DRN-4564555

The complaint

Mr B complains that HDI Global Specialty SE (HDI) avoided his home insurance policy from the 2021 renewal and refused to pay his claim.

Where I've referred to HDI, this also includes any actions by agents acting on their behalf.

What happened

Mr B took out a home insurance policy with HDI in 2019 via an online aggregator.

The policy was renewed in 2020 and 2021. In 2022 Mr B made a claim to HDI for a damaged laptop.

During the validation of the claim, HDI discovered that Mr B had two previous County Court Judgement's (CCJ's) that they weren't told about, which pre-dated his 2019 policy and subsequent renewals.

HDI avoided Mr B's policy back to the latest renewal in November 2021 and refunded the premiums, as they said that if they had been aware of the CCJ's they wouldn't have been able to provide a policy. And this was the most recent point at which they say Mr B should have told them about the CCJ's. As the policy was effectively never in place for this period, HDI also refused Mr B's claim.

As Mr B was unhappy with HDI's position, he approached this service.

One of our investigators upheld the complaint. She said that HDI hadn't asked Mr B about CCJ's when he first took out the policy in 2019. She said that as Mr B's circumstances hadn't changed since then, regardless of what the documents for the subsequent renewals said or required Mr B to do, she didn't think Mr B had misrepresented.

So, the investigator said HDI should:

- Remove any records of cancellation from internal and external databases
- Reinstate the policy
- Deal with the claim subject to the remaining terms
- Pay Mr B £200 compensation
- Refund the increased premiums Mr B has incurred elsewhere as a result of having to declare a cancelled policy
- Add 8% simple interest to the reimbursement

Mr B agreed with the investigator's outcome and recommendations. He also provided his insurance documents for 2022 and 2023. He said this demonstrated that he'd incurred increased premiums of around £683 due to needing to declare having a policy cancelled.

HDI didn't agree with the investigator and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator, so I issued a provisional decision, to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

> *"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*
>
> *As I've reached a different outcome to our investigator, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.*
>
> *Firstly, I should explain that HDI has referred to 'cancelling' Mr B's policy back to the latest renewal, and they've also returned the renewal premiums. It's my understanding that this would actually be a policy avoidance. But either way, in effect the policy is being treated as if it never existed.*
>
> *Whilst not specifically referenced by HDI (or our investigator), the relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.*
>
> *And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.*
>
> *CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*
>
> *HDI accepts a question about CCJ's wasn't asked when Mr B took out his policy online. And that was for the period 2019-2020. However, they say that Mr B failed to take reasonable care not to make a misrepresentation when he renewed his insurance policies in 2020 and 2021, as he didn't inform them the documents were incorrect when they noted Mr B hadn't ever had a CCJ – as he in fact had two previously – and one was still unsatisfied.*

As HDI says that they didn't ask a question about CCJ's in 2019, or the information input on the aggregator differed to that which then transferred to them, they haven't avoided that policy year. So, I won't consider whether Mr B failed to take reasonable care not to make a misrepresentation at that point of taking out the policy in 2019. Instead, I'll focus on the renewals after that first year as HDI has. Each renewal is a new annual policy and contract of insurance.

The renewal documents and statement of insurance from 2020 and 2021 both said:

> *"You should read this document together with your policy booklet and cover summary. If any of the details are incorrect or have changed, please contact us immediately.*
>
> *If any of the details are incorrect or have changed, please contact us immediately."*

And listed within the documents was the following question and answer:

> *"Ever had a CCJ No"*

This question and answer were clearly presented. It was on the first page of the statement of insurance, just below where it said (twice) Mr B needed to check the documents and let HDI know if anything was incorrect. It was prominently presented and was alongside Mr B's personal information, which included occupation, date of birth and his contact details.

Mr B says his circumstances hadn't changed in relation to CCJ's since he took out the policy, so he didn't consider that he needed to contact HDI. It may be the case that Mr B's circumstances hadn't changed since the 2019 policy year, as he already had the CCJ's at that point. But the documents said he needed to let them know if anything was incorrect, not just if anything had changed. And the question and answer about CCJ's wasn't asking if he had received any since the last policy year, instead it outlines 'ever had a CCJ'. And that question with the answer recorded as 'no' was incorrect (and was incorrect on each document each year – 2019, 2020 and 2021).

Whilst Mr B might not have considered it important as his circumstances hadn't changed, that question and corresponding answer clearly was factually incorrect, and he didn't make HDI aware of this. So, I think Mr B did fail to take reasonable care not to make a misrepresentation for the policy years I'm considering, 2020 and 2021.

So, I'll now consider whether the misrepresentation Mr B made is a qualifying misrepresentation under CIDRA. To answer this question, I need to establish what HDI would have done if Mr B hadn't made the misrepresentation.

HDI has provided their underwriting criteria to this service to show what they would have done if Mr B had declared he had previous CCJ's. I can't share this in full as it is commercially sensitive. However, I'm satisfied HDI has demonstrated it wouldn't have offered cover if Mr B had disclosed the CCJ's he had.

This means I'm satisfied Mr B's misrepresentation was a qualifying one.

Whilst not referred to specifically by HDI, given they have avoided the policy and refunded the premium, I'm assuming they have treated Mr B's misrepresentation as careless. I say this because if they considered it reckless or deliberate, and following the remedies under CIDRA, they'd be entitled to keep the premium, but instead they've refunded it.

