

The complaint

Mr C and Mrs C complain that Lloyd's Insurance Company SA declined a claim for flood damage under their home insurance policy.

What happened

Mr C and Mrs C have a home and holiday home insurance policy underwritten by Lloyd's, which covers buildings and contents, amongst other things, at their property overseas.

They made a claim in November 2021 after excessive rainfall in the area. They say this caused a flood at their property which caused damage and left soil debris throughout their grounds.

Lloyd's declined the claim. They said the damage had been caused by landslip, which was not covered under the terms of the policy.

Mr C and Mrs C complained to Lloyd's. And when they maintained their stance, Mr C and Mrs C brought their complaint to us.

Our investigator looked into it and thought Lloyd's had acted unfairly towards Mr C and Mrs C. He upheld the complaint and said Lloyd's should appoint an expert to review all the available evidence and determine the cause of the damage. And he said Lloyd's should pay the claim if the expert's opinion was that the damage had been caused by an insured event.

Lloyd's disagreed and asked for a final decision from 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.

There's no dispute in this case that there was extremely heavy rainfall in the locality at the relevant time. Mr C and Mrs C have pointed out there was a record amount of rain for the area.

There's also no dispute that Mr C and Mrs C's property suffered damage on the night in question. They describe their grounds as being inundated. And when the water had subsided, there was a residue of soil and rock particles left around the grounds and in the pool.

Lloyd's sent a loss adjuster to inspect the damage. Their view was as follows:

"A layer of sludge came off the mountain and covered the exterior of the property... We confirm that due to a heavy rainstorm, the exterior of the property was inundated and once the water drained away a layer of mud covered the flower beds, the pool and the garden."

There's also no dispute about the terms of the policy. In short, Mr C and Mrs C will be

covered in this case if the damage was caused by storm or flood. They will not be covered if the damage was caused by landslip, which is specifically excluded from cover in the policy terms.

As our investigator has already pointed out to both parties, there are some general principles which apply to all insurance cover and which I have to bear in mind when I look at this case.

In brief, it is down to the policyholder or customer to show that they've suffered damage or loss when they make a claim. In this case, Mr C and Mrs C have done that and there's no dispute about it.

However, it's down to the underwriter, when they decline a claim, to demonstrate that a policy exclusion applies or that a condition of the cover hasn't been met by the policyholder.

In this case, Lloyd's are saying an exclusion applies because the damage was caused by landslip. And it's for them to show that this is in fact the case.

The loss adjuster – who is the only expert who has inspected the property since the event in question – concluded that the damage was caused by storm. And on that basis, they said the claim should be covered.

We have no expert advice or opinion from Lloyd's to contradict the loss adjuster's opinion. And so, it's impossible to reasonably conclude that Lloyd's have demonstrated that the exclusion for damage caused by landslip applies.

Our investigator said Lloyd's should either get such expert evidence or settle the claim, which I think was a reasonable outcome in all the circumstances.

In response, Lloyd's said there was little point in getting another expert to review the evidence because there was nothing to be gained by it. And they said they were entitled to disagree with the loss adjuster's conclusion given that they confirmed that sludge had come off the hillside during heavy rain and damaged the property.

As I say, the only expert who has taken a view of the evidence at present believes the damage was caused by storm. The photographs they took show a relatively thin layer of soil residue on the grounds of the property, which by no means covers the whole area of the grounds.

The pool water might be described as slightly cloudy. It is certainly not sludge or mud. You can see the bottom of the pool through the water.

As I understand it, there is a clear difference between sheet flooding, which can remove and carry soil particles or small rocks across some distance, and landslip. The latter involves relatively rapid movement of a large mass of earth and rocks down a slope.

Landslip is primarily caused by gravity. Landslips may be relatively dry. But as water content increases, they may move more rapidly and become either debris avalanches, earthflows or mudflows (where there is also high clay content). Where water content is higher than that, a sheet flood is the result rather than a landslip of any kind.

I'm not an expert in geology, but my understanding is that, put simply, landslip is only said to occur where the water in the flow is not abundant enough to be regarded as a transporting medium. If the water *is* the transporting medium, then that's defined as a sheet flood.

It seems to me, from the evidence collected by the loss adjuster, that the residue left by the

event that caused the damage at Mr C and Mrs C's property most likely indicates that the soil and rock particles were transported onto the property in the flood water rather than as part of a mudflow.

In summary, Lloyd's have not, as yet, demonstrated that the landslip exclusion applies in this case. And so, their decision to decline the claim was unfair and unreasonable based on the evidence in hand at the time they made their decision.

Putting things right

If Lloyd's believe it's pointless now to appoint an expert to take a view on that, as they said in their response to our investigator's view, then they should pay the claim.

If not, they can appoint another expert and consider their report. If the expert agrees with the loss adjuster that the damage was caused by storm and/or flood, Lloyd's must then pay the claim.

If on the other hand, the expert provides compelling and persuasive evidence that the damage was caused by landslip, then Lloyd's would be entitled to decline the claim.

My final decision

For the reasons set out above, I uphold Mr C and Mrs C's complaint.

Lloyd's Insurance Company SA must either pay Mr C and Mrs C's claim or appoint an expert to review the evidence.

And if they choose to appoint an expert, they must then pay the claim if the expert believes the damage was caused by an insured event.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 21 November 2022.

Neil Marshall
Ombudsman