

The complaint

Mr P complains about HDI Global Specialty SE's ("HDI") decision to void his buildings insurance policy and decline to deal with his claim.

What happened

Mr P bought a property on 28 October 2022 and took out a home insurance policy with HDI after using an online comparison site to obtain a quote. On 23 December 2022, Mr P made a claim to HDI following an escape of water caused by a burst water pipe. HDI appointed a loss adjuster - who I'll refer to as company C - to investigate the claim. They carried out enquiries, which included appointing an agent – who I'll refer to as company M – to take a detailed statement from Mr P. Following this, HDI voided the policy from the date of inception on the basis that, when applying for the policy, had Mr P disclosed that the property wasn't his main home, wasn't permanently lived in and was unoccupied/unfurnished, he wouldn't have received a quote or policy from HDI. They said, in view of the voidance, they couldn't offer any financial assistance in respect of the claim. Mr P complained about HDI's decision on the basis the property was his family home, and it wasn't unoccupied.

HDI responded and explained, following the submission of Mr P's claim, it came to their attention that, when Mr P bought his property, it was his intention to live in the property with his family. However, he later explained, him and his partner were living between his parents and his partner's parents' addresses, while his children were permanently staying with their grandparents. HDI said, in addition Mr P also confirmed that, following the sale of his previous property, his contents and personal possessions were removed, and furniture was stored in a family member's barn, with the intention to have the property in a condition that would allow the whole family to be in the property by early January 2023. HDI said, at inception of the policy, had Mr P disclosed that his property wasn't his main home, was not permanently lived in and was unoccupied/unfurnished, he wouldn't have been able to get a quote from them. HDI said, due to this, they maintain their decision to void the policy from the inception date and decline to deal with the claim.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr P and HDI on 29 April 2024. In my provisional decision I said as follows:

"My starting point is Mr P's home insurance policy booklet. This sets out the terms and conditions and, under a section headed 'Providing us with information' it says, 'You must take reasonable care to ensure that the information which you gave us before the policy started...(whether provided orally, electronically or in writing) must be complete, accurate and honest. You can make sure the information is accurate by checking your Statement of Fact, if any information is inaccurate or you are unsure, contact us immediately.' The terms and conditions then go on to say, 'If you or anyone representing you provides us with misleading or incorrect information to any questions asked when applying...The insurer may...reject a claim...cancel or void your policy...'"

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This requires consumers to take reasonable

care not to make a misrepresentation when taking out a consumer insurance contract (a policy).

The standard of care is that of a reasonable consumer. And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. So, in deciding this complaint, I've looked into whether the questions were clear and specific, and whether Mr P answered any of those questions inaccurately and didn't take reasonable care not to make a misrepresentation.

HDI thinks Mr P failed to take reasonable care not to make a misrepresentation when, during the sales journey, he didn't disclose accurate information about the occupancy of the property. They confirm had Mr P disclosed that the property wasn't his main home, wasn't permanently lived in, and was unoccupied/unfurnished, they wouldn't have offered a quote. HDI have provided information which shows the assessment they carried out and this shows the misrepresentation they're alleging is based on the property being unoccupied. They say, following enquiries they carried out during the claim process, it had come to light that the property hadn't been lived in since the policy inception date.

The first point I've considered is whether the questions asked about the occupancy were clear and specific. I've looked at the information Mr P was presented with during the online sales journey, and this shows he was asked, "Is this house your main home?" The options available to Mr P were 'Permanent main residence', 'Weekend only', 'Weekday only', 'Holiday home', and 'Unoccupied'. The information shows Mr P chose 'Permanent main residence'.

The next question asked, "Will your house be left empty for more than 30 consecutive days?" and Mr P answered this as 'No'. Another question asked, "Who lives in your house?" and the options were 'Policyholder only', 'Policyholder and family members', and 'Policyholder and other', and Mr P chose 'Policyholder and family members'.

Mr P then received a Statement of Fact which said, "Is your Home left unoccupied for longer than 60 days?", and the answer says 'No'. It also says, "Is your Home solely occupied by you and your family members?" and the answer says 'Yes'.

