

The complaint

A limited company, which I'll refer to as B, complains that HDI Global SE rejected a claim on its business protection insurance and said the policy was void.

Ms A, a director of B, brings the complaint on B's behalf.

What happened

B made a claim on its business protection insurance policy following a fire at its premises. HDI appointed loss adjusters to look into the claim and they asked for information from B before making a decision. Correspondence continued for some time and B complained about how long the process was taking.

When that complaint was referred to this Service, our investigator said some of the delay had been caused by HDI and asked it to pay compensation of £200. She said HDI should make its decision on the claim promptly.

After considering all the information provided, HDI concluded that B had made a misrepresentation when it took out the policy, so it refused to pay the claim and said the policy was void. The misrepresentation concerned information B had provided about electrical testing and kitchen cleaning.

B has now complained about this decision.

HDI says when B took out the policy information was provided that was incorrect and if the correct information had been provided it would not have offered insurance, so it's entitled to void the policy. But as the misrepresentation wasn't deliberate or reckless it has returned the premium paid.

Our investigator thought HDI's decision was fair but B disagrees and has requested an ombudsman's decision.

B has been assisted in bringing the complaint by a representative. They have provided detailed submissions on B's behalf. I won't set them out in detail but the key points include:

- When the loss adjusters requested information no questions were raised about the nature of the electrical testing or the electrician's qualifications.
- A copy of the invoice for electrical testing and minor works was provided and it was only after this that HDI expressed any concern.
- The electrician had told Ms A he was a qualified electrician and registered with the relevant body. He's well known in the area and Ms A had no reason to doubt him.
- There's no suggestion the work done by the electrician was defective or caused the fire.
- As with the electrical testing, HDI expressed no concerns about the cleaning until a late stage in dealing with the claim.
- The same person who did the electrical work also carried out work cleaning the kitchen ducting. He's a professional contractor who confirmed to Ms A that he was qualified to carry out the kitchen duct cleaning and had done this for other

restaurants.

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.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

B's representative has provided very detailed comments covering a number of issues. While I've considered everything I won't comment on every point raised. My role is to use my judgement to decide what is fair, based on the main crux of a case. So I will focus on the key points that are relevant to the outcome I've reached.

The crux of the matter is whether it was fair for HDI to decline the claim and void the policy on the basis there was a misrepresentation.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) B had a duty to make a fair presentation of the risk. This means B – or the director, Ms A, on its behalf – had to provide either

- disclosure of every material circumstance which they knew or ought to have known, or
- failing that, disclosure which provided enough information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there's anything they ought to disclose.

When it took out the policy B was asked to confirm if the electrical installation had been tested by a certified NICEIC, ELECSA or ECA contractor in the last 5 years, with all reported defects remedied.

This was a question of fact – either it had been done by a certified contractor or it hadn't. Any representation as to a matter of fact needs to be substantially correct. B answered yes to this but HDI has now established that the contractor wasn't certified, so the answer given was not correct.

Ms A says she relied on what the contractor told her. But she was required to take reasonable steps to check any available information. She had no information from the contractor about his qualifications or membership. The invoice is handwritten on a piece of paper with no details and there was nothing to show he was qualified or a member of any professional organisation. A simple check with those organisations would have confirmed this.

HDI did check with the bodies and they confirmed the electrician wasn't a member (and had never been listed as one).

B's representative questions if the issue of whether the electrician was certified would be a material consideration for a prudent insurer – since an inexperienced electrician might be

certified but a more experienced one might not. And it says the issue is what would be material to a prudent insurer, not necessarily just to this insurer.

I agree that in the second part of the duty (referred to above), where someone is providing information to enable the insurer to make further enquiries the reference is to a “prudent insurer”. But in this case, Ms A was asked a specific question. I think it was clear from that question HDI wanted to know if the electrician was certified. Ms A needed to confirm that. And if she didn’t know, she needed to carry out a reasonable search of information to establish it. Ms A could easily have established whether the electrician was certified but didn’t do so.

On this basis I’m satisfied there was a breach of the duty to make a fair presentation of the risk.

For this to be a qualifying breach under the Act, HDI needs to show it either wouldn’t have offered the insurance at all or would only have done so on different terms.

HDI has provided information showing that if the correct information had been provided it would not have offered insurance.

B’s representative questions the relevance of whether the electrician was a member of the relevant body. HDI has explained that the material difference for an insurer is that a certified contractor will ensure the electrical installation is tested in line with and complies with the relevant safety standards. And membership is renewed each year following an assessment process.

The whole point of certification is to provide customers with an assurance that the electrician is qualified and carries out work to the relevant standards. It seems to me this would be relevant to a prudent insurer. And it was relevant to HDI, which would not offer insurance unless the electrical installation had been tested by a certified contractor.

B hasn’t been able to show the electrician was working to the standards and competencies required of a certified contractor.

So this was a qualifying breach, but it was careless rather than deliberate or reckless. The Insurance Act sets out the remedies available to an insurer in these circumstances. HDI is entitled to void the policy but must return the premiums, which is what it has done.

I think that in itself would be enough to say HDI’s decision was reasonable. There is also the issue of the second question, about cleaning. This required confirmation that the kitchen and/or canopy hood, range extraction systems and ducting were maintained and cleaned by a professional contractor. On this point too, B hasn’t shown the contractor was a professional. The same points apply here as with the electrical certification.

B’s representative says there’s no evidence the contractor’s work was defective or caused the incident. If HDI had rejected the claim on the basis of a breach of condition relating to the work, that might be a relevant consideration. But it’s not relevant to the question of whether there was a breach of the duty of fair presentation, which is about what happened when the policy was taken out.

Finally, B’s representative says it hasn’t seen HDI’s underwriting criteria and in the interests of natural justice should be given the opportunity to comment on it – seeing a redacted version of it if necessary. The Ombudsman may accept evidence in confidence where he considers it appropriate and given the commercial sensitivity of HDI’s underwriting criteria I’m satisfied it is reasonable to deal with it on this basis. B has been given a summary and is

aware of HDI's position on this.

I appreciate the consequences of the fire were difficult for B and this was compounded by the amount of time taken to deal with the claim and the eventual outcome. Some of the points HDI made only arose late on, but that was because it was waiting for information about, for example, the electrician's qualifications and certification. It was only once HDI had the information that it was able to make a decision.

It's fair to expect a business to take reasonable steps to safeguard its position, including when taking out insurance. In the circumstances of this case I am satisfied that it was fair for HDI to conclude there was a misrepresentation and implement the remedy available under the Insurance Act.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 16 January 2024.

Peter Whiteley
Ombudsman