

## The complaint

Mr F and Mrs F complain that HDI Global Specialty SE (HDI) has unfairly declined a home insurance claim after their home was damaged by fire.

Mr F and Mrs F are being represented by a third party but for ease of reading I will refer only to Mr F in my decision.

## What happened

In August 2021 Mr F said he'd fallen asleep on the settee whilst watching the television. But awoke feeling sick and dizzy, he said he found an armchair was on fire. He said as he rushed outside, he fell injuring his back. The fire brigade attended, and the fire was put out. Mr F said he didn't know the cause of the fire but thought as he was a smoker, he might have dropped a cigarette or some ash.

Mr F told his insurer HDI about the fire the next day, but as it was a bank holiday, they couldn't arrange alternative accommodation for a few days. Mr F said he and his family didn't have any clothes or toiletries. He said despite being injured he had to arrange for hotel accommodation for him and his family. Subsequently Mr F said HDI accepted his claim and made a £2,000 initial payment. But he regularly had to chase for his accommodation costs. And later HDI declined his claim as they said the armchair could only have caught fire and sustained the flames if it had been started by a naked flame. Their forensic reports didn't accept Mr F's account of his smoking causing the fire. They determined the fire was caused by a deliberate act. Mr F complained to HDI saying he'd:

- concerns about how HDI had handled his claim in the immediate aftermath of the fire,
- the process of finding alternative accommodation, and
- the decision to decline the claim.

HDI said they'd looked to help Mr F in finding suitable alternative accommodation. They made an initial payment of £2,000 and subsequently a monthly allowance of £1,000. HDI said their forensic tests showed that a cigarette smouldering couldn't cause the flaming combustion that caused the damage to the armchair. They said their tests showed the fire damage was most likely caused by an open flame ignition, such as a gas lighter. They said they declined Mr F's claim under the exclusion in his policy, "*Any loss, damage, bodily injury or liability caused deliberately, maliciously, wilfully, recklessly by you, your family, lodgers, paying guests, tenants or employees.*" HDI acknowledged there had been some unnecessary delays and offered Mr F £500 to compensate him for this. And said they wouldn't seek reimbursement of any without prejudice payments they'd already made.

Mr F wasn't happy with HDI's response about his claim being declined. He said that he'd put forward the possibility that falling ash had caused the fire, as he didn't know how it had begun. And that HDI hadn't considered other possible ways the fire could have started. He referred his complaint to us.

Our investigator said that the fire brigade report referred to the incident as a standard house fire that didn't require further investigation. And Mr F had shown there was paper and other inflammable materials around the armchair that could have caught fire. He didn't think HDI

had acted fairly and reasonably in applying the policy exclusion, and asked HDI to reassess Mr F's claim. HDI didn't accept our investigator's outcome and asked for an ombudsman to decide.

### **Mr F hasn't 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.

What remains in dispute is HDI's decision to decline Mr F's insurance claim. So, it is this that I will consider in my decision. Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened or not considering the available evidence and the wider circumstances. Having done so I'm upholding this complaint. I'll explain why.

It's not for me to determine the cause of the fire, or even the outcome for the claim. Rather it's for me to consider whether HDI acted fairly and reasonably in assessing and determining the claim. In this case the determination was that HDI declined Mr F's claim.

HDI, like many insurers, doesn't agree to offer cover for anything and everything that may occur. Rather, as their policy explains, they offer cover against damage caused by a list of certain events or perils. The policy also contains various exclusions to cover, where if damage is caused or affected by situations subject to the exclusions, HDI won't be liable for the claim.

It's for HDI to show, where they decline a claim based on an exclusion, that it's most likely that the exclusion in question applies in the circumstances of the claim and can, therefore, fairly and reasonably be relied on. HDI after carrying out their investigation which included forensic tests said they'd found on the balance of probabilities; the cause of the fire was an armchair catching fire. The forensic tests showed the armchair wouldn't ignite from a smouldering cigarette but would from a naked flame, such as a gas lighter. And concluded it would have had to have been intentionally applied for the flaming combustion of the armchair. As Mr F was the only person in the house at the time of the fire, they decided he'd deliberately started the fire. The exclusion in question here that HDI applied in declining Mr F's claim is:

*"Any loss, damage, bodily injury or liability caused deliberately, maliciously, wilfully, recklessly by you, your family, lodgers, paying guests, tenants or employees."*

I've looked closely at HDI's handling of Mr F's claim, and the exclusion they've applied to decline it to see if they've acted within the terms and conditions of his policy and treated him fairly.

