

## The complaint

Mrs R's complaint is about the handling of a claim made under her legal expenses insurance cover with HDI Global Specialty SE.

HDI Global Specialty SE is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As HDI Global Specialty SE has accepted it is accountable for the actions of the agent, in my decision, any reference to HDI Global Specialty SE includes the actions of the agents.

## What happened

In February 2024, Mrs R discovered damage to the kitchen extension of a property she lets out. Mrs R says this is the result of her upstairs neighbour placing scaffolding on her kitchen extension roof. Mrs R says she also found out that the neighbour had obtained planning permission to build a loft conversion and dormer window in the roof. Mrs R says she was not informed of the work and did not consent to it. Mrs R says that the roof and loft space is jointly owned.

A few days after discovering the damage to her kitchen, Mrs R contacted the legal helpline provided as part of her cover with HDI. Mrs R says she was advised she needed to apply for an urgent court order to have the scaffolding removed and to stop unauthorised construction on the building. Mrs R therefore made a claim under the policy for the costs of such legal action against the neighbour.

It is not clear exactly when, but Mrs R also reported the damage to the kitchen, attic and roof to her home insurer. Her home insurer was only prepared to cover the damage to the kitchen, as it said the ownership of the roof and loft space was the subject of a civil dispute and not covered under the household policy.

On 24 February 2024, HDI confirmed it had appointed solicitors to assess the claim. The solicitors appointed a barrister to advise. He said that the claim was unlikely to succeed. As it is a pre-requisite of cover that any claim have reasonable prospects of succeeding, HDI did not agree to cover any legal costs based on this advice.

Mrs R is very unhappy with HDI's handling of her claim. She says the case was deemed to be urgent but HDI did not treat it with urgency. Mrs R says it took six weeks for the lawyers to contact her and several months for her claim to be considered. Mrs R says this delay allowed the neighbour to carry out further construction and cause further damage to the property, that could have been avoided.

Mrs R made a number of points in support of her complaint. I have considered everything she has said but have summarised the main points below:

- She was bounced back and forth between the solicitors and HDI.
- HDI advised her to make a buildings insurance claim, so the kitchen repairs could be done quicker for her tenant. She did so and has therefore had to pay an excess under her buildings cover and the legal expenses cover. HDI said it would reimburse

her the buildings insurance excess but she has not received that.

- The buildings insurer paid for the kitchen repairs but not any of the other repairs needed to the attic and roof. After this HDI said it was no longer providing cover for her to take action about the other property damage (to the loft and roof) so the claim with HDI adversely impacted her home insurance claim.
- HDI limited the scope of the legal assessment to a nuisance claim only and not to include consideration of the property damage to the roof and loft. Without the property damage element, her case was weakened.
- Trespass was not properly considered either and the issue of nuisance was only considered in relation to the outside space and not the building itself, which weakened her case further.
- The barrister said that it was too late to take action against the neighbour and the claim was unlikely to succeed due to the delays.
- The barrister said she should complain and HDI should admit that it made these mistakes and rectify them.
- The barrister's opinion was in any case based on incomplete evidence, as HDI has not surveyed the roof and loft, which are the key areas of concern.
- The solicitors appointed did not keep her updated, so she had to call HDI for updates.
- HDI's communication was poor, which made the experience stressful.

Mrs R wanted HDI to take up her case again and take all action necessary to get her neighbour to cease the roof and loft works and reinstate the roof to its original state. She said HDI should do this at no cost to her and reimburse her for the costs she has incurred to date.

HDI accepted there were some initial delays in handling the complaint. However, it said that the claim was made in February 2024 and the barrister's opinion was obtained in May 2024 and a period of three months to get a barrister's opinion, is not unreasonable overall. HDI apologised for the initial delays and offered £120 compensation. However, it says the claim was handled correctly thereafter and those initial delays did not prejudice Mrs R's claim and it was entitled to rely on the barrister's advice when declining the claim.

HDI also said it would agree to consider any contrary opinion Mrs R got from a barrister that was favourable. I understand Mrs R did obtain some further advice and she has told us HDI reopened the claim as a result but this has not resolved matters.

One of our Investigator's looked into the matter. She agreed that there had been some initial delays and recommended that HDI increase the compensation for this to £300. However, she did not think HDI had acted unreasonably in relying on the barrister's opinion that there were no reasonable prospects and did not consider there was any evidence that HDI had prejudiced Mrs R's legal claim.