Mr B has said his circumstances hadn't changed since taking out the policy, so he didn't contact HDI to change the answer noted as 'no' against the question 'ever had a CCJ'. I agree Mr B's misrepresentation was careless as I think he made an incorrect assumption that he only needed to contact HDI if things had changed, and therefore hasn't corrected the question about CCJ's on his documents based on this incorrect assumption.

As I'm satisfied Mr B's misrepresentation should be treated as careless, I've looked at the actions HDI can take in accordance with CIDRA.

This outlines that in the event of a careless misrepresentation, where the insurer would not have entered into the consumer contract on any terms, as is the case here, the insurer can avoid the policy and refuse all claims but will need to return the premiums.

However, whilst considering the misrepresentation to have taken place at both 2020 and 2021 renewals, HDI has only avoided the policy and returned the premiums for the most recent renewal from 2021. Following the remedies under CIDRA, HDI could also do this for the 2020 year too and this would mean an additional refund of that policy year for Mr B. However, by HDI not doing that, I think Mr B is actually in a better position despite not receiving a further refund. I'll explain why.

This is because Mr B had a claim paid in the policy year 2020 to 2021. This was for considerably more than the premium he paid for that year. If HDI was to avoid the 2020 to 2021 policy (and return the premium) this policy effectively also would never have existed. This means Mr B wouldn't have been able to benefit from a successful claim under the policy. So, in order to avoid that policy and return that premium, Mr B would need to repay that claim to HDI, which is significantly more than the premiums he'd receive in return. But HDI isn't intending to do that. Therefore, by HDI not avoiding the 2020 to 2021 policy, whilst it could do under CIDRA, Mr B is actually in a better position than he would otherwise be. And I don't think that's unfair in all the circumstances.

With the above in mind, unless anything changes as a result of the responses to my provisional decision, I won't be directing HDI to do anything further, as I'm minded to conclude they have acted fairly by avoiding the 2021 to 2022 policy, returning the premium and declining the claim."

So, I wasn't minded to uphold the complaint.

The responses to my provisional decision

Mr B responded and said whilst disappointed with the change in outcome from the investigator's, he respected the review of things and the provisional decision. He said as far as he knew, he took the policy out earlier than 2019 and it was transferred in 2019.

Mr B also reiterated that nothing had changed at each renewal from when he took out the policy. Mr B says that he didn't mislead anyone and instead failed to review the documents when nothing had changed in relation to his circumstances. He reiterated that by having a claim paid in previous policy years, he'd assumed everything was in order.

Mr B also said he noted the provisional decision said the policy had been avoided, rather than cancelled. And he wanted to know how he should be declaring that to alternative insurers going forward and the difference between the two.

HDI responded to confirm it was in agreement with the provisional 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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision and for the same reasons.

I note what Mr B says about his circumstances not changing so he didn't think he needed to change anything. But I discussed this in my provisional decision, and that renewal each year was a new contract which asked not only if anything had changed, but also to let HDI know if anything was incorrect. And the documents showed an answer wasn't correct relating to CCJ's.

I also explained the relevant Act that applied in a case of misrepresentation (CIDRA), and the remedies available to HDI under this where there was a qualifying misrepresentation. And I thought HDI had acted fairly. I also recognised that Mr B had made a previous claim, and by taking the actions that HDI did by only avoiding the policy back to the previous renewal, rather than 2020, this actually left Mr B in a better position. This is because he successfully claimed under the previous policy and that outweighed the premiums he'd been charged.

With the above and my provisional decision in mind, I don't think HDI has acted unfairly so I won't be directing them to do anything further.

Mr B has asked what the difference is between cancellation and avoidance, and how he should be declaring this to new insurers. I can give a broad explanation of *some* differences, but this isn't intended to be advice or a full detailed explanation of all the differences, instead a more general explanation. And I can't guide Mr B on how he should answer questions when he takes out a new insurance policy. It is important that Mr B answers any questions asked by an insurer in the sale (or renewal) process accurately, and if he is unsure how to answer them, he should seek guidance from the insurer or broker asking the question.

Generally, if an insurer cancels a policy, it would often do so from a specific point during the policy term, rather than back to the start date it was taken out. For example, it could be the case that an insurer could offer a policy from the outset and be happy to take on that risk, but something changes during the term which then makes it unacceptable from that point onwards. So as the policy is no longer acceptable, the insurer decides to cancel it mid-term. It is also a potential option in a case of misrepresentation, in certain circumstances, if there has been no claim. And often a cancellation fee can be applied, along with time on risk charges i.e., being charged for the amount of days the policy was in force before it was cancelled. A claim would also need to be assessed in line with the policy terms if it happened before the cancellation date whist the policy was 'live'.

If an insurer avoids the policy, this means it treats it as if it never existed, effectively it was never taken out and was never in effect. So, in effect, it was cancelled back to when it was taken out, to never have been 'live' for any time at all. This is because the insurer would never have been able to offer the policy in the first place. This is why it is backdated to when it was taken out and depending on the remedies under CIDRA (which is the relevant law when considering misrepresentation), the full policy premium may be refunded in some circumstances. A claim wouldn't need to be considered either as the policy was effectively never in place, so there was never a point in which the policy was 'live'.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 February 2024.

Callum Milne
Ombudsman