#### *Fire brigade report*

I've looked at the fire incident report this shows that the time between the incident and discovery was *"under five minutes"*. And that the call to the fire brigade was *"immediate"*. The report also says the cause of the fire was *"accidental"*, with the main cause given as *"Careless handling - due to careless disposal"*. The report says the source of the ignition was *"Matches and candles-matches"*. The report also said Mr F was *"overcome by gas, smoke or toxic fumes, asphyxiation."*

The incident report has been further expanded on in a later statement that said:

*“main area of the damage was in the corner of the room, in the vicinity of an armchair. When the fire was extinguished there was significant fire damage to that room and it was not possible to say what the cause was.”*

It was explained that it wasn't known why matches and candles had been mentioned in the original report as Mr F hadn't said anything about this or about any possible cause of the fire. The statement went on to say:

*“We did not smell accelerants or see anything else which might raise concerns about how the fire started or spread. I did not request that fire investigation officers attend. It seemed like a standard house fire.”*

The statement also says that Mr F appeared “*confused*”.

#### *Fire investigation summary report*

In September 2021 HDI instructed a fire investigator to determine the origin and cause of the fire at Mr F's home. The report says:

*“There are a number of possible causes which may have led to the ignition and spread of this fire.”*

And lists these as being abnormal electrical activity, discarded cigarette igniting combustible material and deliberate ignition.

The report considered all three elements, the first was discounted as there wasn't any evidence of an electrical device or activity being the cause of the fire. But said it was possible that a:

*“smouldering cigarette end had come into sustained contact with suitable ignitable material I am unable to rule this out as a cause of this fire's uncontrolled development.”*

And stated there wasn't any physical evidence of the fire being caused deliberately remaining on the scene. The report referred to:

*“evidence of Mr F being in financial difficulty and witness reports of a domestic disturbance”*

#### *Forensic report*

I've looked at the findings of the forensic report, a chair seat, back rest pad, cushions and loose seat cover from the armchair were recovered from the premises and used in the tests. The test used a smouldering cigarette to see whether this would bring about flaming combustion. But it didn't, flaming combustion was only caused to the seat pad and cover by the use of a naked flame. The report suggests that the naked flame could be brought about using a gas lighter.

Mr F's testimony throughout has been that he didn't know the cause but conjectured that as he smokes it might have been from a cigarette. He has said that he and his wife only ever smoked outside the front door, which the previous reports confirmed as there were several cigarette ends visible outside this door. Mr F said the cause of the fire could possibly have been ash falling from a cigarette or a dropped cigarette as he went from his front door, through to the back garden to quieten his dogs. His route would have taken him passed the armchair and through the kitchen.

Mr F has also said that behind the armchair that caught fire is a desk where receipts, invoices and other paperwork is kept, and that his wife sometimes rests paperwork on the armchair before putting it into the desk. I can see that there is evidence of combustible material such as paper being present in the vicinity of the armchair that caught fire. And from pictures of the armchair there is evidence of fire damage at the base as well as the arms and back.

The exclusion term used by HDI covers, a deliberate, malicious, wilful, reckless act done by Mr F or family members. Mr F was alone at home at the time. HDI declined Mr F's claim as they considered the fire had been started deliberately. HDI based their decision on the forensic reports and information regarding Mr F's finances and from a neighbour's report of a recent domestic disturbance.

I think HDI has placed emphasis on Mr F's financial circumstances and the comments from his neighbours. But Mr F disputes his neighbour's account and has said there was discord between them which I think places some doubt on the neighbour's account of what happened the night of the fire. The neighbour suggests Mr F was intoxicated, but as shown by the fire report, Mr F was overcome by fumes and was "*confused*". Mr F has also clarified the details about his financial circumstances which were accepted by HDI. And I've noted that Mr F said they'd recently had a new kitchen fitted at the property. So, I don't think HDI has shown enough evidence to conclude Mr F had any cause to deliberately set fire to his own home.

I wouldn't expect an insurer to do endless tests to make absolutely sure of their findings. But while the forensic tests show the armchair could have only ignited from a naked flame being applied. I haven't seen any evidence to show whether a naked flame could have been brought about in another way. For example, combustible material, such as paper that was or could have been present near to the armchair which could have ignited from a smouldering cigarette or falling ash.

So, I'm not satisfied that on the balance of probabilities the only cause of the fire was the armchair being deliberately set alight. I don't think the forensic report has discounted other sources of combustible material that could have led to there being a naked flame that accidentally caused the fire.

### **Putting things right**

As I'm not satisfied HDI has applied the exclusion term they used to decline Mr F's claim fairly and reasonably. They should reconsider his claim.

**My final decision**

I'm upholding this complaint and directing HDI Global Specialty SE to reconsider Mr F and Mrs F's claim under their insurance cover (subject to the terms, limits and conditions).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 17 July 2023.

Anne Scarr  
**Ombudsman**