

The complaint

Ms I has complained about her let property insurer HDI Global Speciality SE regarding a settlement offer it has made for repairs to her property, damaged by the outgoing tenants.

What happened

Ms I found her property was damaged and a loss adjuster, acting for HDI, in November 2020 said it would cost £48,652.51 to repair the property. Ms I wanted to settle the claim in cash. In an email to Ms I in December 2020, the loss adjuster, having noted costs for further provisional sums, said the agreed repair cost was £72,278.55. Following some further claim issues HDI then reviewed that value. In February 2022 HDI said the provisional sums, which had resulted in the figure of £72,000 in December 2020, had been discounted. Also that the costs had been reworked based on the initial scope totalling £48,652.51 – some figures making up that sum had been reduced or deducted altogether and some increased, or added – and the final settlement offer was £52,294.46.

Ms I felt this was unfair given the figure she'd been quoted in December 2020. She didn't understand how that could change so much – she had obtained two quotes around that same price, one of which had recently been revised upwards due to increased costs for materials. She said she didn't expect to get all of the cost she'd been quoted for repairs as she understood that as the cash settlement had been her choice, HDI could settle based on its costs. But she didn't think, taking everything into account, that £52,294.46 was a fair price for the work which had been accepted was needed. Ms I complained to us.

Our Investigator felt HDI had shown its offer was fair. Ms I disagreed. HDI advised that it had since negotiated an increase to its offer with Ms I to £68,000 (although it didn't tell us what made up that increased figure). Ms I asked for an Ombudsman's consideration.

The complaint came to me and I felt that HDI's offer of £52,294.64 was flawed. I issued a provisional decision to explain what I felt HDI should pay and also that I couldn't comment on its later offer of £68,000. I said:

"I intend to uphold this complaint. But I'll explain at the outset that I can't comment on the validity of the recent increased offer. Clearly Ms I is still unhappy with that sum and I can't say whether it is fair or not as the detail behind it hasn't been put forwards as part of this complaint. So I will focus on the matter as it came before us – that HDI's final offer was £52,294 and Ms I felt that was unfair. My view is that HDI's final offer is unfair and I intend to require that it is increased. I'll explain below why that is and what I think needs to be added. The parties will then have a chance to respond and/or they may wish to agree settlement based on HDI's revised offer.

The sum of £48,652.51 was originally calculated in 2020. HDI's final offer, based in part on the values that made up that sum, was put forward in February 2022. Yet no allowance was made for the time that had passed and which would likely have impacted the reasonable cost for works. So, even on that very basic point, HDI's final offer was flawed. But I've then looked more closely at the values and amendments HDI made.

HDI removed all costs from that sum for enabling works, including provision of scaffolding, and labour costs for preparing damaged walls for painting. But no work had been done at Ms I's property – she would still need to pay for enabling work and labour costs for repairing the walls. So deducting these sums wasn't fair.

HDI then took out the costs for removing and replacing the fire surrounds in both lounges at the property, and an amount for asbestos testing. I think HDI was unreasonable in removing costs for both the fire surrounds – as one was damaged. But taking off the cost of £1,500 for one of the fireplaces is, I think, reasonable as I haven't seen anything showing that both were damaged. And, assuming HDI can share its asbestos tests with Ms I, removal of the £264.10 cost for testing, is reasonable. That is because HDI did do the tests, those for the house were negative and that for the garage was positive. So HDI should share those results with Ms I, and she won't need to pay for further testing to be done.

So the only sums I'm satisfied that HDI can fairly deduct from the initially stated cost of £48,652.51 is £1,500 for one fireplace and £264.10 for the asbestos testing. That gives a figure of £46,888.41 for HDI to pay Ms I. To account for the change of prices since that sum was set, HDI should add 8% interest to that figure from 6 November 2020, the date of the scope, until settlement is made.

HDI did though, as I mentioned above, increase some of the figures that made up that initial sum. For example – the initial price allowed only £4,000 for replacement windows whereas the final settlement allowed £11,616.90. An uplift of £7,616.90. And it also added a cost for the garage. The total of the uplifted and additional costs is £13,077.38. I've not seen anything to make me think these additional sums are unfair or need increasing. But that final offer was calculated on 20 January 2022 and no payment has yet been made. So this sum should also be paid to Ms I now, plus 8% interest from 20 January 2022.

HDI's offer is also silent on the issue of VAT. HDI's figures don't include VAT and I wouldn't usually expect an insurer to pay VAT upfront for property repairs. But HDI should have explained to Ms I that VAT on the repair costs would be something she could claim for once work was done and VAT became due. The sum of £46,888.41 and £13,077.38 is £59,965.79. The cost for VAT on that sum is £11,993.16. I intend to require HDI to pay Ms I the cost of VAT she incurs for completing work at her property up to the value of £11,993.16. This is to be paid by HDI when Ms I shows it work has been done and what her cost for VAT for that work is.

