

## The complaint

Mr and Mrs A are unhappy HDI Global Specialty SE (HDI) has declined a claim made under their landlord property insurance policy.

## What happened

Mr and Mrs A let their property out to a tenant. The tenant wouldn't allow access to the property and sadly died some time later. Mr and Mrs A discovered someone else was living at the property, and they had to gain access via the courts with an eviction.

Mr and Mrs A gained access to their property in December 2022. They discovered a significant amount of rubbish, human waste and some damage to their property. They made a claim to HDI, their landlord property insurer.

HDI ultimately declined the claim. They said there wasn't an insured event which had occurred and instead it was as a result of a lack of care by the tenant. There was then a dispute between the parties over the applicable terms and conditions at the time of the loss.

As Mr and Mrs A remained unhappy with HDI, they approached this service.

One of our investigators looked into things and upheld the complaint. She said that HDI hadn't provided clarity over the terms and conditions, and she thought there had been malicious damage. So, she recommended HDI should settle the claim and pay £100 compensation.

HDI didn't agree. As an agreement couldn't be reached, the case was passed to me to decide.

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.*

*Having done so, whilst I appreciate it'll come as a disappointment to Mr and Mrs A, I'm minded to reach a different outcome to our investigator.*

*There has been a lack of clarity around the terms and conditions which applied at the time of the loss being claimed for. HDI say the policy renewed in August 2022, and the policy terms changed at that point. However, Mr and Mrs A say they were only able to access a different set of policy documents on their online portal. They say the documents weren't changed on their portal until after they made the claim.*

*The difference between the two policies and how they work is significant. The older terms are 'all-risk' which means everything is covered, unless otherwise excluded. Whereas the later terms are 'insured peril' which means a specific insured event has to have occurred (and an exclusion doesn't apply to that event) otherwise it isn't covered.*

*Based on what I've seen, I think it would be fair for the 'all-risk' terms to apply here when considering the claim. I'm persuaded these were the documents that Mr and Mrs A were told applied after renewal, and that they weren't provided with any other terms until after the claim had occurred. So, I don't think it would be fair or reasonable to say different terms would retrospectively apply when Mr and Mrs A haven't had an opportunity to see these previously. Furthermore, looking at the August 2022 renewal documents, when the change was said to have occurred, it doesn't list any change in terms, instead it refers to:*

<i>Schedule version</i>	<i>1</i>
<i>Wording version</i>	<i>1</i>

*And this same section is included in previous years, identically, so there isn't any reference to a change of policy wording since the previous year.*

*But having said that, whilst I think the 'all-risk' terms are the applicable terms for the time of loss, I don't think there is a valid claim in any event. But for completeness, I also considered the peril-based terms, and even if those were the terms Mr and Mrs A were provided, I still don't think there would have been a valid claim either.*

*As I'm persuaded the 'all-risk' terms would have been relevant, I'll focus on those.*

*The policy covers:*

*"The cover*

*The Insurers will indemnify the Insured as stated in the Schedule against Damage arising from any accidental cause not being an Excepted Cause, occurring during the Period of Insurance, subject always to the Excess(es) and the limits, terms, conditions and exclusions of this Section and the policy."*

*And damage is defined as:*

*"Damage/Damaged*

*Means accidental physical loss of, destruction of or damage to the Property Insured."*

*So, the starting point of a claim is that there needs to be damage as defined, and unless otherwise excluded, Mr and Mrs A would have a potential claim.*

*Mr and Mrs A discovered a significant amount of rubbish, decomposing food, personal belongings and human waste in their property. They also discovered a bookcase was missing, a wall had been damaged, along with the smoke detectors. This was after the tenant had sadly passed away, and another person was living in the property, and they had to have them removed via eviction proceedings.*

*From my understanding, the tenant was lawfully living at the property via a tenancy*

*agreement. But the second person living there wasn't permitted to live there. So, it does seem that there was a period of time where someone was lawfully, and unlawfully, living at the property. And due to Mr and Mrs A not gaining access to the property until an eviction had taken place, it's uncertain exactly what point everything happened and whether it was as a result of the lawful tenant or the unlawful occupant.*

*However, based on what I've seen, I don't think the policy provides cover for what happened in any event. I'll explain why.*

*Firstly, the policy covers Damage – as defined above.*

*Each room had a significant amount of rubbish and belongings in it. An excess amount of rubbish and belongings in my view wouldn't be 'damage' as defined. There was also a large amount of human waste. But again, the presence of this in itself wouldn't be 'damage' as defined. Instead, the property required a considerable amount of cleaning. This is supported by the view of the independent contractors Mr and Mrs A appointed:*