The Investigator also explained that while she noted there have been issues since, we can only consider the events up to the date of the final response letter in relation to this complaint (*i.e.* 7 June 2024).

Mrs R did not accept the Investigator's assessment. She asked for a thorough investigation into HDI's mishandling of her claim; a reassessment of the case with a focus on the trespass to her property, and appropriate legal action taken to resolve the situation.

Mrs R also wants compensation for the distress, inconvenience, and potential financial loss caused by HDI's delays and misjudgements. Mrs R made a number of other points in response to the Investigator. Again, I have considered everything she has said but have

summarised her main points below:

- HDI overstepped its role and improperly influenced the legal strategy. The solicitor told her that the decision to decline the claim, and limit the scope of the claim, was made by HDI, not as a result of their independent legal assessment. This is supported by the fact the solicitor also told her they would need to contact HDI regarding cover.
- Her initial claim was only for the kitchen damage and if HDI had acted promptly, the situation could have been resolved.
- The helpline told her an urgent order was needed to stop the building works due to the potential damage to her property. Instead, HDI focussed on the property damage and not the steps needed to prevent further construction, which allowed the neighbour to continue and start unauthorised building works and resulted in significant damage to the main building as well.
- She wants clarification on why HDI relied on a flawed legal opinion and assurance that such oversights will not happen in the future.
- The compensation recommended does not address fully the psychological, emotional and financial burden caused to her by HDI's handling of the claim.
- The Investigator refused to consider that she got a second legal opinion that was supportive of her claim which led to HDI reopening the claim but there were problems and delays after this as well. The delays and second opinion related to her ongoing case should also be factored into the assessment.
- She has also made a complaint about the buildings insurer, which is intrinsically linked to this one and they should be considered together in order that there be a comprehensive review of her situation.

As the Investigator was unable to resolve the complaint, it was passed to me.

I issued a provisional decision on the matter in January 2025. I confirmed that I could only consider the events up to the final response letter of June 2024 and that any complaint about events after that date would have to be considered separately. I also explained that I did not think it is necessary to consider the buildings insurer complaint at the same time as this one. This is because the buildings insurer is a separate legal entity and provides different cover from HDI. I was satisfied that the outcome of that complaint would not impact my consideration of this complaint against HDI. I remain of that opinion.

I concluded that HDI should pay Mrs R £300 compensation for the initial delays in handling her claim but did not uphold the other aspects of her complaint.

I have set out my provisional findings below:

"Mrs R's policy terms

Mrs R's policy provides cover for various legal disputes. The section of cover relevant to this claim says:

*"What is covered*

*1. Property damage, nuisance and trespass*

*a) An event which causes visible damage to your property and/or anything owned by you at your property*

*b) A public or private nuisance or a trespass relating to your property".*

This is subject to various terms and conditions and includes a condition that [the claim has reasonable prospects of success, defined as]:

*“Reasonable prospects of success  
Where you have a greater than 50% chance of successfully pursuing your  
claim against another person. If you are seeking damages or compensation”.*

Most legal expenses insurance policies work in the same way, with insurers having a panel of pre-approved solicitors. The insurers will usually have pay agreements with these pre-approved solicitor firms, which is aimed to make this more cost effective and they will have been audited and checked for their suitability to deal with certain legal issues.

We expect legal expenses insurers, and their claims-handling agents, to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, however, it has no duty to oversee how they run the case and it isn't responsible for any action or omission on the solicitor's part. Solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not. Panel solicitors will have some agreements in place with insurers but it does not change that their primary duties are to the courts and their clients (in this case Mrs R). In addition, this service has no jurisdiction over solicitors.

Did HDI unfairly limit the scope of the lawyers' assessment and should Mrs R's claim be covered?

Mrs R says HDI chose to frame the claim as a nuisance claim rather than trespass and damage, limiting the solicitors' consideration and delaying effective action.

The solicitors wrote to Mrs R on 2 April 2024 and said HDI would not cover the building damage (therefore this meant there was no cover for an order to get the neighbour to remove any part of the scaffolding from her extension roof) and would only cover nuisance.

However, this was because there was deemed to be no loss to be recovered from the neighbour ... [as part of a] legal ... claim, as Mrs R's home insurer had agreed to pay for the damage to the kitchen caused by the scaffolding. I do not agree that this was HDI overstepping its remit. And, in any case, I note HDI told Mrs R it would consider property damage if there was damage after the scaffolding had come down and it is not covered by the buildings insurer.

