

## **The complaint**

Ms R's complaint is about ongoing issues with how Lloyds Bank General Insurance Limited have dealt with a subsidence claim made under her buildings insurance policy.

All references to Lloyds include its appointed agents.

## **What happened**

I'm aware that my summary of events will be in far less detail than the substantial submissions provided by the parties concerned. But I'd like to reassure everyone that I've carefully considered everything that has been provided. And I'll set out the events which I find relevant to my decision below.

- Ms R made a subsidence claim in 2018 through her home insurance policy which was accepted by Lloyds. The site investigations determined the cause was most likely linked to clay shrinkage caused by a nearby third-party tree. Lloyds attempted to get the tree removed and offered to pay but were ultimately unsuccessful. So, Lloyds scoped a more robust schedule of repairs because the tree would most likely remain. Lloyd's position was that the property had stabilised and so it was ready to move to the repair phase of the claim.
- Ms R disagreed that the property was stable and says Lloyds didn't take into account all of the cracks. Ms R didn't accept Lloyds' scope of repairs and didn't want to cash settle the claim either. Ms R has raised multiple complaints throughout the duration of the claim. And to date, Lloyds has paid around £1,000 compensation for the distress and inconvenience it's caused.
- Around September 2021, Lloyds offered Ms R three options to move things forward:
  - Accept the cash settlement and instruct her own contractors, with the option to review the costs if they increased.
  - Complete the current crack monitoring exercise and if no movement was shown, proceed to a cash settlement.
  - Offer a choice of two independent companies to visit Ms R's property and review the claim, or Ms R could appoint her own engineer (paid by Lloyds) and their report would be considered.

- Ms R engaged an independent expert who said Lloyds hadn't taken into account the subsidence in the rear wall of the property. Ms R's expert suggested a more extensive repair was needed than Lloyds had scoped.
- Ms R referred her concerns to our service around January 2022. In summary, she said:
  - She was unhappy at Lloyds' failure to investigate the property or damage accurately, including the foundations and possible root ingress.
  - She maintained the property wasn't stable or ready to move to repairs.
  - That the scope of works had been drawn up and costed inaccurately. Including for example, a failure to include any provision for alternative accommodation (AA).
  - That she'd previously asked Lloyds to remove its loss adjuster and other staff members from the claim as there'd been a breakdown in trust.
  - She'd not been reimbursed for her engineers' report, and repairs to her door lock.
- Ms R also provided comments on the future direction of the claim, scope of works and repairs she felt were needed to move the matter forward.
- Both sides, at times, commented that the complaint is now with our service, and as such, any progress will be limited until we have decided the matter.

However, the matter developed after the complaint had been referred to our service:

- Lloyds appointed a new loss adjuster who conducted a further site visit around October 2022. The loss adjuster concluded:
  - That they agreed in part with Ms R's engineer that the rear elevation of the main house was affected by subsidence.
  - The next stage will require further investigation to show where the subsidence has affected the movement to the walls and floors.
  - Any repairs need to occur when the soils aren't affected by clay shrinkage during the early spring months.
  - That the claim should be resolved towards mid-2023.
- Lloyds also confirmed that Ms R had now been reimbursed for her engineer's report and for the repairs to the door lock.

The complaint was passed to me and on 21 November 2022 I issued my provisional decision. I've repeated an extract below:

*"This claim has spanned many years and has clearly been stressful for Ms R based on the detail in her submissions. I understand how keen she is for a resolution to the matter.*

*I've first looked at which aspects of Ms R's complaint our service can consider in line with our jurisdiction.*

*The rules applying to this service state that, unless the business agrees, I can't consider a complaint referred to us more than six months after the date it sends the consumer its final response letter, telling them they can refer their complaint to us. This is set out in Dispute Resolution ('DISP') rule 2.8.2R(1), which can be found online in the Financial Conduct Authority's handbook. Or we can provide a copy on request.*

*Ms R has provided a number of final responses to our service, linked to complaints she's raised with Lloyds throughout the claim. All the final responses I've seen clearly state Ms R needs to refer the complaint to our service within six months of the date of the letter.*

*I've checked our records, and I can see that Ms R first contacted us on 20 January 2022, telling our service about her intention to refer the complaint. So, I consider that only the final responses dated within the six months prior to this date have been referred in time. To be clear, this refers to the final response letters issued by Lloyds in August 2021, September 2021, and November 2021.*

