

The complaint

Ms O and Mr O complain about Lloyds Bank General Insurance Limited ("Lloyds") for its decisions to decline their claim and to cancel their policy back to the start of the policy period. They want Lloyds to reinstate their insurance and accept their claim for damage.

What happened

Mr O and Mrs O bring this complaint through a third-party representative.

For the purposes of this complaint I will refer to all comments from either the representative, Mr O or Ms O as having come from Mr O.

Mr O purchased a property in 1995, using a mortgage from a business which later merged into Lloyds. As part of the mortgage he took out property insurance. Details of the sale of that policy are no longer available.

Mr O did not live at the property and rented a home nearer to his work. He says that he purchased the property as an investment and as a holiday/weekend home.

The insurance renewed each year in February. Renewal letters were sent to his correspondence address, which was his rental home.

Mr O's property suffered thefts during 2000/2001. He made claims to Lloyds in respect of these and they were accepted and settled.

In January 2015, a letter was sent to Mr O by Lloyds mortgage services department. It detailed that his property insurance was to renew and that changes to the policy would be updated by the insurer. It does not appear that this letter included a policy booklet, as it gave details of how to get a policy booklet if needed.

The letter detailed:

"Please consider carefully whether any of the information you previously gave us has changed during the last period of insurance, such as your intended occupancy of the property (whether you are intending to let it out or be away from the property for more than 30 consecutive days for example) or any criminal convictions (other than motoring offences)."

The letter then stressed that incorrect information could result in the policy becoming invalid and all claims being refused.

It does not appear that Mr O informed Lloyds of any changes.

Around mid-October 2015, Mr O's property suffered a break in, and extensive damage was caused. All pipes and most fittings were stripped from the property, and structural damage was caused.

A surveyor attended and detailed the damage. They also detailed that the hedges and trees around the property were overgrown and were causing changes in the property levels.

Mr O submitted a claim to Lloyds. A surveyor attended and spoke with Mr O. The surveyor recorded some details of that conversation.

Lloyds then obtained copies of utility bills for the property. The electricity bill showed very low usage over the period (although this overlapped with the period when the wiring had been stripped) and a water bill showed very low usage for the period April – September 2015.

The Council Tax bill obtained showed that for the period April 2015 - March 2016, Mr O was paying a long-term empty premium on the property.

Based on those documents, and on information from its discussion with Mr O, Lloyds wrote to Mr O in April 2016 declining the claim and cancelling the policy back to April 2015. It said that had it known that the property was not lived in it would not have offered cover.

Mr O complained and Lloyds responded to that complaint. Lloyds did not send a final response and so Mr O was not aware he could refer the complaint to us.

In 2021, Mr O complained to Lloyds. Lloyds responded in October 2021. It maintained the previous decision to decline the claim and to cancel the policy. It then gave Mr O his referral rights to our service.

Mr O complained to us. He felt that the decision was unfair as he had told Lloyds at the time of policy inception that he did not plan to live in the house full time. He argues that it is unfair to cancel the policy back to before the loss (which is a remedy used in misrepresentation cases) when he does not think a clear question was asked, or that he misrepresented that he was not living at the property.

One of our investigators has looked into this matter. Due to the time since both the policy was inception, and since the damage was caused leading to this claim, the documentation available is not complete.

Our investigator did not recommend upholding Mr O's complaint. He considered that Lloyds' decision was not unreasonable in the circumstances and he did not ask Lloyds to do anything further.

Mr O did not accept that view and asked for an ombudsman decision. He made some further submissions.

I issued a provisional decision in respect of this complaint in October 2022. In that provisional decision I set out that I thought that Lloyds had not applied the relevant legislation to Mr O's claim and policy, and so the decision to cancel his policy, and to do so retrospectively, was unfair. I provisionally decided that Mr O's policy should be reinstated, and Lloyds should now consider his claim in line with the remaining policy terms. I thought that Lloyds should also pay to Mr O £500 compensation for his distress and inconvenience. That provisional decision has been shared with the parties and they have been invited to comment.

Mr O disputes some of the background that I set out, and reserves his right to dispute that background, or details about the earlier claims, in any further claim or complaint. He does not submit any alternate background for me to consider as it is not central to this complaint.