I haven't seen anything that makes me think other work is required at the property which is not accounted for in the initial or final settlement sums. I note that Ms I's contractor's quote is for a lot more. But it seems he has included provisional sums. And he has explained that these are provisional, for things like decorating, as the true cost will depend on Ms I's choice of materials. But HDI has costed the work based on like-for-like reinstatement. And that is what the policy allows for. I also see that Ms I's quote includes replacement of both fires – not just the surround for one of the fires. And I haven't seen anything that makes me think the fires themselves (or the second of the two surrounds) were damaged.

I know Ms I is upset that HDI's original offer of around £72,000 was rescinded. And I do accept that she was told that this was the "accepted cost of the work". Clearly, for me, that sum included figures that weren't fully accepted as being necessary – so the £72,000 was really the accepted cost of hypothetically required work. But that wasn't made clear to Ms I. I think HDI misled Ms I in this respect. I note it has apologised for that. But I think that, along with what I have found to be the unfair and unreasonable final settlement offer, has caused her frustration and upset as well as impacting the length of the claim. This service views upset, frustration and the like to be a non-financial loss. And for that I can award compensation. I think £500 compensation is fairly and reasonably due in this instance."

HDI said it had nothing further to add.

Ms I thanked me for my findings but asked that I review what I'd said about several points. In summary she said:

- The loss adjuster's photos show that both fireplaces were damaged. So she'd like costs for the second fireplace to be added back on.
- The initial cost for windows and the garage weren't really increased – rather costs for the windows to be repaired were initially used but later it was accepted that replacement was needed, and the garage was missing entirely from the original scope.
- No increase has been made to account for the cost of materials having gone up since the prices were agreed.

Ms I also asked that a compromise be reached in respect of VAT. She said she'd like HDI to pay half the VAT sum as part of the settlement for this complaint, and she will forego the rest. That will enable them all to move on as quickly as possible. Our Investigator put this request to HDI but it said it could only pay VAT when proof is shown that Ms I has incurred a loss in this respect.

Ms I finally asked that we monitor the situation post my final decision to ensure that HDI makes the correct payments, and promptly too. She said this is because her health is poor and worrying about the final payments, if they are delayed or incorrect, will affect her.

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.

I've considered the detail from the loss adjuster. The reports make reference to one damaged fireplace and the photos show one fireplace, with the damage referred to. I'm not persuaded that both fireplaces were damaged or that it would be fair and reasonable for me to make HDI pay for both of them.

I can assure Ms I that the original scope does refer to £4,000 being allowed for replacement windows. And the cost for reinstating the garage wasn't included. Whilst I can understand that Ms I might then not see the later sums offered for these items as increased amounts, they do equate to HDI offering more in settlement for the claim, as against what was originally offered.

I appreciate that costs have likely changed since the cost for work was set in 2020, and even since certain aspects were revised and/or added in early 2022. I have accounted for this, as is often the approach of this service, by awarding interest*.

I understand why Ms I would seek to reach a compromise agreement on VAT. But I can also understand why HDI isn't prepared to make an agreement in that respect. Quite simply VAT is not always charged, and when it is, it only becomes payable once work is completed. HDI

is only liable to Ms I for losses. So until VAT is charged and becomes payable, strictly speaking, there is no loss for HDI to respond to. I bear in mind that half the VAT sum is not an insignificant amount. So, with no loss having yet occurred, I can't fairly and reasonably say HDI should agree to the compromise Ms I has put forwards. As such, my provisional award – of reimbursement of VAT once VAT is shown as due – will remain.

I completely understand that this has been a difficult time for Ms I and that she wants to be assured of a smooth conclusion to this prolonged claim, which resulted in this complaint. I trust that HDI will facilitate that. If it doesn't, we will likely endeavour to assist resolution by contacting it. But I need to manage Ms I's expectations here – my final decision marks the end of our process. Which means we won't be formally involved in progressing matters after our Investigator informs HDI that Ms I has accepted my final decision, if she does. I truly hope this won't be necessary but Ms I should be aware that this service does not enforce the decisions we issue. If a business does not comply with the redress, it is the courts that would enforce the decision outcome and Ms I would need to take advice about doing that.

Putting things right

I require HDI to share its asbestos test results with Ms I and pay her:

- £46,888.41, plus interest* from 6 November 2020 until settlement is made.
- £13,077.38, plus interest* from 20 January 2022 until settlement is made.
- Upon sight of proof from Ms I that VAT on insured works is due, her cost for VAT on that work up to a maximum of £11,993.16. This payment should be made within one month of Ms I submitting reasonable proof of her VAT cost to it. If payment is made after that time, then interest* will have to be added to the amount due to Ms I for VAT from the date Ms I submitted the proof until settlement is made.
- £500 compensation for non-financial loss.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires HDI to take off tax from this interest. If asked, it must give Ms I a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require HDI Global Speciality SE to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 29 November 2022.

Fiona Robinson

Ombudsman