*I've considered whether Ms R was delayed in referring the complaint to us as a result of exceptional circumstances. I've thought carefully about Ms R's circumstances but on balance, I don't think that she was prevented from bringing the complaint to us in time. So, I intend to find that I'll be unable to consider the aspects of her complaint that Lloyds responded to prior to August 2021 because this part of the complaint was referred too late.*

*Lloyds has consented to our service considering its final response issued in June 2022 as part of this complaint, and it's also consented to me considering events up to the date I issue my provisional findings.*

*So, in summary, I intend that my decision will consider matters and events covered in Lloyds final response of 19 August 2021 up to the date I issue my provisional findings, in order to arrive at a relevant and fair answer.*

*Having reviewed Lloyds final response letters and the present position of the claim, what's left for me to consider is the impact of any avoidable delays caused by Lloyds and any resulting distress and inconvenience this may have caused to Ms R in the period I have jurisdiction to consider.*

#### *Delays and compensation*

*Our awards aren't designed to punish businesses for their conduct, our role is to resolve individual complaints between a consumer and a business. So, I won't be going any further than considering whether Ms R is due fair and reasonable compensation in the circumstances of this complaint.*

*I acknowledge that whilst it is clear Ms R has spent considerable time preparing her submission to our service, we don't generally award compensation for the time spent in dealing with or handling of a complaint.*

*I'm also aware that Ms R has shared evidence with our service in confidence, and I've taken this into account when reaching my decision. But the role of our service is to be impartial, and I cannot reasonably require a business to pay compensation for issues it isn't aware of, nor has had the opportunity to address.*

*I can see Lloyds' previous loss adjuster continued to make attempts to cash settle the claim whilst Ms R was disputing the scope of repairs. This continued until around August 2022, after Ms R had referred her complaint to our service.*

*It's not clear whether Lloyds was aware that its loss adjuster was continuing to attempt to cash settle, but in any event, the loss adjuster was acting in its capacity as Lloyds' agent, and its actions clearly caused Ms R additional distress when she'd told Lloyds she didn't want to cash settle the claim. So, I think Lloyds should compensate Ms R for this additional distress.*

*I think it was unfair in the circumstances of this case for Lloyds to rely on the policy terms to cash settle the claim. I accept that the policy allows Lloyds to settle the claim in the way it chooses and allows it to cash settle. But our service's general approach is that cash settling a claim which potentially involves structural work isn't a fair choice for an insurer to make – especially if it's likely to put the consumer in some difficulty (for example if they have a vulnerability or can't source the relevant engineers to do the work).*

*However, all claims require an element of co-operation between the parties, and it's clear Ms R has been an engaged claimant during this process – for example in conducting her own monitoring readings. And without wishing to sound discourteous, I find it probable that this level of engagement has, at times, led to some of the delays and confusion in moving things forward.*

*I say this because Lloyds' position on the claim around September 2021 was clear when it presented Ms R with options to move things forward. With the benefit of hindsight, I think it would've been helpful had Lloyds held its position at this stage, as the options it presented were all reasonable to progress the claim. And it appears that subsequent correspondence served to confuse things between the parties – especially in relation to the cash settlement.*

*Ms R told Lloyds in August 2021 that she'd be looking at appointing her own engineer to review the damage. But Ms R's report wasn't presented for consideration by Lloyds until August 2022. I accept that Ms R says that personal circumstances meant she was unable to arrange for the report to be done sooner. But I'm unable to attribute these delays to Lloyds or as a direct result of its actions. And once Lloyds received this report it did, albeit with some further minor delay, act on the report's findings to move the claim forward.*

*Lloyds accepts it could've acted quicker upon receipt of Ms R's engineer's report – in gaining a response from the loss adjuster, in reimbursing Ms R for the report and for the repairs to an external door/lock. I agree. So, I think Lloyds' compensation payment should include and reflect the inconvenience of these delays between August 2022 and October 2022.*

*Taking all the above considerations into account, I intend to find that an award of £400 fairly reflects the distress and inconvenience caused to Ms R, by the added impact of Lloyds' actions to what was already a complex and challenging claim.*

#### **Next steps**

*Whilst any issues that might occur in future sit outside the scope of this decision, I reiterate that any repairs to Ms R's property will require an element of co-operation for the claim to be resolved in a timely manner. Should Lloyds be prevented from unreasonably progressing the claim, then it might be reasonable for it to consider a cash settlement in those circumstances.*

*However, it appears that many of Ms R's concerns have been addressed with the recent developments in the claim. I'm pleased to see that Lloyds' loss adjuster has identified a way forward and that they and Ms R are co-operating regarding the next steps.*

*So, for the reasons given above, I intend to uphold this complaint.*

#### **Developments**

Lloyds accepted my provisional findings and said it would pay the £400 compensation upon receipt of Ms R's acceptance of my final decision.