Mr O advises that he tried to get insurance in 2017 but was unable to do so, possibly due to the voidance decision and possibly due to the extent of the damage.

He argues that the compensation I provisionally awarded is insufficient and he points to examples on our website where severe impact across a long period of time has been awarded higher levels of compensation.

The business has also responded. It accepts the compensation part of the decision and agrees that it did not apply the legislation properly. Lloyds argues, however, that in order to consider the complaint Mr O would have to pay the premium which was wrongly refunded to him in 2016. Lloyds says that it believes that a policy exclusion relating to the property being unoccupied applies and that it is likely to decline the claim. Lloyds therefore queries whether proceeding to consider the claim is the best outcome for Mr O.

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.

Firstly, to address Mr O's comments. He is correct that there was a typographical error in my provisional decision introduction. I apologise for this. It is also noted that he does not accept the entirety of the factual background and may dispute this later with Lloyds.

Secondly, in respect of the level of compensation I provisionally awarded, I have considered his comments but remain of the view that £500 compensation is appropriate. I acknowledge that Mr O has experienced severe distress and inconvenience as a result of the damage and of the claim not being accepted and that this has lasted for years. I have, however, distinguished between the effects of the wrongful cancellation of the policy, and the other effects of the situation, and I consider that £500 reflects the impact of the wrongful cancellation and the misapplication of the law.

To increase the compensation to reflect all the effects of the situation would be unfair and would be based on predicting a particular outcome of the claim. I therefore consider that £500 remains appropriate.

Responding now to Lloyds. I am grateful for the recognition that the cancellation was wrong, and the proper process was not followed.

There is no dispute about the substance of my provisional decision, and that Lloyds was wrong to cancel the policy, and so I uphold Mr O's complaint.

Putting things right

The remaining dispute is about how matters should be put right.

I understand Lloyds' submissions about the possible exclusion which may apply, and that to now consider the claim (and to require Mr O to repay the premiums it refunded to him in 2016) may be a worse result for Mr O if his claim is then declined. I also understand that for a policy to exist, a premium is required.

I think that for Lloyds to require repayment of the premium, in order to decide the claim, would present an unfair obstacle to Mr O having his claim assessed and decided. Mr O would have to make an assessment of the chance of the claim being accepted and decide whether to take a risk. If he is not in a position to take that risk (and the evidence we have suggests that he is experiencing financial difficulty), he would be prevented from having a

decision on his claim, and he would not be able to complain about that decision to this service if he wished to.

I do not think that is fair, and I have borne in mind that this situation, and the premium being refunded to Mr O wrongly in 2016, arose out of Lloyds' wrongful actions. Consequently, in the particular circumstances of this complaint, I do not think it fair for Lloyds to enforce repayment of the premium, in order for Mr O to have that claim decided.

I therefore consider that the appropriate outcome of this complaint is for Lloyds to remove all reference to cancellation of the policy from its own and any central databases. Lloyds should then confirm to Mr O in writing that he does not need to declare any cancellation of this policy. The policy will instead be treated as having lapsed in April 2016.

Lloyds should then consider the claim and provide a decision to Mr O with full reasons, and details of the complaints process and/or his right to complain to us.

If Lloyds accepts and settles the claim, it should deduct the premiums owed for the year 2015/16 from any settlement.

If Lloyds declines the claim, then it should not pursue recovery of the premium which was wrongly refunded to Mr O in April 2016. This is due to Lloyds being responsible for the erroneous refund of premiums, and to Mr O's apparent financial difficulties.

My final decision

For the reasons given above, and in my provisional decision I uphold Ms O and Mr O's complaint and direct Lloyds General Insurance Limited to:

- Remove all reference to this policy being cancelled from its own databases, and from any centralised databases which it updates;
- Confirm to Mr O in writing that he need not declare a cancellation in respect of this policy;
- Consider Mr O's claim and provide him with a fully reasoned decision, and details of his rights to complain or appeal that decision; and
- Pay to Mr O £500 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O and Mr O to accept or reject my decision before 15 December 2022.

Laura Garvin-Smith
Ombudsman