HDI say, in relation to the question which asked whether the property was Mr P's main home, he shouldn't have said the property was his main home. They say if a suitable answer wasn't available, he shouldn't have proceeded to obtain a quote and should've contacted the broker/intermediary to discuss the circumstances of the occupancy, and at best he should've confirmed it was unoccupied. Given this, I'm not persuaded this question was therefore clear and specific. Mr P has confirmed this is his only property and he stayed there for the majority of the week. If HDI believe those circumstances meant Mr P shouldn't have chosen the 'permanent main residence' option and taken alternative steps, then I don't believe that's clear from the way the question was presented.

In relation to the question which asked whether the property will be left empty for more than 30 consecutive days, HDI say Mr P should've said his house was left

empty for more than 30 consecutive days. They say in insurance terms 'unoccupied' is a building that has no one living in it for a period. They say if no one is actually living there then it's classed as unoccupied or empty. And in relation to the question which asked who lives in the house, HDI say they don't believe Mr P lived at the property so he shouldn't have proceeded with a quote and contacted the broker/intermediary to discuss the circumstances of the occupancy.

HDI say had Mr P answered the questions about the occupancy, and taken their suggested approach, in the way they've described – as they believe he should've done – then they wouldn't have provided a quote, and therefore, wouldn't have offered a policy.

So, I've looked at Mr P's circumstances to see whether he could reasonably have been expected to answer the questions in the way HDI have described. I can see a detailed statement was taken by company M and I've referred to sections which I believe are relevant to Mr P's circumstances. Mr P said, "I bought the house with the intention of living in it with my partner...and our children...I wanted to modernise it to our personal taste and to turn it into a family home for all of us. We were planning to modernise the bathroom to our taste and to decorate other rooms in the property." And, "I can confirm that between 28 October 2022 and 22 December 2022, we had stripped out the carpets within the property and we had begun stripping walls and removing old wardrobes. We had undertaken no structural work within the property." And, "Prior to the Escape of Water of 23 December 2022, it was my hope and intention that by early January 2023, we might have the property in a condition that would allow all of us, including our children, to live in it on a full-time basis.

HDI say their understanding of this is that Mr P wasn't living at his property as his main permanent home full-time. They question if, at inception of the policy, Mr P believed the property was in an acceptable condition to live in, then why he stated that it would be ready to live in by January 2023. I don't doubt Mr P was carrying out renovation work and I can see he provided HDI with some photos taken prior to the escape of water showing the strip-out works carried out in various rooms within the property. But the specific questions which HDI say weren't answered correctly, and where they believe misrepresentation occurred, relate to occupancy and not the extent of any renovation work or when Mr P felt the property would be ready following the work.

In relation to the occupancy, Mr P said in his statement, "I can confirm that between 28 October 2022 and 22 December 2022, I have continued to spend on average 4 nights per week sleeping at [property]. I sleep on a divan bed that we put into the property after we purchased it. I continued to sleep in the property during that period because it enabled me to get on with the works in the property. In addition, I was often working late during that period and would not want to wake people up at [Mr P's parents' house] by returning to the house in the early hours. I can also confirm that between 28 October 2022 and 22 December 2022, I did spend on average 3 nights per week sleeping at [Mr P's parents' house]."

So, given that Mr P's statement confirms he spent the majority of the week at his property, and I've seen no evidence Mr P owned another property where he was staying, I don't believe he answered the question about whether the property was his main home incorrectly. I've considered the other options available to Mr P, but I don't believe they apply to Mr P's circumstances. I note HDI believe Mr P should've answered this question by choosing the 'unoccupied' option, but I don't believe that's reasonable in Mr P's circumstances given that he was staying at his property for at least four nights during the week. And for the same reasons, I don't believe Mr P's

response to the question asking whether his property would be left empty for 30 days or more, was unreasonable.

I can see there's a dispute about whether Mr P was actually staying at his property at all. HDI say, while Mr P may have been carrying out work at the property, they believe he was residing at his parents' house together with the rest of his family. I can see Mr P said in his statement, "I can confirm that between 28 October 2022 and 22 December 2022, my partner spent on average 2 nights per week sleeping at [property]. She would sleep there when I was also present." The statement then says Mr P's partner would spend the remainder of the week at Mr P's parents' house or her own parents' house. Mr P confirms him, his partner and his children all stayed at the property on the weekend following the purchase. Mr P says his children weren't happy to live in the property in its condition and without access to the internet, so his children stayed at Mr P's parents' house until the property was more habitable for them. So, while I accept Mr P's partner and children spent most of the week not living at the property, this doesn't mean the property was unoccupied as Mr P was there for the majority of the week.