Ms R responded and said in summary:

- That our service's external guidance for investigating subsidence claims showed Lloyds hadn't followed the required process.
- Lloyds had repeatedly ignored her evidence which showed there was ongoing movement at her property.
- Lloyds had effectively lied to her, by omitting or obscuring the facts of the claim.
- Lloyds hadn't met its obligations in line with the FCA's Principles for Business (PRIN).
- Lloyds hadn't presented the cash settlement fairly or explained the consequences of her accepting it. And she felt Lloyds had forced her to seek an independent expert opinion through trying to cash settle the claim.
- That my provisional decision hadn't reflected the additional impact to her on top of the subsidence claim, and hadn't given sufficient weight to either her vulnerability, or Lloyd's lack of acknowledging her vulnerability.
- Her actions in recording and providing monitoring readings directly led to the claim moving forward and as such shouldn't be considered as having contributed to any delays in the claim.

### **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.

Whilst I acknowledge the detail in Ms R's response, I haven't seen anything material which wasn't available to me (albeit in more general terms) when I decided the outcome of my provisional decision.

I acknowledge this claim has happened at a difficult time for Ms R regarding her wider circumstances, but I refer to the test set out in my provisional decision which was to consider the impact of *"any avoidable delays caused by Lloyds and any resulting distress and inconvenience this may have caused to Ms R in the period I have jurisdiction to consider"*.

In response to Ms R's points above I have the following comments to make in addition to my provisional findings:

- It's not in dispute that errors have been made in this claim. And that's something that all parties agree with. For context, and as set out in my provisional decision, Lloyds has already paid Ms R around £1,000 compensation for its poor handling of the claim. And it's agreed to pay £400 more for the period I had jurisdiction to consider.
- In line with our service's general approach to compensation, this total amount reflects that a business's mistakes have caused substantial distress, upset and worry to a consumer. This includes impact to daily life over a sustained period. And having carefully considered everything that Ms R has said, I remain persuaded that this award, overall, fairly reflects the impact of Lloyds' actions.
- I've considered Ms R's comments about the scope of Lloyd's investigations and its obligations under PRIN. Having done so, I'm satisfied that Lloyds' offer of compensation covers any failings which fall into the jurisdiction of this complaint. And that includes its obligations under the relevant rules which apply to this complaint.

- Lloyds acted on Ms R's expert report and worked to move the claim forward whilst the existing complaint was being considered by our service. And that's what I'd expect to see in the circumstances. Therefore, due to those developments, I found no basis to weigh up the expert reports from both parties or provide a direction on the next steps; Lloyd's loss adjuster had already done so and was working with Ms R to progress the claim.
- Ms R strongly feels that Lloyds were determined to cash settle and force liability of any further issues onto her. However, as I set out in my provisional findings, I'm not persuaded Lloyd's was fully aware of its loss adjuster's actions at this stage. And instead, I think it's more likely that Lloyd's loss adjuster thought the property was stable and ready to move to the repair stage. I've already acknowledged the impact this had, and recommended Lloyds compensate Ms R accordingly.
- I've considered Ms R's comments about why she was delayed in providing her expert report, but I can't reasonably hold Lloyds responsible for these. I think Lloyds were clear around September 2021 that it was willing to fund an independent report to move the claim forward. Once Ms R told Lloyds she indicated to take up that option, I find it reasonable that Lloyds waited for the report before progressing the claim.
- I accept Ms R strongly feels her own measurements and readings contributed to the claim moving forward, and it's probable that her engineer took this into account. However, I'm more persuaded that Ms R's engineer was the key factor here in their own right; through the persuasiveness of their report which put Lloyd's on notice that further investigations and repairs were most likely required.
- I acknowledge Ms R's comments regarding her health and vulnerability. But to consider any additional compensation here, I'd need to be satisfied that any delays caused by Lloyds significantly worsened the impact and issues being caused by a complex subsidence claim. And for the period I'm considering, I'm satisfied that the compensation offered is fair and reasonable, for the reasons I've given above.

Therefore, having carefully reconsidered everything, I find myself coming to the same conclusions I reached in my provisional decision, and for the same reasons. I therefore uphold this complaint in part and require Lloyds to pay Ms R £400 compensation.

### **My final decision**

My final decision is that I uphold this complaint about Lloyds Bank General Insurance Limited and require it to pay Ms R £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 3 January 2023.

Dan Prevett  
**Ombudsman**