I am satisfied that the solicitors did also consider a claim for trespass. In an email to HDI on 19 April 2024, they said the encroachment was on common land, so there was no trespass as such. The solicitors said the issue was about correct use of the common land but the materials left on the common land would be removed once completed. The solicitors also said that the scaffolding on the kitchen roof *“could perhaps be considered under the trespass section or nuisance section on the basis of damage”*.

HDI contacted the buildings insurer on 23 April 2024 and it confirmed that it would not cover the damage in relation to the roof and attic space, so HDI then confirmed this could be considered by the solicitors.

The solicitors did ... consider the damage to the roof and ... told HDI they thought there were reasonable prospects of success in getting the roof reinstated and dormer window removed, and in getting the scaffolding removed from the extension roof.

HDI agreed to the solicitors going ahead and the solicitors instructed a barrister to advise.

However, the barrister's opinion was that there were not reasonable prospects in stopping the work and removing the scaffolding, as the works were too far along and there was no immediate danger to the property. He said there might be a claim for damage but this would have to be assessed after the works were completed. The barrister also did not think that there would be reasonable prospects of stopping the work to the roof and attic or having it reinstated, as he did not think Mrs R owned the attic space.

The barrister did say the fact the scaffolding had been in place for around three months at the time of his advice weighs against the granting of an interim order but he also said there would be no reasonable prospects of succeeding in a claim to get the scaffolding removed, as the neighbour said they'd moved the scaffolding and there was a dispute about this. He also said there was no evidence of immediate damage to Mrs R's property as a result of the scaffolding; and that an interim order was unlikely to succeed given that notice of the works would have been provided (albeit Mrs R says she didn't receive the notice) and planning permission had been granted. I have not seen anything that supports that the barrister said the interim order could not be obtained due to HDI.

I also note the barrister said in an email to the solicitors: *"My position remains that any action seeking interim interdict would not have reasonable prospects largely because of the stage of the works and the lack of any action prior to it commencing. I also do not think that any action seeking removal of the works and reinstatement has reasonable prospects for the reasons set out in the original opinion."*

There is therefore no convincing evidence that the works could have been stopped but for anything HDI did wrong. Mrs R says the works were unauthorised but the neighbour had planning permission. Given all this, I am not therefore persuaded that HDI caused any loss of chance of getting the scaffolding removed.

With regard to nuisance/interference, the barrister said that if the damage to the property caused by the scaffolding is remedied, given that the neighbour had planning permission and the interference was temporary, he did not think there were reasonable prospects of getting any interim order on this basis.

The barrister concluded that once the works are complete, any damage can be assessed and Mrs R or her buildings insurer can pursue recovery but assessing damages (at that stage) would either be premature or not have reasonable prospects of success.

I am satisfied that the solicitor and the barrister were able to consider all possible aspects of Mrs R's case and were not hindered by HDI unfairly. I am also satisfied that HDI acted fairly and reasonably in managing the claim.

Given the expert legal evidence provided, it is my opinion that HDI was entitled to refuse cover for the proceedings.

#### Time taken to deal with Mrs R's claim

I can see there was a delay of around two weeks at the outset before HDI confirmed cover was in place and sent the claim to the panel solicitors to assess. I've not seen anything to explain that delay.

The solicitors were instructed in late February 2024. From that point on they were responsible for the matter. However, I can see that on 2 April 2024 Mrs R told HDI she had not heard from the solicitors and so it contacted them. HDI chased the solicitors again on 15 April 2024. I think HDI acted reasonably and I do not think that HDI caused any additional delay.

For the reasons given above, I do not think that the initial delay was the reason why Mrs R wasn't able to take the legal action she wanted to take. However, I can understand the urgency for Mrs R and that the initial two week delay will have caused her some trouble.

Having considered everything carefully, I agree with the Investigator that the sum of £300 compensation for this is reasonable.

Should HDI have obtained a surveyor's report and applied for an interim court order?

Mrs R says HDI should have promptly applied for a court order to prevent further damage to her property and unauthorised use of her property. However, it is not for HDI to take such legal action. It is only responsible for paying legal costs of action deemed to meet the policy criteria.

