DRN-5567278

The complaint

Mrs H has complained that her escape of water claim was unfairly declined by HDI Global SE ("HDI").

Mrs H has been represented throughout this complaint, but for simplicity I'll refer to the representative's comments as Mrs H's own.

Any reference to HDI in this decision includes its appointed agents.

What happened

Mrs H made a claim under her policy with HDI in June 2024, saying water had been entering her property for some years. She says she first reported the water ingress in June 2020 and that the problem was a direct result of a gap beneath the lead flashings of the flat roof adjoining her property, which was allowing rainwater to enter during storms and cause damage.

She said the housing association had been neglectful and despite making numerous complaints to it, it had failed to remedy the damage to the building until September 2024 when it finally repaired the roof. Mrs H said the delay in it doing so had caused the internal damage to worsen significantly despite her arranging some repairs herself in an effort to mitigate further damage.

HDI declined Mrs H's claim. It said the damage was gradual and caused by faulty workmanship, but Mrs H didn't agree so she made a complaint.

In its response to her complaint, HDI said it stood by the claim decision that had been communicated to Mrs H – that the damage wasn't a result of a one-off insured event but a result of gradual rainwater ingress due to a faulty roof.

Mrs H didn't accept HDI's response, so she referred her complaint to this service. She said she had received only vague responses and there were numerous delays. She also said that in denying her claim HDI had overlooked key facts and documents she'd provided and that the landlord's negligence had caused extensive damage to her home.

Our Investigator considered Mrs H's complaint, but didn't think it should be upheld. The Investigator said that based on expert evidence, it was clear that the water ingress had only occurred due to the poor workmanship which had caused the gap in the roof. And that as there had been no one-off insured event that had caused the damage claimed for, HDI had applied the gradual damage exclusion fairly.

Mrs H didn't agree with our Investigator's assessment. She said that a storm constituted the insured event and that there were periods of heavy rainfall during the relevant timeframe which caused the damage claimed for. But this didn't change our Investigator's view of the complaint.

As Mrs H didn't accept the conclusions reached by our Investigator, the complaint has now been referred to me for an Ombudsman's 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.

This is an informal service, so I'm not going to respond here to every point raised or comment on every piece of evidence Mrs H and HDI have provided. Instead, I've focused on those I consider to be key or central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

It's important for me to clarify that insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy.

And when making a claim on an insurance policy, it is for the insured – so in this case Mrs H – to demonstrate she's suffered a loss covered by the policy. If she can do so, then HDI will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

In this case, whilst Mrs H has been able to demonstrate she's suffered a loss, HDI has also been able to show there's a valid exclusion in the policy relating to that loss, which means the claim isn't covered. The exclusion it's relied on says the policy doesn't cover *"loss or damage by anything that happens gradually and the cost of correcting faulty workmanship or design or the cost of replacing faulty materials".*

It's not in dispute that the damage worsened over time following various periods of heavy rainfall or storms. But while Mrs H says the storms were the proximate cause of the damage and each storm constituted an insured event, I don't agree that HDI has declined the claim unfairly on this basis. I say this because, had it not been for the poor workmanship which caused the gap under the lead flashings of the flat roof, it's entirely possible the property would've withstood the inclement weather conditions. This is supported by the expert reports on file, one of which confirms that the *"roof is [in a] poor state of disrepair"* – and water was *"breaching lead work and entering the cavity".* Another expert report I've seen confirms *"Due to the length of time this issue has been ongoing since (since 2020) the ongoing damage has exacerbated and any form of mitigation has only recently occurred in Sept 24 when the gap under the flashing was filled."* It's clear therefore that all the expert evidence refers to the flat roof defects as being the main cause of the damage – and none of the evidence suggests that those defects were caused by a storm or other one-off insured event. Rather, the evidence points to poor workmanship as being the proximate cause.

There's also ample evidence in this case that Mrs H holds the housing association responsible for the failure to repair the roof in a timely manner after she first reported the issue in 2020. She's said in numerous communications, for example in her email of 23 September 2024 that it *"neglected to act on my initial reports"* and *"failed to repair the flat* *roof, which was the source of the problem".* Ordinary home and building insurance doesn't usually cover issues caused by third parties such as negligence by housing associations. And at no time has it been accepted by the insurer that if the flat roof had been repaired, the damage claimed for would still have occurred. I think based on the available evidence that this is a fair assessment and I've seen nothing that makes me consider it likely that the same or similar damage would've occurred had it not been for the faulty workmanship or the failure of the housing association to put things right.

It's also important to note that HDI wasn't contacted when the first leak occurred and no claim was made until four years later. Insurance policies require a policyholder to make a claim much sooner than this, so it's likely the claim wouldn't succeed in any event due to the time it took Mrs H to notify HDI of the damage, even though she was dealing with the housing association during that time and attempting to mitigate further damage.

I should also point out that when we look at storm-related complaints, there are three key questions to consider. One of these is whether the storm conditions were the main or dominant cause of the damage. We're likely to uphold a complaint if the answer to this question is 'yes' and we're unlikely to uphold a complaint if the answer is 'no'. So I've considered what this means for Mrs H's complaint and I'm satisfied that whilst the poor weather did result in damage to the home, it wasn't the main cause of that damage as confirmed by the expert evidence I've mentioned.

Mrs H has mentioned subrogation, saying that HDI should pay and pursue the housing association for recovery of those costs. But HDI hasn't incurred a loss here as it says the claim isn't covered, and there's nothing in the policy obliging HDI to accept the claim and take this type of action. Subrogation would be entirely at HDI's discretion.

I'm afraid I can't fairly comment on any loss of rent claim. This wasn't addressed in HDI's final response letter and in the complaint form Mrs H brought to this service, so it's a matter which should be referred to HDI first before we can become involved. I also can't consider any complaint about the housing association as it's not a regulated financial business.

The case Mrs H has quoted (Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980]) relates to repairing covenants in leases – particularly regarding structural issues due to faulty design or construction. But the circumstances of her complaint and the case she's referred to are different. Mrs H has said that the case shows an insurer must cover damage where an insured peril is the dominant and operative cause. However, as I've said, I don't agree that in her complaint, a one-off insured event was the dominant cause of the damage.

Mrs H has referred to other decisions issued by Ombudsmen at this service, which she says rule that recurring weather events must be treated as separate claims, not conflated into gradual damage, and that the faulty workmanship exclusion can't apply to consequential damage caused by an insured peril. But I haven't seen the details of those cases and the circumstances won't be identical to Mrs H's case. In any event, the decision of another Ombudsman at this service does not set a precedent for other cases as every case is considered and decided on its own merits.

So, having fairly taken everything into consideration, I'm afraid I'm not satisfied that HDI has acted unreasonably here, for the reasons I've explained.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 September 2025.

Ifrah Malik
Ombudsman