

The complaint

Miss B complains about HDI Global Specialty SE (“HDI”) for declining her claim for damage to her home following an ingress of water. She wants HDI to settle her claim for repairs to her home.

What happened

Miss B lives in a semi-detached property with a converted and tanked cellar which she uses for storage. She insured her home and contents with HDI. This included cover for escape of water, and for trace and access to find the source of any leak.

In November 2021, Miss B went into her cellar and discovered that the laminate floor was saturated with water. She removed the laminate to try to find the source of the water and believed that this was coming from the party wall between her and her neighbour’s homes.

That property was tenanted and, when she contacted the owner, they did not acknowledge any issue and denied having a cellar.

Miss B submitted a claim on her home insurance. HDI assigned her claim to a third party to handle the claim. For the purposes of this complaint I will attribute all actions of the third party to HDI.

HDI’s loss adjuster attended the property a few days later. They produced a report.

The report detailed that there was “video and photographic evidence further supporting our physical inspection suggesting moisture is penetrating through the shared wall to the neighbouring property”.

It stated that the loss adjuster had requested that Miss B contact the company who installed the tanking and obtain a report on why the tanking had failed “however in the event that [Miss B] is unsuccessful we would look to obtain a report from an approved specialist given the possible third-party involvement with the neighbouring property.”

It stated “We note that in the first instance we would look to outline the cause of damage to assist with any potential subrogation effort and to confirm policy cover,..”. It then stated that “At this stage we cannot confirm whether the policy will respond..”

HDI removed Miss B’s possessions into storage and for assessment as part of her claim.

In January 2022, HDI wrote to Miss B declining her buildings claim. The decision set out that the policy had exclusions “which would prevent a claim from being accepted. An example would be wear and tear, or gradual deterioration”.

It stated that the professional opinion outlined that the tanking system was not fully functioning and appeared to have reached the end of its life. It stated that there was no evidence of a one-off peril causing damage to the tanking system, and that the claim was therefore not covered. It also ruled out the buildings damage being treated as accidental damage as it said that the damage to the building had occurred gradually.

HDI then said that it would be able to cover the cost of repair or replacement of contents that had been damaged “by this sudden presence of water”.

Miss B complained to HDI. HDI sent its final response in February 2022 maintaining its decision to decline the buildings claim. It acknowledged that the contents claim was ongoing and that this was delayed. HDI offered Miss B £200 compensation to reflect failings in service that she had experienced.

Miss B was not happy and contacted us.

HDI subsequently offered Miss B a settlement of her contents that were damaged by the sudden presence of water, for around £4450, minus her excess.

Miss B later observed work ongoing outside her neighbour’s property by drainage and leak detection contractors and she took photographs of this. The work appeared to involve underground pipes and water being pumped away from the property. Miss B has reported that since this time the water ingress into her cellar has stopped.

Our investigator looked into this matter and set out her view to the parties. This was that HDI had unfairly declined the buildings claim. She considered that the loss adjuster had observed that the water may be coming from the neighbouring property and had advised that further investigations needed to take place. As HDI had not undertaken those investigations, **she was not persuaded that it had fairly concluded that there was no insured peril. She recommended that HDI settle the claim and increase its** compensation to Miss B.

HDI did not accept that view and asked for an ombudsman 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.

My colleague has previously set out a thorough and considered view, analysing the policy cover, and the exclusions which HDI relied upon.

To summarise her view, the policy covered damage caused by an escape of water from a fixed water appliance, and there were no specific exclusions relating to escape of water which HDI had applied to this claim.

The policy included general exclusions, rejecting damage which occurred gradually over time, or damage which occurred due to wear and tear. My colleague did not consider that HDI had demonstrated that these exclusions applied to Miss B’s situation.

I agree with her view, and I consider that HDI has not approached this claim in a reasonable way.

Firstly, HDI asked Miss B to obtain a report on the adequacy of the tanking. I cannot see that this was justified as this did not affect the cause of the water, and it could only be relevant in respect of loss or mitigation of loss. The first step ought to have been assessing the cause of the water, both for the claim and so that it could be stopped from causing further damage.

In this instance, there is no evidence that the damage to Miss B’s building occurred gradually over time. If damage had occurred over time, we would expect that a loss adjuster would observe this and explain how they supported their view, such as if they saw signs of mould or rot. No such evidence was included in the loss adjuster’s report and I therefore

understand that no evidence of gradual damage was observed during that visit.

Instead, the evidence supports that the cellar experienced a sudden ingress of water, which breached the tanking, penetrated the walls and caused damage. HDI has accepted, in respect of Miss B's contents claim, that the damage met its policy definition for accidental damage, which is damage caused by "an unintentional and one off incident".

HDI ultimately concluded that Miss B had not demonstrated that there was an insured peril. I do not agree. She had shown that water entered her cellar, suddenly, and she and the loss adjuster both observed that this came through the party wall with her neighbour's home. She has also provided evidence indicating that repairs have taken place at the neighbouring property, and that this has stopped the water ingress. This all points to an escape of water in the neighbouring property. Without the co-operation of her neighbour, I do not see what more she could be reasonably expected to demonstrate.

HDI then concluded that it is more likely than not that the damage was caused by the tanking failing. HDI has not provided evidence for this and HDI did not out the further assessment of the cause of the water ingress as recommended by the loss adjuster at their initial visit.

To be clear, I have not seen any evidence that the tanking was defective. In fact, the account of Miss B - that the water ingress has stopped since works were carried out next door - suggests that the tanking remains functional and effective for keeping out ordinary levels of ground water.

I therefore do not think it reasonable for HDI to rely on its assertion that the tanking was responsible for the water penetration, without evidence.

In any event, the tanking clearly was not the source of the water, or the cause of the damage.

HDI has made various submissions arguing that it is pertinent whether the water in this case was ground water or water coming from a pipe, and HDI discusses whether water from a pipe may become ground water and then penetrate the property. HDI also discusses the expectations of a tanking system, and what it ought to reasonably withstand.

I do not consider it necessary to go into these arguments as they all rely on speculation about how the water came to be penetrating Miss B's cellar.

HDI had an opportunity to investigate the cause of the water, and chose not to do so. On the basis that it elected not to carry out recommended investigations and then based its decision to decline on speculation, I agree that its decision to decline was unfair and I uphold Miss B's complaint.

Putting things right

I agree with my colleague's view that HDI should now settle the claim in line with the other policy terms.

I do not think it fair to allow HDI to now consider further policy exclusions as its decision not to carry out trace and access meant that the water ingress continued for much longer than it might have done, and likely caused greater damage than it might have done if investigated and halted sooner. It should therefore meet Miss B's claim in full. In reimbursing any costs which Miss B has incurred, HDI must also add interest at the rate of 8% per annum from the date of payment up until the date of settlement.

I also agree with my colleague's assessment of the distress and inconvenience compensation which should be paid to Miss B. This is reasonable and in line with other awards we would make in similar circumstances.

My final decision

For the reasons given above, I uphold Miss B's complaint and direct HDI Global Specialty SE to:

- settle Miss B's buildings claim in full;
- when reimbursing any costs which Miss B has already incurred, to add to this interest at the rate of 8% per annum; and
- pay to Miss B a total of £400 compensation for her distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 11 January 2023.

Laura Garvin-Smith
Ombudsman