HDI will fund any reports and expert evidence required to advance a legal claim, once it is accepted as covered under the policy, but it is not responsible for obtaining expert evidence needed to establish there are prospects in the first place. It was for Mrs R to establish she had a strong enough case, and therefore a valid claim under the policy, which would mean it is her responsibility to pay for any reports needed to prove that.

HDI was therefore entitled to get the claim assessed and rely on the opinion of the lawyers involved. As they determined there were not reasonable prospects and therefore no valid claim under the legal expenses policy, HDI was not responsible for the cost of any surveyor's report or interim order.

Should HDI refund the buildings insurer excess?

Mrs R says HDI advised her to make the home insurance claim and that it said it would refund the excess she paid that insurer. I can see HDI did say in correspondence to Mrs R that it would reimburse this. However, it is not clear to me why it offered this. I do not consider on the current evidence that HDI is liable to pay this. While it encouraged Mrs R to make a claim under her home insurance for the damage to the kitchen, I do not consider that she was prejudiced as a result. The home insurer dealt with the damage and an excess was properly charged by that insurer. On the evidence currently available, I do not therefore think I can reasonably make an order that HDI pay this to Mrs R.

## **Responses to my provisional decision**

I invited both parties to respond to my provisional decision with any other information or arguments they want considered.

HDI has not added anything further.

Mrs R does not accept my provisional decision. She has made a number of points in response. I have considered everything she has said and have summarised her main points below:

- Her neighbour gained planning permission by falsely claiming he was the sole owner of the roof.
- The legal helpline told her an urgent court order was needed to stop the construction and remove the scaffolding and HDI assured her the case would be looked at urgently but the court order was never obtained and the scaffolding remained in place for 10 months.
- HDI advised her to make a home insurance claim and offered to refund the excess as an incentive for her to do so, as she was reluctant.
- The home insurance claim complicated matters, as it was difficult to assess the damage while the scaffolding was in place; the buildings insurer would not cover the damage to the roof and HDI removed damage from her legal expenses claim.
- The solicitors told her on 2 and 15 April 2024 that they were restricting their consideration to a nuisance claim only, so HDI did restrict her claim.
- The barrister's opinion was only needed due to the delays by HDI and the neighbour had started work on the jointly owned roof, which complicated matters as it turned into a boundary issue.
- The barrister's opinion that the building work was at an advanced stage and that her property had not been damaged were speculative as no survey had been obtained. The barrister ignored the fact that she jointly owned the roof and failed to address the trespass of her property in placing scaffolding on her extension roof. Also other legal implications of her liability as a joint owner were not considered.
- It is unacceptable to say that placing scaffolding on her property without her consent is not trespass. I referred to use of common land as a construction site but again if this happens without her consent, is this not also trespass? Her neighbour's rights seem to be prioritised over hers.
- It is incorrect to say the initial delays did not prevent her from taking the legal action she wanted. The Barrister's opinion states that legal action needed to be taken early. The damage could have been prevented and construction could have been halted, if her case had been handled urgently.
- She could not get a survey of the property, as the scaffolding and building works made it difficult to do so safely.
- Her buildings insurer has not paid for any of the repairs.
- HDI did not tell her it would not be overseeing the solicitors suggesting it would be responsible for the solicitors taking appropriate urgent legal action need but she had to chase them after six weeks. This raised concerns about lack of oversight and lack of accountability for managing her legal expenses claim.
- The mishandling of her claim has caused significant distress and significant financial loss. The proposed £300 compensation award is inadequate and her property is still not repaired and reinstated and the damage is ongoing as the building settles with the additional weight.
- She asks for higher award to reflect the difficulties caused to her and to reassess HDI's liability and clarification on what further steps can be taken to ensure a fair resolution. She wants a formal review of the fairness of this process and the level of compensation reconsidered taking into account the fact her buildings insurer has not carried out repairs and her property is in a deteriorating state.

Mrs R has also told us that HDI has contacted her to ask her to accept the £300 compensation provisionally proposed. Mrs R is concerned about why it has done this before my final decision has been issued and asks that this be addressed. Mrs R says the timing of HDI's contact suggests the final decision has been predetermined without due consideration

of her response set out above and that HDI has been notified of the final decision ahead of time.

### **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.

I can assure Mrs R that HDI has not been contacted by anyone at this service about her complaint since my provisional decision was issued. I suspect it acted prematurely on my provisional decision but this is not as a result of any communication from us. I can see why this has caused Mrs R concern but I confirm I have considered carefully all the information provided again and have considered the points she has raised in response to my provisional decision before reaching my final conclusions on her complaint. Having done so, I am not however persuaded to change my provisional decision.

