

The complaint

Mr T, a sole trader, complains HDI Global Specialty SE turned down a claim he made on his business protection insurance policy.

What happened

Mr T took out business protection insurance with HDI in December 2023. The policy schedule says his 'Trade / Business activities' are '*Garden maint ex tree felling*'. In January 2024 Mr T made a claim on his policy following the theft of plant (primarily a trailer and digger) from a plot of land he owned. After obtaining further information and carrying out a site visit HDI declined the claim in April 2024. It said the policy only covered plant used in connection with work carried out during the course of business. In this case it thought the stolen items were held by Mr T in a personal capacity.

Mr T's representatives said the plant was being used for business purposes at the time of the theft (and provided invoices in support of that position). HDI sought further information on the work Mr T had been carrying out. His representatives provided clarification on this but said additional questions HDI then asked weren't relevant to the claim outcome. HDI said its decision to decline the claim was correct based on the available evidence. And unless the further information it had requested was provided it wouldn't be reconsidering matters. But it accepted the claim could have been progressed more quickly and offered to pay Mr T £100 in recognition of the inconvenience not doing so caused him.

Our investigator thought it was reasonable of HDI to conclude, based on the information Mr T's representatives initially provided, that the digger and other equipment were being used in a personal capacity. It had correctly reviewed matters when Mr T provided more information. However, given the discrepancy between this and what HDI was initially told she thought the further questions it asked were appropriate. Mr T hadn't provided the requested information so she thought it was fair of HDI to maintain its decision to decline the claim.

Mr T (through his representatives) didn't agree. He said:

- HDI had initially declined the claim without any evidence the digger and other stolen items were held in a personal rather than business capacity. And he'd repeatedly told it the digger was purchased to expand his gardening business which only operated on a seasonal basis. So it wasn't relevant what he was using plant for on his own land. At the time of the theft the digger wasn't being used for any purpose because the gardening season hadn't started.
- He didn't understand why HDI was asking for details of the contract he had with clients because contract work was excluded under the terms of the policy. And his business account hadn't been used at the time of the theft because the gardening season hadn't begun and many clients paid in cash in any event.
- He'd provided the information HDI reasonably required and thought it was therefore in breach of contract by not paying his claim. And he queried why HDI hadn't covered the

other items that were taken in the theft. He also questioned what information remained outstanding and said he'd been told there were no outstanding inquiries.

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 looked first at the terms and conditions of Mr T's policy. This does cover damage to insured property which includes plant. And damage is defined as "*Physical loss, damage or destruction*". So it could, in principle, include the theft of the digger and other plant Mr T claimed for. However, the definition of 'Plant' includes that "*it is owned by You and used in connection with the Contract*". The policy separately defines as Contract as "*any contract or agreement entered into by You to carry out works in the course of the Business*".

And the general definition of 'Business' in the policy is "*the activities of the business shown in the Schedule*". Those activities in this case are garden maintenance excluding tree felling. So for Mr T's claim to be covered the stolen plant needed to have been owned by him (which I don't think is in dispute) and used in connection with a contract for his business activity of garden maintenance. And as the question here is whether an insured event under the policy has taken place the onus is on him to show, on balance, that's the case.

HDI initially declined the claim because it thought the stolen items were being held in a personal capacity. Mr T says it didn't have evidence in support of that position. I don't agree with him on that. I've reviewed the loss adjuster's report produced following a site visit and meeting with Mr T's representatives. That report says "*During our site visit, we queried the reason for the purchase of all of the Insured's plant and we were told that the plant is purely being used on the plot of land owned by the Insured where he intends to eventually home livestock and have a yard where he keeps his plant and maybe build a shelter for the animals*". And that Mr T had "*been using the stolen excavator, subject of the claim, to dig and flatten the ground on part of the plot*".