HDI also refer to there being very limited furnishings in the property as evidence of it being unoccupied. They also say Mr P didn't have a television service or internet access. I can see Mr P confirmed this in his statement, he said the items he took to his property included two bedside tables, coffee table, television and stand, sideboard, sofa, three stackable chairs, leather chest of drawers, two beds and bags. He also confirmed that at no point prior to 22 December 2022, had he booked, or organised the installation of, broadband internet or any television services. When questioned about the remainder of his furniture, Mr P explained he'd moved items into a barn that belongs to a family member. He also confirmed he hadn't taken out contents insurance at the time as he didn't have much to insure.

I agree the amount of furnishings are limited, but I'm not persuaded this means the property was unoccupied. I say this for a number of reasons. Firstly, Mr P has described the renovation he'd been carrying out and the photos he provided support this. On this basis, I don't think it's unreasonable to expect Mr P to have arranged for only a limited, and necessary, few items to be moved into the property. This includes a bed to sleep in, a sofa and chairs to sit on, a table to use when eating, and drawers to store any clothing. Secondly, HDI refer to company C's comments about there being a bed with bedding in the master bedroom, some towels and personal hygiene products in the bathroom. I've seen photos taken by HDI's agent which demonstrate this, and I also note in Mr P's statement, he confirmed the property had, "...a fully functioning bathroom with working washing and toilet facilities." That being the case, I'm persuaded this is evidence of Mr P living in the property. I find it unlikely that bedding would be used on a bed if there was nobody staying and sleeping in the property. And I think the presence of personal hygiene products and towels in the bathroom, together with confirmation from Mr P about the working washing facilities, suggest Mr P was living at the property.

I can see HDI question why the remainder of Mr P's furnishings were stored at a family member's barn and why he didn't take out contents insurance if it was his intention to live in the property. I do acknowledge these points but, as mentioned above, I don't think it was unreasonable in the circumstances for Mr P to only move in the items which he felt were necessary to live in the property while he was carrying out renovation work. Also, I don't think the absence of contents cover suggests the property was unoccupied given that it's clear there were some necessary furnishings in the property.

HDI have also raised a concern about the low gas and electricity usage. I can see Mr P has taken photos of the gas and electricity meters on 28 October 2022 and this shows the gas reading as 14876 and electricity as 92116. Mr P then took gas and electricity meter readings on 16 February 2023 and this showed the gas reading as 15080 and electricity as 92183. So, between these dates – which is just under four months - the total gas usage has been 204 and electricity usage has been 67. HDI say this is very low usage particularly as this was during a period over which there was very cold weather. I do acknowledge the points made by HDI, but I'm not persuaded this demonstrates the property was unoccupied. Again, I say this for a number of reasons.

Firstly, I don't think it's fair to use a period of around four months here when assessing gas and electricity usage. That's because the escape of water was discovered on 23 December 2022 and Mr P confirmed, since that point, he and his family have all been staying at his parents' house. So, the period Mr P was using the gas and electricity is two months.

Secondly, while I can agree the usage is still low for two months, I don't think that's unreasonable in the circumstances here. I say this because Mr P has confirmed he works most of the day. Mr P's statement describes him finishing work on 21 December 2022 and returning to his property around 1.00am in the morning of 22 December 2022. Mr P says he then slept at the property and then left for work again at 6.30am on 22 December 2022 and returned home again at 1.00am on 23 December 2022. I can see Mr P has also provided HDI with evidence which shows he was working late at night on 22 December 2022. It's clear from this that Mr P was working long hours so it's understandable that gas and electricity usage during those two months would've been relatively low. In addition to this, given there weren't many electrical items at the property, it's not unreasonable for the usage reading to be low.

So, taking all the information into account, I think on the balance of probabilities, it's more likely than not Mr P's property wasn't unoccupied. That being the case, and given that I'm more persuaded Mr P did take reasonable care not to make a misrepresentation, I don't think the action HDI have taken is reasonable here. So, HDI should take steps to correct the position in relation to the voidance and also reconsider Mr P's claim.