*"In the first instance the entire property will be fogged with the chemical known as (name). This process will be repeated throughout the clean-up as the rubbish is removed in stages.*

*The overwhelming bulk of strewn debris, general rubbish and decomposing food means that the technicians will clear one room at a time, ensuring that the entire house is cleared prior to undertaking any cleaning/disinfection treatment.*

*Once the rooms are cleared. We would advise all carpets are uplifted and placed in several 14 yard skips for disposal. The floor structure would then be hard swept, sanitised and left in good order.*

*The bathrooms throughout the dwelling highlight evidence of bio-hazard(sic) material which will require to be medically incinerated and a full deep clean of sanitary ware and structure would be highly recommended before strip out.*

*The final phase would be to undertake a deep hygienic clean and to ensure all touch points are sanitised in order(sic) to hand the property over to you in a hygienic state.*

*The kitchen will be lightly washed and sanitised as this will be completely removed by yourself."*

*So, this shows that rather than damage being caused, there was significant debris which needed removing, along with very extensive cleaning being required. And I don't think this is 'damage' which is what the policy covers.*

*I recognise the carpets needed disposing of, and there are also notes that the furniture was covered in waste, and the fridge freezer was damaged. But Mr and Mrs A don't have contents cover so these items wouldn't be covered. And whilst the above says the kitchen would be removed by Mr and Mrs A, there isn't reference to this being due to damage as the contractor says this can be cleaned.*

*Mr and Mrs A, and our investigator, argued that what occurred was malicious. This was on the basis that there was human waste throughout the property. Our*

*investigator said that she thought this was done maliciously as she'd have expected the tenant or person after the tenant to have known how to use a toilet, and the fact they didn't, she believed was a malicious act.*

*However, as I say, the policy covers damage. And I don't think damage has been caused. Instead, a significant clean was required. Even if it could be classed as 'damage' – which I don't think it can – I don't think, on balance, it's been shown to have been caused maliciously anyway.*

*I say this because the notes indicate the tenant was suffering a terminal illness and was incontinent. In the images, there are bathroom related personal hygiene products, it is noted the tenant was undergoing medical care, and required a hospital bed. I don't know the full details of the medical condition, but the fact there is a hospital bed, sanitary personal hygiene items, and significant human waste, I think on balance, this supports that the human waste was most likely as a result of medical circumstances, rather than maliciously done.*

*The policy does also cover accidental damage, but the policy also has a general exclusion for damage caused by anyone lawfully on the property:*

*“Excepted Causes*

*The Insurers shall not indemnify the Insured for:*

*4. Damage caused directly or indirectly by any person lawfully in the Premises.”*

*So even if I was satisfied the human waste was 'damage' (which I'm not), I don't think it's been shown it was done maliciously, and the policy doesn't cover damage caused by anyone who was lawfully on the premises. And there is nothing to show that this was solely caused by the person who resided in the property after the tenant, rather than it being as result of the tenants' medical circumstances. But in any event, crucially, I don't think it's 'damage' which is what the policy covers.*

*I note Mr and Mrs A have said a bespoke bookcase has been removed. I understand this was fitted, so would form part of the buildings (they don't have contents cover). However, it is unclear what has happened to the bookcase, and theft by persons lawfully on the premises isn't covered either. So, in the absence of knowing who this was taken by or when, I'm not persuaded it's been shown an insured event occurred – i.e. theft by someone not lawfully on the premises.*

*There is also reported damage to walls and smoke alarms are reported to have been tampered with. But it isn't clear if this was done with malicious intent, accidentally, by someone else, or by the tenant. But as outlined, damage caused by anyone lawfully at the property isn't covered. However, from what I've seen, this wasn't fully considered yet as HDI were awaiting quotes from Mr and Mrs A. Instead, the dispute over all-risks vs specific perils in the policy terms occurred instead. But if Mr and Mrs A have further information in support of the wall or smoke detector damage (or any other damage) and that this should be covered under the terms, they should submit this to HDI to consider further.*

*I do recognise Mr and Mrs A have been left in a very difficult and costly position as a result of what happened to their property. And they do have my sympathy for what happened to them through no fault of their own. But I do also need to take into account the terms of the policy. And having done so, unfortunately, I don't think there is cover for what has happened here."*

Therefore, based on what I'd seen, I wasn't minded to uphold the complaint.

### **The responses to my provisional decision**

HDI responded and said they had nothing further to add.

Mr and Mrs A responded but they didn't agree. They provided a detailed list of items where a clean was initially attempted but was unsuccessful, so they said there was actually damage and those items required replacement. They said the garden had been left untended to, and gates were rotten due to the accumulation of leaves and debris, along with the gutters being full of debris. And they said the tenant hadn't complied with the tenancy agreement.

