

## **The complaint**

Mr C complains about how Society of Lloyd's has settled his claim on his commercial buildings insurance.

## **What happened**

Mr C owned a building that contained a shop on the ground floor and a residential flat on the first floor. He had buildings insurance with Lloyd's that covered the entire building.

In September 2018 there was an incident at the shop where thieves drove into the building and removed the cash point on the wall. This left significant damage to the wall and structure of the building.

Mr C arranged emergency repairs to the wall, so his shop could continue trading. He then made a claim on his insurance.

Lloyd's sent out a loss adjuster to inspect the damage in October 2018. However he raised concerns around the amount the property was insured for and recommended this was investigated further.

Lloyds then instructed a buildings surveyor to assess how much the property would cost to rebuild. In February 2019 they produced a report concluding the rebuild cost was £910,000. Mr C's insurance only covered him for a rebuild cost of £266,491.

Lloyd's wrote to Mr C to let him know that he was under-insured. It said that based on the figure from its building surveyor he was 71% under-insured. It said it would therefore settle the claim proportionally – covering only the 29% that was covered by the policy.

Mr C didn't think this was fair and made a complaint. He said he had made an insurance claim on the same policy in July 2018 after the shop had been struck by lightning. And he said the loss adjuster that had attended for that claim had confirmed that the property was insured for the correct amount.

Lloyd's didn't uphold the complaint. It said that Mr C had benefited from the error of the previous loss adjuster as his full claim had been paid out. But it was satisfied that the building was significantly under-insured based on its building surveyor's report.

Mr C didn't agree. He said that he had originally had a combined policy that covered the buildings and contents of the whole building. But this had been split out by his broker into two policies and he thought the cover would be sufficient. He brought his complaint to this service.

Our investigator didn't think the complaint should be upheld. She said as a business owner, she thought Mr C should have had a good idea of how much the property was worth as a business asset. And he should have realised the insurance he had didn't cover the total rebuild cost. So she thought Lloyd's had acted fairly by offering to settle Mr C's claim proportionately.

Since our investigator considered the case Mr C has instructed his own surveyor to assess the cost of rebuilding the property. They produced a report that concluded it would cost £707,834.47. Lloyd's has also considered this report, and its own surveyor has reduced its cost of a rebuild to £875,000 and has agreed to settle based on this new amount. However it says Mr C's report fails to take into account current building regulations and the fact that the building is listed, which would add to the cost of rebuilding it.

Mr C wasn't happy with the adjusted settlement and asked for his complaint to be reviewed by an ombudsman.

### **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.

Lloyd's has said it considers Mr C to have made a misrepresentation when he took out the insurance about the amount the property would cost to rebuild. When we consider complaints of this nature, the relevant law is the Insurance Act 2015. This requires the insured to make a fair presentation of the risk to the insurer when they take out and renew a policy. Where the insured fails to do this, it provides various actions the insurer may take. These include avoiding the policy (cancelling it as if it never existed).

However in this case Lloyd's hasn't applied these remedies. And has instead relied on the average clause in the policy, in order to settle the claim. So rather than considering whether a misrepresentation has been made under the Insurance Act, I have considered whether Lloyd's has acted fairly by applying this clause.

The 'average clause' in the policy states as follows:

#### *'(1) Average*

*Where a Sum Insured is stated to be subject to average, this means that if at the time of Damage, the Sum Insured is less than the total value of the property, You will*

*(a) be responsible for the difference*

*(b) bear a proportionate share of the loss.'*

So I can see that where the sum insured is less than the actual value, Lloyd's can provide a proportionate settlement under the policy.

To decide if Lloyd's has applied this clause fairly, I have first considered whether it is reasonable for it to say that the amount insured was less than the true value.

Both Mr C and Lloyd's have provided reports that conclude that it would cost significantly more to rebuild the property than the amount Mr C is insured for. And, both these reports quote significantly more than Mr C declared – with the lowest of the two still being three times higher than the value given. So I think it's fair to conclude that Mr C was significantly under-insured.

I have also considered whether Lloyd's made it clear what information they required about the value of the building when the policy was taken out and renewed.

Mr C took the policy out through a broker and it hasn't been possible to retrieve the original sales call from them. However Lloyd's has provided a copy of the statement of fact that was provided to Mr C by the broker at each renewal. On the statement of fact it states as follows:

***'Asset Protection Property Damage All Risks Cover***

*It is important to ensure that the value of the property insured represents the total cost to rebuild your property (this is not the market value). This should represent the total cost to rebuild your property including architects, surveyors, consulting engineers, debris removals and legal fees you would be required to pay.'*

I think this is enough detail for Mr C to have understood what was being asked for, and that it was more than just the market value of the building.

Further the statement of fact states at the beginning of the document that the insured must advise if any of the details aren't correct. It goes on to say: *'Failure to do so could invalidate the policy from inception or result in a claim being repudiated'*. It also says just above the question about the value of the property:

*'Please ensure that the sums insured provided by YOU are sufficient as the consequences of being underinsured can be significant.'*

So I'm satisfied that it would have been clear to Mr C that it was important the figure provided was correct and that there would be consequences affecting any claims on the policy if it wasn't.

Mr C says that during his claim in July 2018 he checked with the loss adjuster that the amount he was insured for was sufficient and they confirmed it was. So he had assumed the amount was correct based on this.

While I appreciate it would have been frustrating to find out this wasn't correct, I don't think this has any impact on how Lloyd's should settle this claim. Mr C's policy renewed in December 2017 and this is when Mr C re-confirmed the building's value. If he had any doubt about the figure provided, he should have checked it at this point, as directed by the statement of fact. So while it seems clear now that the loss adjuster that was involved in the previous claim did give incorrect information, I don't think that has any impact on considerations in this claim.

So based on the information I've seen, I'm satisfied that Mr C provided incorrect information that has led to him being under-insured. So I have gone on to consider whether Lloyd's has offered a fair settlement.

Lloyd's originally said Mr C was 71% under-insured, so would only contribute the remaining 29% towards the claim as this was the proportionate amount he was insured up to. I am satisfied that this is a fair approach and in line with how we would expect insurers to settle claims in these circumstances.

However since then Mr C has provided his own report which values the rebuild of the property as less than the report from Lloyd's surveyor. And Lloyd's has altered its valuation from £910,000 to £875,000. However this is still higher than Mr C's report – that valued it around £707,000, so I've considered whether I think this is fair.

From looking at Mr C's report, and the response to it from Lloyd's surveyor, it seems there is some disagreement about the exact floor area of the building. Lloyd's surveyor has provided detailed floor plans which were drawn up after their site visit. Whereas Mr C's surveyor just states that these dimensions are likely to be too high. So I'm more persuaded by Lloyd's assessment of the dimensions as they are significantly more detailed.

Further Lloyd's surveyor has pointed out that there would be additional costs, in particular related to planning, due to the fact the building is listed. Whereas there is no mention of this in Mr C's report.

Lloyd's has now reduced its assessment of the true rebuild cost to £875,000 based on some of the observations in Mr C's report. And it has offered an additional settlement amount to match this. From what I've seen I'm satisfied that this is a fair assessment of the true value. And therefore I'm satisfied that Lloyd's has already offered a fair settlement for Mr C's claim, so I won't ask it to do anything further.

### **My final decision**

For the reasons I have given, I don't uphold Mr C's complaint and won't require Society of Lloyd's to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 February 2021.

Sophie Goodyear  
**Ombudsman**