

The complaint

Ms L, trading as S, complains HDI Global Specialty SE turned down a claim she made on S's property owner's insurance policy.

Ms L is represented by her partner, Mr H.

What happened

In November 2022 Ms L contacted HDI to claim on the legal expenses section of S's policy. She said tenants (who'd now left the property) had made a claim for expenditure incurred as they thought the tenancy agreement entitled them to purchase it. Ms L wanted cover to defend that claim and pursue a counterclaim against the tenants for damage.

HDI requested further information about what happened. Having considered that it said the policy didn't provide cover for a dispute existing prior to its start date which the insured could reasonably know would lead to a claim. In this case the tenants had met with Mr H in May 2022 when they were told they wouldn't be able to purchase the property. And that was prior to the start of the policy. So it thought the exclusion applied and turned down the claim.

Our investigator wasn't satisfied the meeting with the tenants in May 2022 was something S could reasonably have known would give rise to a claim. Following that the tenancy continued as normal. Ms L and Mr H said they were shocked when the tenants subsequently issued court proceedings. She didn't think HDI had correctly turned down the claim.

She said HDI should reconsider the claim against the remaining policy terms. If cover was available it would need to reimburse S the legal costs it had incurred (plus interest at 8% simple on any costs already paid from the date of payment to the date of settlement). And it should also pay S £250 in recognition of the inconvenience it had been caused.

Mr H reiterated why he thought HDI wrongly turned down the claim. HDI didn't agree with our investigator. In summary it said:

- It was concerned the legal expenses insurance had only been added to the policy after it started. Although S said cover began on 29 June 2022 legal expense cover had only been included on 17 August 2022. It also said that adjustment shouldn't have been agreed although accepted this appeared to be a broker issue.
- In relation to the dispute start date it said court papers referenced relations between the insured and the tenant deteriorating immediately after the lease was signed. It thought S was likely aware of the dispute following the May meeting rather than when a letter was received on 28 August 2022 (only 11 days after legal expenses cover had been added).
- It also asked whether an insured event had taken place. It questioned whether this was an agreement under the Landlord and Tenant Act 1954 (or equivalent given the location of S's property) as required by the policy. Even if it was it said this was a claim from the tenants on the basis of a misunderstanding over an option to buy the property. So arguably this wasn't a dispute relating to or arising from the lease agreement.

In summary HDI said it was challenging the conclusion that the dispute didn't predate the policy start date. And it was asking us to consider whether an insured event had actually taken place. It also questioned whether the claim should be covered given that costs had been incurred without its consent and the policy excluded claims where that was the case. So I need to reach a final 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.

The relevant rules and industry guidelines say HDI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've thought first about whether this dispute does predate the start of the policy given that's what HDI relied on to decline the claim in correspondence with S. The relevant exclusion says *"the insured is not covered for any claim arising from or relating to... any actual or alleged act, omission or dispute happening before, or existing at the start of the insurance provided by this policy, and which the Insured knew or ought reasonably to have known could lead to a claim"*.

HDI has referred to court submissions from the tenants which refer to the relationship between the tenants and S deteriorating from soon after the lease was signed. But the claim in this case primarily relates to expenditure the tenant incurred on the understanding they would be able to purchase the property. So for the exclusion to apply there would need to be a dispute about that. And S would reasonably need to have thought that would lead to a claim prior to the policy start date.

HDI has focussed on a meeting between the tenants and Mr H which took place in May 2022. It says at that the tenants were told the property would not be sold which contradicted their understanding of the lease agreement. And it's therefore from then the landlord and tenant had different views on the purchase of the property which is what the subsequent claim was about.

I don't think it's in dispute there was a discussion at that meeting about whether the tenants would be able to purchase the property. But a discussion doesn't equate to a dispute. And the notes Mr H has provided of that meeting (which I understand formed part of his witness statement to the court) don't suggest the tenant challenged his position in relation to the sale of the property at that time. Nor does this issue appear to have been raised in any subsequent correspondence prior to the policy start date.