That clearly suggests the stolen plant was being used for Mr T's personal use and there's no indication it was being used in connection with a contract relating to his garden maintenance business. So I think it was correct and fair of HDI decline the claim on the basis that the stolen items didn't fall within the definition of plant the policy contained (meaning an insured event as set out in the policy hadn't taken place).

Following the decline of the claim Mr T's representatives said the stolen items weren't being held in a personal capacity and provided an invoice for work he'd carried out. They also provided a separate invoice for the hire of a digger and said he'd needed to hire that to carry out maintenance work as a result of his being stolen.

I've reviewed that information. The work invoice is brief and doesn't evidence what (if any) plant would be required to carry this out. And while the hire invoice does indicate Mr T did hire a digger (for delivery to a different address to the loss address) it doesn't in itself evidence why that was. In addition, this represents quite a significant change in position from what Mr T's representatives are recorded as saying to the loss adjuster. I don't think it was unreasonable of HDI to request further information from Mr T on the work he'd been carrying out before deciding whether it should review its decline of the claim. That's also in line with a

claims condition of his policy which says *“you must let us have at your expense any information and assistance we reasonably require in relation to any claim under the policy.”*

Mr T's representatives did provide some further clarification. But at the point HDI issued its final response to the complaint there remained outstanding queries. Those related to what gardening works were being carried out that required the use of a digger, any pictures of work carried out at the site the hired digger was delivered to, evidence of payments for the digger being made from Mr T's business account and information on whether the invoice for work carried out required the use of a digger.

I haven't seen that a clear response to all those questions was provided by Mr T. His representatives said they were told no information was outstanding. But the email they've referenced in support of that wasn't sent by HDI but by Mr T's broker (who weren't handling this claim on its behalf). And his representatives previously said in response to HDI's information request *“I believe that the Insured has provided more than adequate information in relation the claim and the ongoing questions AFTER declining the claim, are simply not relevant to the overall claim”*.

However, in my view the evidence as to whether the digger was being used for business purposes (which is key to whether a loss covered by the policy has taken place) remains confusing and contradictory. For example, in response to HDI's initial decline of the claim, Mr T's representatives suggested the digger was required for a business contract (which is why he needed to hire an alternative digger). The first hire invoice is dated a week after the loss took place. But in correspondence with us they've said *“At the time of the theft the digger was NOT being used for any purpose”*. And *“it was not being used at the actual time of the theft because the gardening season had not started”*.

I think the questions HDI asked were relevant to establishing what the correct position on the use of the digger was and resolving the confusion over this. Mr T has questioned why HDI was asking for information about contracts when the policy doesn't cover contractual works. Cover for 'Contract works' isn't included in the policy he took out but I don't think that's the issue here. The reason HDI was asking about his contracts was so it could understand whether those required the use of the plant that he'd claimed for (and met the policy term that it needed to be used in connection with that contract).

Mr T also says his business account wasn't in use at the time of the loss because the gardening season hadn't started. But the outstanding information HDI requested related to whether the payments for the digger (both the original one and the hired one) had been made from Mr T's business account. I think that is relevant to the question of whether that plant was for business use.

I appreciate Mr T's claim was for both the digger and other items (a trailer, saw, draw bar and lifting straps) but he'd still need to show those items fell within the policy definition of plant for his claim to be covered. I appreciate the questions HDI asked were focussed on the digger but I think the information it was requesting would be relevant to that issue in relation to those other items as well. And it was reasonable of HDI to say it wouldn't be reviewing its decision to decline the claim unless that information was provided.

However, I do agree there were some issues with its handling of the claim. In particular there does appear to have been a delay in matters being progressed after the loss adjuster carried out their site visit. And HDI has accepted a claim decision should have been reached more quickly. I accept that will have caused Mr T some inconvenience but I think the £100 HDI has already agreed to pay does enough to put things right here.

My final decision

HDI Global Specialty SE has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that HDI should pay Mr T £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 April 2025.

James Park
Ombudsman