

The complaint

R complains that HDI Global Specialty SE ('HDI') declined a claim under a residential landlord insurance policy.

R is represented in the complaint by its director, Mr M. I'll refer to both R and Mr M at different points in my decision.

What happened

R owned a property that was let as both a holiday and private rental. The property was covered by a landlord insurance policy, underwritten by HDI. In December 2022, it suffered extensive water damage when a pipe burst, causing flooding. Mr M – on behalf of R – made a claim on the policy.

HDI appointed its loss adjustor (LA) to assess the claim. The LA believed the property hadn't been occupied "*for some months*". HDI told Mr M the policy didn't cover the property if it was unoccupied. It said Mr M hadn't provided sufficient evidence to show it was occupied and declined the claim. R complained to this service.

Our investigator recommended that the complaint should be upheld. She explained that HDI had claimed an exclusion to cover, so the onus was on HDI to establish this exclusion applied. She wasn't satisfied that HDI had shown that the property was unoccupied. She recommended it either carry out further investigation to show the policy exclusion applied or reconsider the claim in line with the remaining policy terms.

HDI didn't accept this, so the complaint was passed to me to make 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.

For the avoidance of doubt, my decision is only whether it was fair and reasonable for HDI to decline the claim based on the unoccupied exclusion. I haven't looked at whether the claim itself should succeed.

Page 7 of the policy booklet shows R is covered for "*water leaks from tanks, apparatus and pipes*". Pages 9-10 of the booklet lists certain events that aren't covered, including "*damage... to any buildings that are unoccupied for more than 45 days*." 'Unoccupied' isn't defined anywhere in the policy documents.

The LA assessed the claim on HDI's behalf. He initially suspected the property was unoccupied based on his conversation with Mr M's wife during the inspection on 28 February 2023. His internal email immediately after the inspection said: "*the property has been vacant for some months due to a large scale renovation project*." His March 2023 report concluded the claim warranted "*further investigation*" and "*it is hard to say if we have a strong enough case to decline the claim at this stage...*"

During the investigation, Mr M provided the following:

- A signed witness statement summarising when he bought the property and when it was rented out. The LA says the statement contradicts information Mr M initially gave HDI, as well as a conversation the LA had with Mr M's wife when he visited the property, recorded in his 28 February 2023 email.
- A tenancy agreement for the property.
- An email address for his tenant. Attempts to contact the tenant via email appear to have gone unanswered.
- Council tax bill, landline/internet bill, and utility bills. The LA noted that these were all in Mr M's name, not the tenant's. The LA also says the utility bills show unreasonably low energy usage, suggesting the property had been unoccupied for some time.

I fully understand why HDI has concerns about this evidence. I also accept that Mr M hasn't always provided information when asked. However, I think these concerns can – at least partly – be explained by Mr M's statement that the tenant used the property infrequently. I also note an internal email exchange in May 2023 questioned whether HDI could rely on the unoccupied exclusion to decline the claim. This exchange highlighted that the tenancy agreement – relied upon by Mr M to show the property was rented throughout 2022 – ended in December 2022, less than 45 days before the leak.

The key reason for the exclusion – as HDI set out – is to mitigate loss. In simple terms, a relatively minor problem can cause major damage if the problem isn't spotted quickly. The risk of this happening is increased if the property is unoccupied. This means it's important to establish whether someone was in the property before the leak.

HDI's position is that the property was "*unoccupied for months*", and no-one had been in the property to spot the leak for "*quite a while*". I think our investigator explained this service's approach well. 'Unoccupied' isn't defined in the policy and I don't think a reasonable interpretation of this is that someone must be permanently living in it. Further, I don't think it's reasonable to expect someone to stay in a property undergoing renovation.

Mr M says this building work was completed in December 2022. While the LA initially asked for information about the work, his request seems to have been ignored by both parties for several months. I also think the LA should have specified what he needed. For example, I think he might reasonably have asked Mr M for his builder's contact details, the schedule of building/renovation works, invoices, evidence of payments from R's bank account, emails to/from his builder, or any other evidence that might confirm building work was taking place in December 2022. I also note that it doesn't look like the LA asked Mr M for bank statements that would show the monthly rent going into R's account.

So I think the evidence, as it stands, is inconclusive. On balance, I'm not persuaded that HDI has shown the property was unoccupied at the time of the leak.

Putting things right

I think our investigator's recommendation was fair. I find that HDI should either carry out further investigation to show the unoccupied policy exclusion applies or reconsider the claim in line with the remaining policy terms. R should provide HDI with any information it needs as part of its investigations.

My final decision

My final decision is that I uphold this complaint and order HDI Global Specialty SE to either:

- Carry out further investigation that establishes that the property was unoccupied, as set out above; or
- Reconsider the claim in line with the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 8 June 2025.

Simon Begley
Ombudsman