costs or expenses without Our prior written agreement."*

I've thought about whether this is fair, but I'm not persuaded that it is. I say this because Miss T hadn't received any response to her claim - despite chasing - and there was no indication when she would hear back, if at all. With the threat of legal action, I don't think it was unreasonable for her to take alternative steps outside of her insurance policy to resolve the claim. She sought advice from an industry expert and mitigated her losses by paying the repairs.

HDI say it would've defended the claim against the neighbour, meaning neither it nor Miss T would've needed to pay the neighbour. But I haven't seen any legal advice to support that a defence on HDI's proposed basis would've been more likely than not to succeed. And if it didn't, HDI would've been responsible for both side's legal costs as well as the repairs.

From the information I've seen, I'm not satisfied that HDI dealt with this claim promptly and fairly. And it's provided insufficient evidence to show that its position has been prejudiced from Miss T's actions. For these reasons, I'm upholding the complaint and directing HDI to reimburse the cost of repairs plus 8% simple interest.

## **My final decision**

I uphold this complaint and direct HDI Global Specialty SE to pay Ms H, Mr T, and Miss T the sum of £860 plus 8% simple interest per annum\* from the date Miss T paid the neighbour until the date this settlement is paid.

\*If HDI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms H, Mr T, and Miss T how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H, Mr T and Miss T to accept or reject my decision before 15 February 2023.

Sheryl Sibley  
**Ombudsman**