

## The complaint

K, a limited company, complains about what HDI Global Specialty SE did after it claimed on its business protection insurance policy. K is represented by one of its directors, Mr P.

## What happened

In December 2021 K contacted HDI seeking assistance from its policy with legal costs relating to a claim made against it by another business (E). It said it had previously tried to contact HDI about this matter in October 2021 but had been directed to the wrong team. HDI appointed a firm of solicitors to carry out a review of policy coverage. They sought further information from K about a number of issues including whether the notification requirements of the policy had been complied with. In relation to that K said, amongst other things, that a claim made against it by E in March 2021 was unrelated to the subsequent proceedings for which it was seeking assistance under its policy.

HDI sought counsel's opinion on policy coverage and having reviewed that declined K's claim in March 2023. It said the solicitors letter sent to K in March 2021 contained a threat to commence legal proceedings which it hadn't been notified of. And the allegations in that letter were repeated in the 'Particulars of Claim' (and the amended particulars) which K's claim on its policy related to. As it hadn't been told about that it hadn't had the opportunity to obtain legal advice on the initial letter of claim or the response K provided to that.

It also thought there had been delay in notifying it of the September 2021 claim against K. That meant it didn't have the opportunity to take advice in relation to a hearing which had taken place before it was told about the claim. It said K was in breach of the notification requirements its policy contained and declined the claim on that basis (it reserved its rights in relation to other issues of policy coverage).

Our investigator thought it was reasonable of HDI to have concluded the claim made against K in September 2021 was linked to the issues raised in the solicitors letter it was sent in March 2021. And that letter was something K should have thought could lead to a legal claim against it. So in line with the policy terms it was something HDI should have been told about.

He was satisfied HDI's position had been adversely affected because it wasn't told about that. He thought it acted fairly in declining to provide cover for the legal costs K incurred and so didn't comment on any other concerns HDI had about policy coverage. He agreed it had taken time for that decision to be reached but didn't think there had been any unreasonable delays by HDI in progressing matters.

K didn't agree. In summary it said:

- The notification clause which its policy actually contained (and which had been downloaded from the relevant portal) didn't say that must be done within 14 days or that non-compliance meant a claim wouldn't be covered. It didn't think it was bound by the different wording HDI had quoted.

- The March 2021 letter hadn't been served on it but was addressed to and received by a different business (P). There was a clear separation of legal and operational responsibilities between the two businesses at the time that took place. Sending that letter to P didn't trigger any requirement for K to notify HDI and didn't meet the policy definition of a claim.
- It had never received this correspondence or had any knowledge of its existence prior to the service of proceedings in September 2021. And no dispute existed between it and the claimant at the point the letter was sent. The subsequent 'Particulars of Claim' which referenced the letter had been struck out by the court in their entirety and shouldn't be relied upon.
- Even if it had received the letter and should have notified HDI its involvement wouldn't have made any meaningful difference to what then happened meaning its position hadn't been prejudiced by this. The only claim capable of notification was that from September 2021 and no hearing had taken place prior to HDI being told about that. Seeking legal representation had taken precedence over notifying HDI of the claim and it had in any case been told within the "*reasonably practicable*" timeframe the policy required. So the notification condition of the policy (however worded) had been satisfied.

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 thought first about whether HDI has applied the correct policy terms when considering the claim K made. Its policy renewed at the start of January 2021 so it's the terms in force from that renewal which would apply for the subsequent 12 month period. K has provided a policy which appears to be dated 2019 and which it believes should apply. However, I think the wording more likely to apply is the one HDI has relied on given its dated closer to the renewal of K's policy. And in relation to notification it says.

*"You must give Us notice as soon as possible:*

- a) and in any event within 14 days of, any claim against You or anything that is likely to lead to a claim against You; or*
- b) of any other act, incident or event that could lead to a claim under the Policy*

*If You do not, We will not cover the claim"*

HDI says K should have notified it of the letter before claim that was sent in March 2021. In its most recent submissions K says it never received that letter and wasn't aware of it until proceedings were served in September 2021. However, I've seen a copy of a response it sent to E's solicitors in April 2021. The points in that response correlate to those in the letter before claim.

And K said in correspondence with HDI *"the so called pre action protocol has nothing to do with this claim because when we responded the claimants solicitors responded that they were no longer instructed on the matter"*. In its complaint to us K then said *"this Letter Before Action was asking to sign undertakings which had no legal basis from [K's] point of view. When [K] responded to this Letter Before Action on 19 April 2021, the Claimant and its legal representatives confirmed that it is no longer pursuing this."* I find it difficult to reconcile that evidence with K's view that it wasn't aware of the letter before claim until September 2021. In my view whether that letter was received by it or P it was clearly aware of its contents because it responded to it.