The information shows Mr P has been caused a significant amount of upset and frustration as a result of his policy being voided. It has meant his claim wasn't considered under the terms and conditions of the policy. And, given the claim circumstances, it's clear this was very upsetting for Mr P. So I think it's fair and reasonable in the circumstances for HDI to pay Mr P £400 compensation for the significant upset, frustration and inconvenience caused."

So, subject to any further comments from Mr P or HDI, my provisional decision was that I was minded to uphold this complaint and require HDI to take steps to put things right.

Following my provisional decision, Mr P has responded to say he accepts my decision. HDI have responded and say, shortly after Mr P bought his property, he submitted a planning application for an extension, to demolish a conservatory and convert the garage into habitable accommodation. HDI say they therefore question Mr P's intentions and believe his intention was to modernise the property and then move in with his family. HDI also refer to a previous property Mr P bought and which he also renovated while the family were staying at Mr P's parent's house. HDI believe the same was happening here.

HDI refer to the contents Mr P took with him to the property and say these weren't sufficient for a family of four to reside at the property – and there weren't even enough beds for the family to sleep in. HDI also say there was a responsibility on Mr P to ensure he disclosed the correct answers to the questions asked – and if the options weren't suitable for his circumstances, then he shouldn't have continued with the distribution channel he started with and should've contacted the broker/intermediary.

Given that both parties have responded, I see no reason to delay making my 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.

Having done so, I see no reason to depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I do acknowledge HDI's point about the planning application, and I don't doubt it was Mr P's intention to renovate and carry out structural improvements to his property. But this doesn't mean the property was unoccupied. As mentioned in my decision, from the evidence I've seen, I'm more persuaded Mr P was living at the property. I acknowledge HDI believe Mr P was staying over at the property "*on the odd occasion*" but I don't believe that's the case. I've already made a number of points to support my reasoning as to why I believe the property wasn't unoccupied. I'm further persuaded Mr P wasn't staying over infrequently because, in Mr P's statement, he says he slept at the property on 21 and 22 December 2022, and then discovered the escape of water when he returned to the property in the early hours of 23 December 2022. I haven't seen any evidence which suggests the escape of water had occurred some time before this. So, given that there's no information which challenges Mr P's testimony that he discovered the escape of water on the day it occurred, I'm persuaded this suggests Mr P was living in the property regularly and it wasn't unoccupied.

I also acknowledge HDI's point about Mr P's previous property, but the question which is central to the dispute here is whether Mr P's property was unoccupied. And, the arrangements Mr P might've had in place when renovating his previous property doesn't persuade me that Mr P wasn't living in this property – particularly in light of the compelling evidence I've seen which suggest he was living there.

As mentioned above, I accept there were limited contents in the property, but I refer to my earlier reasoning as to why I'm persuaded there were sufficient contents to enable Mr P to live in the property. I've also carefully considered HDI's points about the steps Mr P should've taken when answering the questions during the online sale journey. But from what I've seen of Mr P's living arrangements and circumstances, I don't believe it was unreasonable for Mr P to answer the questions in the way he did. And I haven't seen any information which suggests that Mr P ought reasonably to have been aware that his responses weren't correct and that he should discontinue the online sale journey and contact HDI or their agents.

I wish to reassure HDI I've read and carefully considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Putting things right

I've taken the view that HDI have acted unfairly in voiding Mr P's policy on the basis he made a misrepresentation when applying for the policy. So, HDI should reverse the voidance and reinstate Mr P's policy. And, because it shouldn't have been voided, HDI should amend any of their records, as well as any central databases, such as Claims Underwriting Exchange (CUE), so that the voidance is removed.

Mr P made a claim and HDI decided they couldn't offer any financial assistance as the policy had been voided from inception. Given that I've decided the voidance was unfair, HDI should reconsider Mr P's claim under the remaining terms and conditions of the policy. HDI should also pay Mr P compensation of £400 for the upset, frustration and inconvenience caused.

My final decision

My final decision is that I uphold the complaint. HDI Global Specialty SE must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 June 2024.

Paviter Dhaddy
Ombudsman