

The complaint

Mr T has complained that HDI Global Specialty SE unfairly rejected a claim he made under his home buildings insurance policy.

What happened

In April 2023 Mr T said he noticed the tiles lifting from his wet room. He made arrangements for repairs to be carried out.

Over two months later he made a claim for the repairs to his insurer, HDI.

HDI appointed a Surveyor to consider photos provided by Mr T of the wet room during repairs – as it wasn't able to identify a cause of damage due to Mr T already having had the repairs completed. Mr T said the contractor found there was a hairline fracture in the gulley which wouldn't have been visible before the floor tiles started to move.

HDI rejected Mr T's claim. Its appointed Surveyor reported that the installation of the wet room hadn't met regulations and that the cause of damage would have been visible for longer than suggested and caused gradually over time.

So HDI applied three exclusions under the policy as its reasons for rejecting the claim: damage caused by faulty design, damage caused by inadequate sealing and grout, and damage caused by wear and tear.

In addition, HDI said a condition of the policy was for Mr T to not carry out permanent repairs or dispose of damaged items before HDI had the opportunity to consider the claim. It said Mr T had prejudiced his position by doing this before HDI could properly consider his claim.

Mr T complained to HDI but it didn't uphold his complaint. So he asked us to look at his complaint.

One of our Investigators issued three views. He initially thought HDI had acted reasonably in declining the claim. On further new evidence provided by Mr T, he thought HDI should meet Mr T's claim in full and pay interest on the invoice costs Mr T had paid.

In response to HDI's rejection of the second view, the Investigator issued a third view. He thought a fairer outcome was for HDI to pay a cash settlement based on what the repairs would have cost HDI, but to pay interest from the date of Mr T's invoice for payment of the works.

HDI didn't respond. Mr T was concerned that HDI's calculation of a revised cash settlement figure won't be fair.

I issued a provisional decision on 2 January 2025. I thought it was a finely balanced case. I thought Mr T had prejudiced his position by carrying out repairs before contacting HDI, which meant it was unable to inspect for a cause of damage. There was no evidence to support the cause of damage Mr T was claiming for. I also found inconsistencies in the reports provided by both HDI and Mr T's Surveyor.

So I provisionally decided a fair outcome would be for HDI to do the following:

- Pay 50% of the costs Mr T claimed for to repair his wet room from water damage.
- Pay interest on the cash settlement at a rate of 8% simple interest from 12

September 2024 to the date HDI pays.

HDI didn't respond to my provisional decision. Mr T replied. In summary he's unhappy and says HDI were unhelpful during the claims process and their Surveyor report included incorrect information. He's unhappy that I haven't included an award to reimburse him for the costs of his Surveyor report.

Mr T believes a fairer outcome is to award him 75% of the costs he paid to repair the wet room. Even then, he is still out of pocket by approximately £1,000.

So the case has been passed back to me to decide.

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.

In my provisional findings I wrote:

"Mr T's policy with HDI has a very common term. It says;

"5. Do not

carry out any permanent repairs or dispose of any damaged items until we have been given the opportunity to inspect the damage."

Mr T says the reason why he didn't make a claim and arranged for immediate repairs himself was because he was going away the following day for work. Mr T says this is the only shower in his home. I understand Mr T's reasons, but it means that HDI wasn't given the opportunity to properly assess the claim and identify a cause of damage. As insurance policies aren't designed to meet every eventuality, but only specific insured perils, the evidence needed for HDI to make an informed decision on his claim isn't available.

I've looked at the photos provided by Mr T of the wet room during repair. Although the cause of damage has been stated as a hair line fracture in the gulley discovered by a contractor, which wouldn't have been visible to Mr T, there is no evidence of this.

There is also no evidence of the condition of the sealant and grout before being removed from the area of damage.

I've looked at the report provided by HDI's appointed Surveyor who carried out a desktop review in June 2023 – and an email statement provided by an RICS associate on behalf of Mr T dated 12 September 2024. It's not clear from the RICS associate what evidence he has seen. I've assumed it is the same photos as HDI's appointed Surveyor – as provided by Mr T.

As I've explained, these photos don't show that the cause of damage was a hairline fracture to the gulley – as there isn't any evidence of that. The RICS associate says he spoke to the contractor who confirmed this.

There are inconsistencies in both reports provided. It seems accepted that HDI's appointed Surveyor relied on regulations that didn't apply to when the wet room was fitted as one of the reasons to reject the claim. On balance, I'm more persuaded by the RICS associate's view on this. HDI hasn't provided evidence to contradict what the associate says, other than to say that it is more persuaded by its appointed Surveyor's view. And it doesn't seem to be in dispute that the wet room was in place for twenty years before the damage was discovered.

