

The complaint

Mr M complains on behalf of the estate of his late mother, Mrs M, that Lloyds Bank General Insurance Limited (Lloyds) declined a claim for theft under her home building insurance policy.

For ease of reading I will refer to Mr M as the complainant in my decision.

What happened

Mrs M held a building insurance policy with Lloyds for a number of years. She moved to a nursing home where she lived permanently from March 2019. The insurance cover was renewed for the 2019/2020 and 2020/2021 policy years.

Mrs M's property was burgled in March 2021 and a claim was submitted to Lloyds. Lloyds declined the claim and cancelled the policy back to March 2020. It says it wasn't made aware that Mrs M no longer lived at the property. Had it known its underwriting criteria means it would only have provided cover for 12 months from the date it became unoccupied.

Mr M didn't think this was fair. He explained that his brother had lived at the property for two days a week since Mrs M moved to the nursing home. He says this meets the criteria set out in the policy terms for the property being occupied. Mr M says he doesn't agree with Lloyds's argument that his brother doesn't meet the definition because he lives elsewhere.

Lloyds didn't change its decision, so Mr M referred the complaint to our service. Our investigator didn't uphold his complaint. She thought Lloyds had applied its underwriting criteria fairly when making its decision. She didn't think it unreasonable for it to consider the property as unoccupied in the circumstances described.

Mr M didn't agree and asked for an ombudsman to review his complaint.

It has been passed to me to decide.

I issued a provisional decision in July 2022 explaining that I was intending to uphold Mr M's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have read the policy documents sent to Mrs M at the renewal. This says that before the policy renews, she should check that the cover is still right for her needs. It also says that she should let Lloyds know if anything has changed.

The Insurance Product Information Document (IPID) included with the renewal documents under "What are my obligations?" says:

*"You must tell us if any of the answers you gave to the questions you were asked when you took out your policy change during the insurance period such as:
Your home is to become unoccupied."*

Under the section "What is not Insured" the IPID says:

"If your home is unoccupied for more than 30 days in a row, you will not be covered for malicious damage, escape of water or theft."

I think this information is clear that if the property was unoccupied Mrs M needed to tell Lloyds. And that cover wasn't provided for certain events.

Mr M doesn't dispute that Lloyds wasn't made aware of the change in circumstances. But he argues the property wasn't unoccupied as described by the policy terms. The policy terms under "General Conditions" say:

"Changes you must tell us about

Your home is to become unoccupied for more than 30 days in a row;

Someone other than you and your family is going to live in your home."

Under the section "Words and phrases with special meanings" it says:

"Unoccupied: Not lived in by you or a member of your family for more than 30 days in a row. Please note, a property will only be considered occupied if it is lived in by you or a member of your family and contains essential items for normal living purposes, for example cooking appliances, sanitary fittings and beds."

In its letter to Mr M in May 2021 Lloyds says:

"Whilst we appreciate that your brother has been staying at the property 2 nights a week, this does not deem the property occupied."

It goes on to quote the policy definition copied above. And says:

"Your brother would not be included within this definition as he does not normally live with your mother as he lives elsewhere."

Also:

"I have noted your comments yesterday that your brother was living permanently at your mother's house prior to her moving into a nursing home and I have queried if this would make any difference and at present, I believe it would not as he had a permanent home elsewhere."

Mr M disputed that his brother living at two addresses didn't meet the policy definition of an occupied property. He says his brother and his partner lived at the insured address full time in the period from December 2018 to March 2019. This was prior to his late mother moving to the nursing home. After the move, he stayed at the property two nights a week. Mr M says because his brother owns another house doesn't mean he wasn't living at the insured property as well.

Lloyds responded to say it can't expand on the reasons it had already provided as to when a property is determined to be unoccupied. It refers to its underwriting rules that determine

why it decided to cancel the policy from March 2020. In its final complaint response Lloyds says it hasn't received documents that substantiate Mr M's brother's infrequent occupancy at the insured address.

Mr M refers to Lloyds's visit to the insured property. He says it has seen that the property contains "essential items for normal living purposes" as required under the policy definition for it to be considered occupied. He says the bank statement and driving licence information Lloyds requested for his brother are registered to the property he shares with his partner. Mr M doesn't think this shows that his brother wasn't living at the property. He also refers to the electricity and gas bills that he supplied for the insured property from the past two years. He says this supports that the property was occupied.

I have thought about the policy definition of an occupied property and whether Lloyd's view is fair. Specifically, that the insured property was left unoccupied from March 2019. But I don't think its view is fair.

It's for Lloyds to demonstrate that a policy term exists that excludes a claim from being accepted. In this case it says Mr M's brother can't have been living at the property under its policy definition. In its response to our service Lloyds says that the purpose of the policy is to cover the policyholder and their family members who live at the property. It says Mr M's brother lives somewhere else and therefore cannot live at both properties.

I acknowledge Lloyds comments. But I don't agree that it's not possible for a person to live at two different addresses. Lloyds agrees that Mr M's brother was staying at the property, but disputes this constitutes him "living" there.

Mr M's brother is part of the late Mrs M's family. I don't think this is in dispute. Based on him staying at the property two nights a week, the property wasn't left unoccupied for more than 30 days in a row. So, I don't think in these circumstances the policy definition supports the insured property having been unoccupied.

I have seen the underwriting information Lloyds provided in relation to its rules around when a property is unoccupied. I can't share this information with Mr M, as it's commercially sensitive. But I don't think this supports Lloyd's view that the property was unoccupied under the policy terms either.

I have read the witness statement Mr M provided to Lloyds after the burglary. In this he states that his brother stayed at the property, "about twice a week". This information has been consistent throughout the claim and the complaint. I have no reason to dispute Mr M's testimony.

Lloyds doesn't dispute Mr M's comments that the insured property contains essential items for normal living purposes, as specified in the policy definition of an occupied property. Its argument is that Mr M's brother lives somewhere else and cannot live at both properties. But this isn't a definition supported by the policy terms or the underwriting information it supplied.

Having considered all of this I don't think Lloyds was fair when declining this claim for the reason it gave. Because of this it should reconsider the claim under the remaining terms of Mrs M's policy without relying on the policy exclusion that the property was unoccupied.

I said I was intending to uphold this complaint and Lloyds should:

- *reconsider the late Mrs M's claim under the remaining policy terms and conditions.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Lloyds says it accepts my findings as set out in the provisional decision.

Mr M says he is satisfied with my conclusions. He adds that should Lloyds wish for more evidence of his brother's occupation of his late mother's property the neighbours can be interviewed in order to verify his claims.

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.

I note Mr M's comments that Lloyds can obtain further evidence about his brother's occupation of the property from the neighbours. However, in my provisional decision I said I didn't think it was fair for Lloyds to rely on the policy exclusion that the property was unoccupied. So, although I acknowledge Mr M's comments, I don't think it's necessary for the occupation of the property to be considered further. As I explained in my provisional decision, I think it's fair that Lloyds reconsiders the claim based on the remaining policy terms without reliance on the occupation exclusion.

Having considered the responses, neither party has made further submissions or provided further evidence that require a change to my provisional decision. So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that Lloyds Bank General Insurance Limited should:

- reconsider the late Mrs M's claim under the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 13 September 2022.

Mike Waldron
Ombudsman