

The complaint

Mr and Mrs F complain that Society of Lloyd's unfairly refused to pay for repairs to defective drains as part of a subsidence claim.

Any reference to Society of Lloyd's in this decision includes its appointed agents and any reference to Mr and Mrs F includes their representative.

What happened

In November 2020, Mr and Mrs F made a claim to Society of Lloyd's when they became aware of subsidence at their property. Society of Lloyd's investigated the cause of the subsidence and found it to be due to ground movement as a result of defective drains.

Society of Lloyd's accepted the claim but said that the drain defects fell under the accidental damage part of the policy and that because the defects had occurred gradually over a period of time, they couldn't be described as sudden (as required by the policy) and so the accidental damage part of the policy wouldn't provide cover.

It told Mr and Mrs F that because there was no cover for the defective drains, Mr and Mrs F would need to arrange for the drains to be repaired, before it could progress the subsidence claim.

Mr and Mrs F were unhappy about this and made a complaint. Society of Lloyd's maintained its position, so Mr and Mrs F referred their complaint to this service.

Our investigator considered the issues and thought Society of Lloyd's had acted unfairly. She said that in order to carry out a lasting and effective repair to stabilise the property, the defective drains would need to be repaired first. And that this should be done under the subsidence claim and not a separate accidental damage claim.

Society of Lloyd's disagreed with our investigator's recommendations. It said the subsidence provision in the policy didn't include cover for drains, which is why the separate section of the policy existed.

Because an agreement couldn't be reached, the complaint has now come to me to decide.

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.

Having done so, I'm upholding this complaint. I'll explain why.

I've considered what the policy says about Society of Lloyd's obligations when a valid claim arises. It says that Society of Lloyd's will cover the buildings for *"loss or damage directly caused by: Subsidence, landslip or heave of the site on which the buildings stand"* and that it will settle a subsidence claim by *"repairing, replacing, reinstating"* or by cash payment. In Mr and Mrs F's case, it agreed to carry out repairs to the damage caused by the subsidence.

In order to meet its obligations under the policy, when a valid claim arises and is accepted by an insurer, the insurer must carry out a lasting and effective repair. This usually means repairing the underlying cause of the subsidence, and not just the damage the subsidence has caused, to prevent the subsidence continuing. Society of Lloyds doesn't dispute that the drains need to be repaired – but say Mr and Mrs F should cover the cost of this.

I don't consider it fair for Mr and Mrs F to cover the cost of repairing the defective drains. I say this because the obligation for Society of Lloyd's to carry out a lasting and effective repair extends to areas that the policy might not cover – for example, in this case, the defective drains, which Society of Lloyd's says aren't covered by the accidental damage provision in the policy, due to the defect happening over time and not suddenly.

But I'm persuaded that the defective drains don't need to be covered by the accidental damage part of the policy and should be covered under the subsidence provision, even though the subsidence provision doesn't provide cover for defective drains. This is because if the drains aren't repaired first, then the subsidence could recur, and so the repairs wouldn't be lasting and effective. And it's Society of Lloyd's duty under the policy to carry out a lasting and effective repair which will stop the subsidence recurring for a reasonable period of time.

So I'm satisfied that a fair resolution in this complaint would be for Society of Lloyd's to pay for the repair of the defective drains that are the cause of the subsidence first, before repairing the damage caused by the subsidence itself. In doing so, it should only apply one excess to the claim and deal with all the repairs under the subsidence part of the policy. Mr and Mrs F have already had the drain repairs carried out, so I'm going to require Society of Lloyd's to reimburse them for this, plus interest.

Society of Lloyd's accepts it could've provided a better service to Mr and Mrs F throughout the course of the claim. Mr and Mrs F say the claim has caused them stress and anxiety ever since the drain repairs were refused. I can see from the information provided that Society of Lloyd's had to be chased by email and phone several times about the progress of the claim, that there were delays in the handling of the claim, and that this caused Mr and Mrs F to worry.

I've considered the impact that Society of Lloyd's level of service and its decision to unfairly refuse the drain repairs has had on Mr and Mrs F, and I've also been mindful that Mr and Mrs F are in their 90s and had to pay for the drain repairs from their savings. I'm satisfied from what they've said that this was upsetting for them and unnecessary. So in recognition of the distress and inconvenience caused, I'm going to require Society of Lloyd's to increase the amount of compensation it pays to £300.

Putting things right

In order to put things right for Mr and Mrs F, Society of Lloyd's must now:

- Reimburse Mr and Mrs F for cost of the drain repairs upon receipt of evidence of those costs.
- Pay Mr and Mrs F 8% simple interest per annum from the date Mr and Mrs F paid for the drain repairs to the date of settlement.
- Charge only one excess and deal with the issues as one subsidence claim.
- Pay Mr and Mrs F an additional £150 compensation for distress and inconvenience, bringing the total amount of compensation to £300.

My final decision

I uphold this complaint and require Society of Lloyd's to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 7 October 2022.

Ifrah Malik
Ombudsman