So I don't think it fair for HDI to apply the following exclusion to reject this claim:

"Any loss, damage or liability caused by or arising from:

- faulty design or workmanship or the use of faulty materials."*

HDI relied on the two further exclusions under the policy. These are:

“What we don’t cover you for: Damage caused by or arising from:

- structural movement, settlement, shrinkage; • the inadequacy or absence of appropriate sealant or grout.”*

And;

“Wear and Tear.

- Loss or damage caused by wear and tear, wet or dry rot or anything which happens gradually.”*

HDI’s appointed Surveyor said the extent of the water damage would have been evident to Mr T for some time before the tiles started to lift. They say the water escaping over time would have caused damage to the sealant and grout, long before the timber underneath would have started to decay. Although this can’t be confirmed due to the works being carried out before Mr T contacted HDI, the Surveyor says the extent of damage showing in the photos (to the timber below) provided by Mr T convince him this would have been the case.

HDI’s appointed Surveyor reported:

“I explained that the original flooring photos show gradual damage to the sub-floor which appears consistent with grout failure. The pattern of staining on the flooring is showing an outward trajectory around the gulley. This indicates that the problem may have related to failed grout as there is no damage to the ceiling below or any evidence of staining to the joists below the trap, which would be expected with water taking the path of least resistance and travelling to its lowest point.”

HDI’s Surveyor says the tiles would have been affected along with the grout. HDI says there is no evidence of the fracture to the gulley. Even if this was the case, it says this would cause intermittent damage over a period of time, rather than a one off sudden event leading to an escape of water.

The RICS associate says; *“I cannot see any evidence that any fittings, including the gulley, were misaligned.”* And says he cannot see evidence of previous repair as suggested by HDI’s appointed Surveyor.

In relation to the damage being caused over time, the associate says;

“From the information provided to me it would appear that the timber which forms the sub- floor is of good quality marine ply and (brand of flooring inserted here) flooring. Although this would be deemed suitable to withstand water ingress or penetration for a period of time, any long term ingress or leakage would be detrimental and the materials would eventually fail and be subject to swelling and deflection. It is my opinion that any deflection would have a detrimental impact on other materials and fittings and would also be critical in respect of causing damage to the gulley, causing leakage and other areas such as the integrity of the floor and tiling.

However, I have contacted the contractor who carried out the repairs and it also appears that there was a hairline fracture of the gulley. This would have also had a long term impact due to small seepage of water. This being hidden, would not have been visible to the naked eye until visual damage of the external elements, such as damage to the tiling, was noted.”

The associate went on to report that the raising of the tiles would have been caused by the long term water ingress damage.

It isn’t unusual for insurers to exclude cover for damage caused gradually over time. However, we don’t generally think it fair to apply this exclusion where the damage wasn’t visible to a customer. In these circumstances, we don’t think it reasonable for a customer to be penalised when there was no way of being able to identify the damage to take steps to mitigate it.

But as I've said, because Mr T arranged for repairs before contacting HDI, it isn't possible to properly evidence the damage – and cause of damage – for HDI to reasonably accept or reject his claim. I don't think it's clear from the photos for HDI to establish either the cause of damage – or make an informed decision on the condition of the sealant and grout when the damage was identified.

On balance, I can accept that Mr T took action to arrange repairs when he noticed the tiles were lifting in the wet room. But this is a finely balanced case. From what is available to me, neither the associate nor the Surveyor has seen evidence of the condition of the wet room when the damage was identified. Photos provided are at the stage of strip out works.

But I also find the comments by the RICS associate as to the damage caused by a fracture in the gulley, unseen by Mr T, mean we would generally consider it fair for an insurer to meet a claim in these circumstances.

I've taken into account Mr T's comments on 6 January 2025. But I'm not persuaded that my provisional decision is unfair, or that Mr T should be reimbursed for the associate report, for the fact that there was no available evidence of the cause of damage for HDI to review. I've taken an 'on balance' approach to reach a fair and reasonable outcome for both parties.

This means my remedy to put things right in my final decision is the same as my provisional decision. I think a fair and reasonable outcome is for HDI to pay 50% of the costs of the claim. I think it should pay interest on the 50% from 12 September 2024 – the date of the RICS associate email - as this is the first time new independent evidence became available.

My final decision

My final decision is that I uphold this complaint in part. I require HDI Global Specialty SE to do the following:

- Pay 50% of the costs Mr T claimed for to repair his wet room from water damage under the remaining terms and conditions of the policy.
- Pay interest on the cash settlement at a rate of 8% simple interest from 12 September 2024 to the date HDI pays.

If HDI Global Specialty SE considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 February 2025.

Geraldine Newbold
Ombudsman