#### Did HDI unfairly limit the scope of the lawyers' assessment and should Mrs R's claim be covered?

Mrs R has said again that HDI said damage to her property would not be considered as part of the legal expenses claim. As set out in my provisional decision HDI did initially say, in early April 2024, that as the buildings insurer was considering a claim for the building damage, this would not form part of Mrs R's legal claim against the neighbour. However, I also set out that on 23 April 2024, HDI contacted the buildings insurer who said it would not be covering the damage to the roof and attic space and as a result HDI told the solicitors this could be considered as part of her claim.

The building damage was subsequently considered by the barrister but he didn't think there were reasonable prospects of success for any damage claim. He did not think that Mrs R did jointly own the roof and attic space, so did not think she could claim for damage (and reinstatement) of those areas. I note Mrs R disputes this but the barrister set out his reasons why and this is not a jointly owned part of the property and I have not seen any convincing legal opinion that this is incorrect.

The barrister did also consider a potential claim for damage to other parts of the property but said that this should be assessed once the building work had finished.

I also set out in my provisional decision that the barrister considers potential claims for trespass and nuisance but did not think these has prospects of success either. I have not said that using the common areas or placing scaffolding on Mrs R's property without her consent is not trespass. But the barrister did not think there were reasonable prospects of succeeding in a trespass and nuisance claim about this.

Having considered all the evidence again, I remain of the opinion that the solicitor and barrister did consider the property damage and trespass and all possible aspects of Mrs R's claim; and I am not persuaded that HDI unfairly fettered any such consideration.

I also remain of the opinion that HDI is entitled to rely on the barrister's opinion on the merits of the claims Mrs R wanted to make and as such it was entitled to refuse cover.

#### Time taken to deal with Mrs R's claim



Mrs R says the barrister's opinion was only necessary because of the time taken to consider her claim but I am not persuaded this is correct. It would be expected to get a barrister's opinion, as they would be involved in any court action.

I set out in my provisional decision that there was around a two week delay on HDI's part at the outset of Mrs R's claim before it sent the claim to solicitors to assess. HDI is not responsible for any time taken by the solicitors, or the barrister, but it did chase the solicitors in early April 2024, once it was aware Mrs R had not heard from them. I think this was reasonable.

I also set out in my provisional decision that this two week delay did not cause Mrs R to lose the opportunity to have the scaffolding removed and all the building worked stopped. I remain of this opinion. This is because while the barrister said the scaffolding had been in place for three months (at the time of his assessment) and that this weighed against the granting of an interim order, this was not due to any delay or error on HDI's part. And he also advised that any claim for an interim order would not likely succeed anyway, given Mrs R would have had notice of the works and her neighbour had planning permission. (I note that Mrs R says the neighbour obtained the planning permission under false pretences and that she did not receive notice of works, but this is the barrister's legal advice.) I recognise Mrs R's strength of feeling about this but there is simply no convincing evidence (such as another legal opinion) that this is incorrect. I remain of the opinion that HDI's initial delay of two weeks did not impact the legal claims Mrs R wanted to make. I also remain of the opinion that £300 compensation is appropriate for this delay, as it would have caused her some distress and inconvenience at the time.

#### Should HDI refund the buildings insurer excess?

Mrs R says HDI told her it would reimburse her home insurance excess as an incentive for her to claim under her buildings cover. As stated in my provisional decision, the file shows that HDI did say in correspondence to Mrs R that it would reimburse this. However, I remain of the opinion that on the current evidence, HDI is not liable to pay this. While it encouraged Mrs R to make a claim under her home insurance for the damage to the kitchen, I do not consider that she was prejudiced as a result. Mrs R says it complicated matters but the property damage was considered as part of her legal claim and, it remains possible for her to claim for this against her neighbour, once the building work is finished and any damage can be assessed.

Mrs R also says her home insurer has not paid for any repairs but that is not a matter for HDI. I remain of the opinion that, on the evidence currently available, I do not consider I can reasonably make an order that HDI pay Mrs R the buildings insurance excess.

#### **My final decision**

I uphold this complaint in part and require HDI Global Specialty SE to pay Mrs R the sum of £300 compensation for the distress and inconvenience caused by its handling of her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or

reject my decision before 23 April 2025.

Harriet McCarthy  
**Ombudsman**