They said much of the human waste was most likely to have been from the other occupant, rather than the tenant. They also said the removal of the bookcase, and cigarette burns to the carpet and bath, were likely to be due to the other occupant too. Mr and Mrs A also said the carpets should be covered under their policy in any event.

### **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 conclusions I reached and the responses to it. Having done so, whilst I appreciate it will come as a disappointment to Mr and Mrs A, my final decision remains the same as my provisional decision.

In my provisional decision I explained why I considered the 'all risks' terms would apply. But also, why I didn't think, based on the evidence provided, there was a valid claim at this stage.

This is outlined in my provisional decision, but in summary, as a starting point, the policy covers damage as defined. I explained that based on what I'd seen, each room had a significant amount of rubbish and belongings present, and I didn't consider this would be 'damage' as defined in itself. I also said I recognised there was a significant amount of human waste too, but I also didn't consider that to be damage either. This is because the report from Mr and Mrs A's contractors said, aside from the carpet requiring disposal, a significant amount of clearing and cleaning was required – and that isn't damage as defined, which is what the policy covers.

In response to my provisional decision, Mr and Mrs A have provided a detailed list of where they say cleaning was later attempted but was unsuccessful, and therefore those items ultimately needed replacing as they were beyond cleaning and therefore were in fact damaged. They also say that smoke alarms and the toilet were damaged, and there were cigarette burns to the bath. However, as I outlined in my provisional decision, the only report Mr and Mrs A have provided outlined that, aside from the carpet, only cleaning was required.

Therefore, as it stands, Mr and Mrs A haven't provided a report, or any evidence, in support of demonstrating any damage as defined which should be covered under the policy. Based on what I've seen, the only evidence provided outlines that all that is required is cleaning. So, at this stage, I don't think it's been shown they have a valid claim. But as I also outlined in my provisional decision, if Mr and Mrs A have any further evidence that damage has been caused (including after cleaning wasn't possible), which should be covered, they should send this to HDI for consideration.

However, to manage Mr and Mrs A's expectations here, whilst the policy does cover damage, there are also a number of exclusions, such as rot, gradual deterioration and wear and tear. So, if Mr and Mrs A are able to obtain a report which shows damage has been caused, HDI will then need to consider whether it is covered under the policy against the remainder of the terms. But it does seem that much of what they have said, for example the human waste build-up resulting in staining which went beyond requiring cleaning, the rotten gates and the build-up of burnt on food and waste to the kitchen appliances, would have occurred over time. So even if Mr and Mrs A are able to obtain a report or evidence showing damage as defined has been caused, it may be that the claim (or some parts of it) are still not covered due to the policy exclusions.

After sending any evidence of damage to HDI, if Mr and Mrs A remain unhappy with whatever decision HDI then reaches after considering this, they'd be free to bring a new complaint to this service to consider that new evidence and information further – subject to our usual rules and timescales. But based on the evidence provided at present, I'm not persuaded Mr and Mrs A have shown damage as defined has occurred, so I don't think HDI has acted unfairly by declining their claim at this stage.

I recognise that in the loss adjuster report a hole in the wall was present. But as outlined in my provisional decision, it isn't clear if it was caused by the tenant, the other occupant or someone else. Mr and Mrs A said previously this may have been caused by moving the tenant's hospital bed or chair and they later said it may have been caused by someone else. And I recognise there is a bookcase missing, but again it isn't clear how or why this is missing, and whether it was the tenant or someone else. Whilst damage is covered, and damage as defined includes loss of (i.e., theft), the policy also excludes if it has been caused directly or indirectly by anyone lawfully on the premises. And the policy also excludes unexplained disappearance, and it isn't clear who took or removed the bookcase, when or why. So, at this stage I'm not persuaded it's been shown this should be covered. But if Mr and Mrs A have any further evidence in supporting these items should be covered, they should send it to HDI for consideration.

One further point Mr and Mrs A mentioned in response to my provisional decision is that they think the carpets should be included as they were damaged. As I outlined in my provisional decision, I recognise the report from Mr and Mrs A's contractor does say this is the only element which required removal, rather than just cleaning, so I accept on balance damage has been shown to have occurred here (putting aside any exclusions which might have applied). However, Mr and Mrs A's policy terms confirm that carpets would be considered contents items, and Mr and Mrs A only have buildings cover, so this unfortunately wouldn't provide cover for the carpets in any event.

**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 A and Mrs A to accept or reject my decision before 29 December 2023.

Callum Milne  
**Ombudsman**