That doesn't necessarily mean the tenants had accepted S's position. They may still have regarded this as a matter in dispute (regardless of whether they were justified in thinking that). But for the policy exclusion to apply not only does there need to be a dispute but the insured needs to know, or reasonably have known, that could lead to a claim. The tenants don't appear to have suggested they would be taking this issue further (indeed they don't appear to have raised it all prior to the policy start date). So I think S could have thought they had accepted its position on the lease (whether that was the case or not) and wouldn't have known this issue which would lead to a claim on the policy prior to its start date.

I think that's supported by a later note of a meeting with the tenants on 20 August 2022 (which I appreciate was taken by Mr H but is contemporaneous) in which the tenants are recorded as saying *"they thought they had an agreement to buy but have now accepted they*

did not". So I don't think the exclusion does apply and it follows that I don't think HDI has fairly turned down the claim on that basis.

HDI has also expressed concern legal expenses insurance was added to S's policy only shortly before a claim letter was received from its tenants. Mr H has told us when reviewing documentation generally in August 2022 (after a problem with utility bills) he realised that the name of the insured on the policy was incorrect and legal expenses cover hadn't been included as he thought it should have been. And so he contacted the broker about this.

I think his position is supported by the fact the updated policy schedule following the mid-term adjustment records the effective date for cover as 29 June 2022. I can also see that S did have legal expenses cover included on its policy with its previous insurer. Taking all of that into account I think it likely it was an oversight that led to this not being included from the outset. And so, while I appreciate why the timings in themselves might cause HDI concern, I don't think they're supported by other evidence.

In its most recent correspondence with us HDI has also queried whether the claim S made is an insured event under the policy at all. It's referenced the policy wording as it relates to the Landlord and Tenant Act 1954 and the need for the dispute to relate to arise from a lease issued under that Act.

I think this dispute does arise from the agreement between S and its tenants. The emailed claim letter the tenants sent on 28 August 2022 said they wanted to be recompensed for the improvements made to the property *"on the understanding that we would be able to purchase the property as per Clause 3.4 of the tenancy agreement"*. But it's less clear to me whether that agreement is one granted under the Landlord and Tenant Act 1954.

However, this isn't a ground for declining the claim HDI has relied on in correspondence with S. In its final response to the complaint it said *"while it appears, on the face of it, a dispute with your business tenant that arises from or relates to a written agreement granted under the Landlords & Tenants Act 1954 has arisen, we would always need to obtain absolute certainty from our solicitor that your claim that you are trying to bring does meet this insured event."*

Where a consumer makes a claim the onus is on them to show that, on the balance of probabilities, an insured event caused the damage or loss. Given the comments HDI made in its final response it seems to have accepted S had done so in this case. So if it now wants to show an insured event hasn't taken place the onus would shift to it to evidence that. And, as HDI has indicated, I think a claim decline on that basis would need to be supported by legal advice. HDI hasn't evidenced that so far. And so for the reasons I've explained I'm not satisfied it's fairly turned down the claim S made.

Putting things right

For the reasons I've explained HDI can't rely on the reasons it set out to S to turn down this claim. So, as our investigator said it will need to consider the claim against the remaining policy terms. As part of that process HDI can review whether an insured event has taken place (though any decision on that should be supported by legal advice). I appreciate if the claim had been accepted from the outset it would likely have been referred to a panel solicitor for an assessment of whether it had reasonable prospects of success. However, looking at the legal advice from S's own solicitors I'm satisfied that requirement has been met so there's no need for that to now take place.

So if the claim is one that is covered by S's policy HDI will need to reimburse the reasonable and necessary legal costs S incurred in relation to this subject to the excess and policy indemnity limit. And, as our investigator said, it will also need to pay interest at 8% simple on those amounts from the date the payment was made until the date of settlement.

I recognise that HDI might have been able to negotiate on the hourly rate charged by S's solicitors. However, as the claim was turned down for the wrong reasons I think it's now lost the opportunity to do that. I also appreciate that the policy doesn't cover "*costs or compensation awards incurred without Our consent*". But given the reason S needed to incur those costs was because it had been told there was no cover available under its policy, I don't think HDI can fairly apply that exclusion if this claim is in fact one for which cover should have been available.

I also agree S will have been caused unnecessary inconvenience by what HDI got wrong. HDI will need to pay it £250 in recognition of that.

My final decision

I've decided to uphold this complaint. HDI Global Specialty SE will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 31 May 2024.

James Park
Ombudsman