

The complaint

Mr D complains HDI Global Specialty SE unfairly declined a claim he made on his building warranty policy.

What happened

Mr D owns a property which comes with an HDI building warranty for ten years. In 2023 – around five years into the policy – he made a claim on it. He said a sprinkler system wasn't installed properly as the pipes hadn't been insulated. He was concerned they could freeze during cold weather which could cause a leak in his home, which would result in major damage.

HDI declined the claim. It said given the age of the property; section three of the policy would apply. That section covered the reasonable cost of repairing major physical damage where there had been a breach of the technical requirements when building. And as that only related to load bearing elements of the home, pipework wouldn't be included in that definition.

Mr D complained. He said because of his concern about the pipes freezing, he'd turned the sprinkler system off. But as this was linked to his fire alarm system, that had also been turned off, which was a fire safety risk. HDI didn't agree to change its position in response to Mr D's complaint.

Unhappy with HDI's response, Mr D brought the complaint to the Financial Ombudsman Service. Our Investigator said under the terms of the policy, she thought HDI had acted reasonably in declining the claim.

She said the policy covered major physical damage that had happened, not what might happen (i.e. it doesn't provide cover to prevent damage that could be caused by a leak). She said the policy did provide cover for fire safety if there'd been a failure to comply with building regulations, but based on what she'd seen, she thought the sprinkler system had met building regulations, and so HDI didn't need to take any action in relation to the system. Mr D didn't agree. He provided a detailed response but in summary said the sprinkler system didn't meet building regulations. He said there is exposed pipework above the thermal envelope of the building, which is not in accordance with the relevant building standard for these systems. Mr D asked for an Ombudsman to consider the matter, so it has come to me to decide.

In April 2024 I issued a provisional decision on this complaint. I have copied this below:

The relevant part of the policy relating to fire safety says HDI will pay:

"The reasonable cost of rectifying a present or imminent danger to the physical health and safety of the occupants of the new home caused by its failure to comply with the Building Regulations that were in force at the time the Building Notice was deposited with the Local Authority, in respect of the following

- Part A Structure
- Part B Fire safety”

So for this term to be satisfied and for HDI to be liable, there needs to be shown to be a present or imminent danger to health and safety, and that has to be as a result of a failure to comply with building regulations in force when the building notice was served. I’ve considered the second part of this term first, because I think that’s most crucial to the outcome I’ve reached.

From everything I’ve seen, the plans for Mr D’s development – referred to as an initial notice – were submitted to the local authority in March 2016. So the build needs to have met the building regulations that were in force at that time in relation to fire safety measures. If it didn’t, then I’d need to assess whether it’s failure to do so resulted in a present or imminent danger to health and safety. But, if it did meet the relevant fire safety regulations, then whatever issue there now may be, it wouldn’t be covered under the warranty.

HDI has said it contacted the Approved Inspector for the local authority who confirmed that a sprinkler system was not part of building regulations for this type of property in 2016. And I haven’t seen any evidence that the regulations that were in force at the time, in relation to fire safety, have been breached. So I haven’t gone on to consider whether there is a present or imminent danger to health and safety, because even if there was, both parts of the term have to be met, and the second part hasn’t been.

So unlike our Investigator, I don’t think the crux of this complaint is whether the sprinkler system met the relevant building standards for its installation. I say this because it didn’t need to form part of the build under the building regulations in 2016. Mr D has argued that the sprinkler system hasn’t met the relevant regulations as it hasn’t been insulated properly. I haven’t investigated whether that is the case or not, because either way I don’t think it impacts the outcome on this complaint. A sprinkler system didn’t form part of the fire safety building regulations at the relevant time, and so how it was then installed, is immaterial for the purposes of the policy terms and HDI’s liability under the policy.

I note that since 2017, fire safety regulations have changed considerably. And it seems accepted that under post 2017 regulations, a sprinkler system would have to be installed for Mr D’s type of property. But I can only hold HDI liable for rectifying issues caused by a failure to meet building regulations in force when the planning notice was served. So HDI isn’t responsible, under the warranty, for any costs for the repair Mr D says is needed to the sprinkler system.

I’ve no doubt this will be disappointing for Mr D. He’s gone to a lot of effort to try to resolve these potential issues in his own property and for other residents in his development. And I’ve no doubt his concerns about the system that was installed are valid based on what he’s told this Service. But the warranty provided by HDI only provides specific and somewhat limited cover in section 3. And I can’t reasonably ask it to cover matters which it hasn’t sought to provide insurance cover for.

My provisional decision

My provisional decision is that I don’t uphold this complaint.

HDI responded to the provisional decision and said it didn’t have any further points to add. Mr D also responded. He didn’t add any further points.

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.

As neither party has responded with any further information me to consider, having reviewed matters again, I see no reason to depart from the findings set out in my provisional decision.

So my final decision is that HDI don't need to cover Mr D's claim, for the reasons set out in my provisional decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 May 2024.

Michelle Henderson
Ombudsman