

The complaint

M is a limited company. It complains HDI Global Speciality unfairly refused to pay its insurance claim until it paid an additional premium.

HDI had an agent acting on its behalf. For simplicity I've referred to the representatives' actions as being those of HDI.

What happened

In August 2020 M took out business insurance with HDI. It renewed in August 2021. In June 2022 M made a claim for damage to an electrical item. During validation HDI discovered what it considered a previous 'claimable event' – theft of an item of jewellery. It said M had failed to declare this when taking out the policy. It said as a result M would need to pay an additional premium (AP) of £626 if it wanted to proceed with its claim.

M refused to pay the additional £626 premium. It said it had informed HDI of the pre-policy theft of the jewellery. And it said it hadn't made a claim for the loss as it didn't have any cover in place at the time.

In September 2022 HDI responded to M's complaint. It said M had breached its duty to make a fair presentation of the risk when taking out the cover. It said M had failed to do so when answering 'no' when asked if it had made any claims in the last five years. HDI repeated its requirement for M to pay the AP before the claim could proceed. M continued to refuse. So HDI declined the claim, saying there was no cover in place. To resolve its complaint M wants HDI to pay the claim.

In February 2023 our investigator considered M's complaint. He didn't agree M had breached its duty to provide a fair presentation of the risk. So he said HDI couldn't fairly require the AP. So he recommended it deal with M's June 2022 claim in line with the terms of the policy. He also said HDI should pay M £250 to recognise the impact of its mistake. M accepted that outcome, but HDI didn't. So the complaint was given to me to decide.

This decision only considers the demand for the AP and HDI's refusal of the June 2022 claim for its non-payment. It doesn't look at HDI's cancellation of a later policy or its response to a further claim made in Autumn 2022. If M would like those issues considered by this service, it should complain to HDI first.

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.

That means considering if HDI's decision to demand the AP and decline the June 2022 claim for non-payment was fair and reasonable – and in line with the relevant legislation. In particular I've considered the Insurance Act 2015 (the Act). Having done so, I've decided HDI didn't treat M fairly.

The claim was made against the August 2021 policy. HDI seems to have demanded the AP for that policy year. It feels the IA15 allows it to do so. So I've first considered if it's reasonable to say M breached its duty, set out in the IA15, to present a fair presentation of the risk.

The August 2021 renewal involved a phone call. HDI says during it M confirmed it had made no claims. In the absence of a transcript or call recording I'll assume the question asked was the same as that in the renewal and other policy documents (and the same one HDI say M was asked on a comparison site in August 2020). This is:

'Have you made any claims (whether insured or not) or has anyone asked you for compensation in the last five years?'

I've considered HDI's comments on the IA15 duty and warnings M was given about the need to provide a fair presentation of the risk. HDI says these mean M had to declare any 'claimable events'. But I've also considered that it's fair and reasonable for an insurer to ask a clear question to find out what it wants to know.

M didn't provide inaccurate information in response to the actual question. It's accepted there hadn't been a claim. And M was asked if it had made any claims. It wasn't asked if there had been any 'claimable events'. Neither was it asked (as in common in my experience) if there had been any 'losses'. So 'no' was a reasonable answer to HDI's question.

HDI's feels the inclusion of '*whether insured or not*' in the question makes it clear. I don't agree. The question asks about 'claims'. If HDI wants to know about all losses (as it appears to) then it isn't asking a clear question, instead it's a misleading and unfair one. And based on what M's said, I'm satisfied it would have declared the loss had it been asked a clear question.

So I don't think it's fair or reasonable for HDI to say M breached its duty to present a fair presentation of the risk. And as that duty wasn't breached it had no remedies available to it under the IA15.

That means HDI's request for an AP for the August 2021 policy was unfair. It follows that its decline of the June 2022 claim, for non-payment, was unreasonable.

In the event the £626 AP was in part to cover the August 2020 policy the outcome is the same. For the same reasons as set out above I don't accept it's reasonable to say M breached its fair presentation duty for that policy either— so HDI can't fairly demand an AP for that cover.

So HDI will need to take various steps to put things right for M. It will need to withdraw its demand for the AP. It will need to consider the June 2022 claim against the terms of M's policy.

Finally HDI will need to pay M £250 compensation. I can see M's had to spend a fairly significant amount of time dealing with HDI's unfair request for the AP and decline of its claim – rather than with its normal business activities. So HDI will need to pay the compensation to make up for that inconvenience.

My final decision

For the reasons given above, I require HDI Global Specialty SE to:

- withdraw its demand for the £626 of additional premium,
- consider M's June 2022 claim against the terms of the policy and
- pay it £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 August 2023.

Daniel Martin
Ombudsman