

## **The complaint**

E, a limited company, complains that HDI Global Specialty SE rejected a claim on its commercial property insurance policy and said the policy was void.

Mr H, who is a director of E, brings the complaint on E's behalf.

## **What happened**

E owns a property with several flats which were rented by different tenants. E bought the property with some tenants already living there and took out insurance underwritten by HDI. The policy was issued in April 2022 and renewed in April 2023.

E made a claim on the policy in August 2023 after damage was caused to the property. The damage was not caused by tenants but by others who were staying there. The police were involved. HDI appointed loss adjusters to deal with the claim and an initial visit was arranged to inspect the property. The loss adjusters asked for information from E about the tenancy agreements and a crime reference.

The loss adjusters requested further information including details of each tenant and dates when they moved out, proof of occupancy and proof of rent payments. In December 2023 HDI asked for information about the checks that had been carried out on the tenants, including background, identity and credit checks.

Mr H initially said he had carried out checks but couldn't provide information. He then explained that the rent was paid directly through benefits and the Department for Work and Pensions (DWP) would deal with checks, so he wouldn't have carried out credit checks himself.

Mr H complained about how long it was taking to deal with E's claim and make a decision. In its final response to the complaint HDI said:

- The claim was still ongoing; most of the information requested had been received but E still needed to provide proof of background checks for the tenants.
- It was aware the damage was not caused by the tenants but by other people who had got into the property.
- It was aware of the delays and the financial difficulty this had caused but needed to consider the claim fully.

Soon after this, E was told the claim was not accepted and the policy was considered void for misrepresentation, because Mr H had said checks had been carried out on the tenants but there was no evidence E had done any checks. HDI said E hadn't ensured the statement of fact completed when the policy was sold was correct and if it had known checks were not carried out, it would not have offered any cover. The policy was treated as if it had never been in force. The premiums were refunded.

When our investigator considered the complaint he said:

- Mr H said the tenancies were arranged and paid through the DWP, that department would hold information on background checks and he would not be able to obtain credit checks for that department.
- The statement of fact question asks for confirmation that checks would be completed but not by whom. As these would have been done by the DWP, he did not think there had been a qualifying misrepresentation.
- The policy should be reinstated, any record of the voidance removed, and the claim should continue.
- There was unreasonable delay in requesting information to deal with the claim and compensation of £300 should be paid for the inconvenience caused to E.

In reply, HDI said:

- E's complaint was only about delays. The decision to void had been made recently and it hadn't been given the chance to comment on this.
- It didn't disagree with the view about delay, but wasn't aware the investigator would also be commenting on the voidance.

The investigator said he had raised the issue of the voidance during the investigation and he had enough evidence about this to consider it. He didn't see any reason to change his view and said as the complaint wasn't resolved it would be passed to an ombudsman to make a decision. He said if HDI had any further information to be considered it should provide this.

### **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 complaint was initially about delays dealing with the claim and making a decision but by the time it was considered by our investigator a decision had been made to reject the claim and void the policy.

HDI didn't dispute the investigator's view about delays but said the decision to void the policy wasn't part of the complaint. However, the investigator asked HDI about this as part of his investigation and included it in his view. He invited HDI to provide any further evidence it wished us to consider. So I'm satisfied it has had the opportunity to comment on this.

This was a commercial policy so, strictly speaking, the relevant law is the Insurance Act 2015, under which E had a duty to make a fair presentation of the risk. This means E – or Mr H, on its behalf – had to give details of every material circumstance which they knew or ought to have known or failing that, enough information to put a prudent insurer on notice that it needed to make further enquiries for the purpose of revealing those material circumstances.

I have to take account of any relevant law, but that's simply one aspect of considering what's fair and reasonable, taking into account all the circumstances of the case.

Although E is a limited company it's effectively just Mr H renting out this property. He was asked some specific questions about the policy. In particular, he was asked to confirm that *"Checks are carried out on prospective tenants before any tenancy agreement is signed"* to which he replied *"I agree."* When asked which checks were carried out he said *"Background and identity checks"*.

Mr H has provided further details about this, explaining that tenants were arranged through the DWP and would need to provide details to the DWP including proof of their identity. He didn't carry out checks himself because he understood the DWP had dealt with this.

The question Mr H was asked was whether checks had been carried out and, if so, what checks. To that extent I think the answers were correct; as far as Mr H was aware, checks had been carried out of the tenants' identity and background. The questions didn't ask who had carried out the checks, require him to provide any more details about the checks or specify that a particular type of check was required..

Taking all of the above into account I think Mr H would have thought this was the information HDI required and, based on what he knew, he gave a reasonable answer on behalf of E. In the particular circumstances of this case, I don't think it would be fair to say there was a misrepresentation that entitles HDI to treat the policy as void. So it should be reinstated.

That doesn't necessarily mean the claim should be paid; HDI will need to make a decision about that. If the claim is covered, it would be reasonable to deduct any premiums repaid to E from any settlement.

The claim was logged in July 2023 but the decision wasn't made until 29 February 2024. HDI was entitled to consider the claim carefully and request information from E but his took a long time and HDI continued chasing for more information after Mr H had explained the position. HDI hasn't disputed that there were some delays. Mr H was put to some trouble dealing with that, which would have taken him away from other activities. It's fair to compensate for that.

### **My final decision**

I uphold the complaint and direct HDI Global Specialty SE to:

- reinstate the policy and remove any records of it being void;
- make a decision on the claim in line with the policy terms and conditions; and
- pay compensation of £300 to E for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 4 July 2024.

Peter Whiteley  
**Ombudsman**