I'm also satisfied that letter is something it should reasonably have told HDI about. The notification requirement says HDI needs to be told about *"any claim against You or anything that is likely to lead to a claim against You"*. Taking into account relevant case law, I think it's reasonable to say for that to apply there should be a real rather than a fanciful risk of a claim being made on the policy. And that a reasonable insured would have understood there was a real risk of such a claim being made taking into account their knowledge of what happened.

I appreciate K's view may have been that the allegations against it were either baseless or misdirected. But the letter before claim (which was addressed to K and its directors) says *"ignoring this letter will lead to our client commencing proceedings against you and may increase your liability for costs"*. The letter invites K (and others) to enter into undertakings and says *"In the event that such undertakings are not provided, then [E] will have to bring this matter to the attention of the Court and seek an injunction preventing such unlawful conduct"*. And the letter concludes *"our clients past, present and future rights are fully reserved, including the right to commence proceedings against you without further reference to you should that prove necessary"*.

Given that letter was from a firm of solicitors I think a reasonable insured would have understood there was a real risk of a claim being made against them. And while K might well have thought such a claim was bound to fail given its position on what had happened that isn't the test in the policy. The question is whether the March 2021 letter should reasonably have made it think a claim against it was likely. I think it should and so this is something HDI should have been told about at that time.

K has argued this doesn't matter because the claim it subsequently sought assistance for was unrelated to the matters raised in March 2021. So any late notification of the March 2021 claim is irrelevant because it's subsequent claim was about something else. But I don't think it was unreasonable of HDI to consider these matters were related.

The key allegation made in the March 2021 letter was that K was in breach of contractual obligations which had prevented E from commencing trading. That stemmed in part from a breakdown in relations between K and E which took place in February 2021. The allegation of loss in the amended 'Particulars of Claim' is the same; that the actions of K prevented E from proceeding with a commercial launch in March 2021. In particular it says *"if the defendants had performed their obligations under the Deed of Assignment and the Consultancy Agreement then the Commercial Launch would have occurred in or around March 2021..."*.

I appreciate the particulars do then go on to make further allegations about what happened after March 2021. But I think it's relevant here that the policy provides a definition of connected claims which says "*All claims arising from or connected with any one act, incident or event, or from the same source or original cause will be treated as one claim*". I think it was reasonable of HDI to conclude in this case the claim against K in September 2021 was connected to the issues highlighted in the March 2021 letter before claim. And so the claim K made on its policy was related to the earlier matter which it hadn't been notified of.

I've gone on to think about whether it's fair of HDI to rely on that breach to turn down the claim. HDI has said the notification clause is a 'condition precedent' to indemnity being provided meaning it doesn't need to show how it was prejudiced in order to rely on this. The term isn't described as such and I think if HDI had wanted to make clear that was the case it could have done so. Having said that I accept that while labelling is important it isn't always determinative and it might well be possible to argue the term in this case has the features normally associated with a condition precedent.

However, even if it is reasonable to regard it as such, I don't think that affects the outcome of this complaint. I understand the legal position as it applies to a condition precedent. But our remit is wider than that and requires me to also take into account what's fair and reasonable in all the circumstances. I think the question of whether HDI has been caused prejudice by the late notification is relevant when considering what's fair and reasonable.

HDI has explained what it believes the impact of the late notification has been. And I think it's fair to say it did lose out on the opportunity to seek legal advice on the letter before claim K was sent or have any input into the response K then sent. In fact it didn't have any knowledge of these issues until over five months after they'd occurred during which time K had appointed its own solicitors and at least some legal costs had been incurred. Taking into account that the notification clause is likely to be regarded as a condition precedent I think HDI has acted correctly and fairly in turning down K's claim because that clause hadn't been complied with. As a result I don't need to consider the other concerns about policy coverage HDI set out (and on which it reserved its rights).

I've also considered whether there was any significant and avoidable delay by HDI in its handling of the claim. I do accept that (as our investigator said) this took some time to progress. However, I think there were some complex issues to explore and HDI reasonably needed to gather further information from K in order to consider them. And it was then appropriate HDI sought counsel's opinion on policy coverage. I've not identified significant avoidable delay here for which it was responsible so there's isn't anything I think it needs to do to put things right.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 27 February 2026.

James Park  
**Ombudsman**