

## **The complaint**

Mrs P and her father, Mr P, complain that Society of Lloyd's has declined their claim for malicious damage and water damage to their let property, on the basis that they are said to have no insurable interest in the property. The policy is underwritten by a Lloyd's underwriter, though for convenience I shall refer to Lloyd's throughout.

## **What happened**

In March 2019 Mrs P's husband, Mr P1, attended a property auction, on behalf of Mrs P and Mr P. He successfully bid for a property and paid a deposit from his account. Subsequently he asked if the sale of the property could be registered in Mrs P's and Mr P's name, or in all three names. The seller wouldn't agree and insisted the purchase went ahead in Mr P1's name only. The balance of the purchase price was provided by funds from Mrs P and Mr P.

Mrs P's and Mr P's broker was asked to arrange insurance of the property and as Mrs P and Mr P had a portfolio of properties, the property was added to the existing insurance, in their names.

The property was registered in Mr P1's name alone. The parties didn't consider transferring it into their names as Mr P1 managed the properties in any event and they are all part of the same family. Mr P1 later set up tenancy agreements with him named as the landlord.

In August 2019 the property was broken into. Substantial damage was done to the property, pipes were cut and the property was flooded. Loss adjusters were appointed, but after review of the policy situation, declined the claim altogether. This was because Lloyd's said that Mrs P and Mr P did not have an insurable interest in the property. Lloyd's maintained this position despite having obtained an opinion from its solicitors that Mrs P was likely to have an equitable interest in the property. It said that had it been approached for insurance in Mr P1's name alone, it would likely not have issued a policy, as he had two recent (albeit satisfied) County Court Judgements on his record.

On referral to the Financial Ombudsman Service, our Investigator said that as Mrs P had provided the majority of the purchase price, and as the intention had been shown to register the sale in her and Mr P's name, she had an equitable interest in the property.

Lloyds didn't agree. It said that underwriters' concerns did not appear to have been given appropriate credence. It further said that the parties are sophisticated insurance buyers, well aware of the importance of making accurate statements when it comes to insurance.

The matter has been passed to me for further consideration.

## **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.

Lloyd's has said the legal view was not to hand at the time of their carrying out an

investigation. It says the evidence it had to hand at that stage was sufficient to decide that the policyholder did not have an insurable interest. In particular it said:

- Mr P1's verbal testimony at the time was that the policy should have been in his name and the fact that it wasn't was a mistake.
- Rent was paid by the tenant into his sole bank account.
- Mr P1 is noted as the sole landlord.
- The property was bought by Mr P1 in his sole name at auction. He is named as sole proprietor.
- The policy in question insures other properties owned by the policyholders.
- They are sophisticated consumers, on the basis they hold a substantive property portfolio (5 other properties) and Mr P1 manages their business affairs, so would be aware of the implications of any "incorrect" insurance cover. Mr P1 sought a quote and took out the cover via a phone call to the broker. He had the opportunity here to explain ownership of the property.
- The broker was working for his client.
- Mr P1's verbal testimony in his signed witness statement noted that the property was bought in his name solely but his "wife conducted the transaction". Notably he does not take the opportunity to explain that his wife purchased the property with him for their joint interest. He also noted that "*I own the property and it is insured by my wife and father-in-law*".
- Mr P1's witness statement also notes that he insures other properties with the same broker. This is further indication that Mr P1 and his family are sophisticated consumers.
- Underwriters have confirmed that Mr P1 would not have been offered coverage in his own right as he had two satisfied CCJ's. This sat outside underwriters acceptable risk profile.

I note Lloyds comment about the legal view not having been available during its investigation. But it was available shortly before Lloyd's published its findings and it could have made further representations. The legal view is worth setting out in summary. That is that underwriters' position in this matter depends on whether Mrs P can prove that she personally paid the £62,000 towards the property's purchase price. If documentary evidence is provided they considered that Mrs P would have good prospects (in the region of 60-65%) of making out a resulting trust and therefore an insurable interest in the property.

*On the question of misrepresentation, the solicitors said "If [Mrs P] did have an insurable interest in the Property by reason of a resulting trust, it would be difficult to argue that there had been a material misrepresentation. There are no questions about type of ownership within the policy documentation provided and the fact that she may have had an equitable rather than the legal interest, seems unlikely to have been material."*

I think Mrs P and Mr P have adequately explained why the purchase went ahead in Mr P1's sole name. This was because he attended the auction, and paid the deposit. I have seen the email exchanges between Mr P1 and his solicitor where he asked for the property to be transferred into Mrs P's and Mr P's name or into all three names. The seller refused this.

So on the basis that the family had properties in Mr P1's name and also in Mrs P's and Mr P's name and as Mr P1 was going to be managing the properties it was in my view understandable that the property remained in Mr P1's sole name, and that he then issued the tenancy agreements in his name. The claim only occurred some five months after the purchase.

I have seen evidence that Mrs P transferred £40,000 from her account directly to the solicitor acting in the purchase. I've also seen evidence that £24,000 was transferred from (presumably) a deposit account into Mrs P's and Mr P's joint account, and transferred directly to the aforesaid solicitor. It's therefore clear that Mrs P provided the bulk of the purchase monies, and Mr P likely also provided a proportion. In light of the email exchanges at the time, I don't think it can be shown that Mrs P's funds were intended as a gift to Mr P1. So I think Mrs P (and probably Mr P) had an equitable interest in the property. And it follows, an insurable interest.

I've considered the question of misrepresentation by or on behalf Mrs P. As Lloyd's solicitors also noted, I'm not sure what relevance this has. Lloyd's hasn't shown us that the ownership of the property in a trust or outright has any bearing on the insurance position.

As for Mr P1's assertion that the property should have been insured in his name, I note Lloyd's view on this. However while it has said it wouldn't have offered Mr P1 insurance in his own right, there appears to be no such bar on Mrs P or Mr P. I think I have to look at it from the perspective of the policy, and its policyholders as it exists. There is here a policy in the names of Mrs P and Mr P to which the property in question was added. Mrs P has an insurable interest in the property by dint of her having provided the bulk of the purchase price. I don't think that is the sort of situation she would have been expected to disclose on setting up the policy as I can't see that it materially affects the cover.

So I think Mrs P1 and likely Mr P, has an insurable interest in the property. Lloyd's should reinstate the cover and reconsider the claim.

### **Putting things right**

Lloyds's should reinstate the cover for the property and reconsider the claim in line with the policy terms and conditions.

### **My final decision**

I uphold the complaint and require Society of Lloyd's to provide the remedy set out under "Putting it right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 28 April 2023.

Ray Lawley  
**Ombudsman**