

The complaint

Mrs B is unhappy with Society of Lloyd's (SoL) handling of a claim made under their commercial insurance policy.

Mrs B is represented by Mr B, so for ease I'll refer to Mr B directly. And any reference to SoL includes its agents.

What happened

Mrs B owns a property which she rents out. In 2015 the property next to Mrs B's underwent development which caused damage to Mrs B's property. The works next door and subsequent claim lasted for several years. SoL covered the cost of the repairs to Mrs B's property. The central issue in dispute here is what level of contribution it should make to the rental income Mr B says was lost.

Unhappy with SoL's handling of the claim, Mr B complained. In the final response issued in April 2021, SoL acknowledged the claim was complex. It involved a number of different issues and different parties. It noted it had already paid a loss of rent payment totalling £121,529.27. It said the policy provided loss of rent for up to three years and, as it had made payments between November 2014 and December 2017, it had acted in line with the policy terms.

It was not prepared to increase the payment. It also said while there were a number of periods of inactivity, none were the sole responsibility of one party. SoL offered £500 in respect of the additional inconvenience experienced as a result of the length of the claim.

Mr B referred the complaint to this service. He said the delays in carrying out the repairs are the reason they lost their rental income for more than three years. The complaint was considered by one of our investigators who concluded SoL didn't need to increase the loss of rent payment. As Mr B didn't agree, this matter has been passed to me.

In January 2023, I issued a provisional decision. My findings were:

"The central issue here is the lost rental income, and whether SoL has acted fairly and in line with the policy terms in respect of the payment it made in respect of this. For ease, I've included the relevant rental income policy term below:

"What is not covered – Continued...

1. Loss or rent for more than three years"

Mr B thinks a considerable reason for the delay lies with the company appointed following the tender process. He says the company in question provided a low quote, and the costs increased significantly. He also says works to underpin the property could have begun several months before they did – as indicated might happen. SoL acknowledges there were moments of inactivity at the property. But I think it's important to clarify here this was a complex claim involving a number of different parties. So, what might appear to be a period of inactivity isn't the same as an avoidable delay caused by SoL.

The central issue I need to decide is if SoL was responsible for any avoidable delays during the claim. And if I conclude it was responsible, I need to decide if it is reasonable SoL should pay an increased loss of rent payment. I think it's helpful to clarify here, that just because the claim is such a long running one, does not automatically mean SoL is required to pay over and above what is set out and required in the above policy term.

Mr B has set out his thoughts on delays and in doing so, he divided the claim up into three separate sections. Our investigator shared Mr B's thoughts on this with SoL in the same format. For ease for both sides, I've continued this in my findings.

2014 - 2017

SoL acknowledges there were some periods of inactivity between June 2014 and December 2017 but says these related to a number of occasions where the owners of the neighbouring property said they were going to instruct contractors. Given the location of the property in the middle of a terrace, it doesn't seem unreasonable SoL gave the owners opportunities to begin their works as any works needed to be carried out (given their nature involved excavation works to the foundations) were likely to impact Mrs B's property. It doesn't seem unreasonable in the circumstances attempts were made at coordinating efforts to try and prevent further avoidable damage or having to carry out a repair that might then need to be revisited at a later date.

I also don't think it was unreasonable investigations were carried out into the cause of the subsidence. As the file shows, while a large contributing factor to the subsidence was the excavation works carried out next door, the conservatory was also found to be subsiding and the cause of this was likely to be the nearby vegetation. It was important proper investigations were carried out to identify the cause of subsidence to ensure any repairs carried out were effective and lasting. While I can see there were times early in the claim where there may not have been much action in progressing the claim, I'm satisfied it was appropriate for these checks to have been carried out.

Mr B raised concerns about the tenants, questioning if they could have been asked to move out sooner. But I think it's important here to focus on the information that was available at the time decisions were made. And while it might be Mr B's perception now is that not renewing the tenancy might have been the more straightforward approach, I'm not persuaded this would have been the case. Ultimately, even though concessions had to be made in terms of a reduced rent, I haven't seen anything that suggests the property was uninhabitable before the tenants were given notice to leave the property in September 2017. That's not to say I don't recognise things were very difficult for Mrs B and the tenants, I do, and I can see there was sometimes conflicting information given to Mr and Mrs B. However, I'm not persuaded SoL acted unfairly in concluding the tenants needed to move out when they did.

Broadly speaking, from what I've seen, correspondence was sent and responded to quickly. But with such a complicated matter and so many factors in hand, the claim would always have taken a long time to progress. In addition to this, there were a number of factors beyond the control of Mr B, Mrs B and SoL. Examples of these include the developers who owned the property next door going into receivership and it being sold. These matters delayed the claim, but I don't see that SoL could have been responsible for these delays.

Overall, I'm not persuaded there were any avoidable delays during the early stages of the claim.

2018

However, Mr B says he was told in January 2018 that there would be a two-month delay in serving the party wall notices. SoL says the notices were served in January 2018. It's perhaps not surprising given the complexity of the claim that the party wall agreement contributed to the time taken to resolve the claim. I've considered Mr B's argument there were only two contractors on site when the underpinning works could have been progressed. Mr B says this was essentially a delay for the majority of 2018 that could have been avoided. However, I'm more persuaded by SoL's response here that the number of operatives were selected due to the size of the site – and the argument that as it was a smaller site, two operatives could carry out the excavations and pour concrete easily in the space.

It was clear from reviewing the various correspondence that SoL was aware Mr and Mrs B relied on the rental income, and all parties involved were aware at this point the policy didn't provide cover for it. With this in mind, I think it's reasonable all parties involved in the claim would be working towards the same objective of getting the repairs completed so the property could be rented out again. However, while it could be easy to point at various moments of inactivity, I find myself more persuaded the cause of these were as a result of the number of parties involved in the claim and a reflection of the complex nature, rather than any avoidable delay on SoL's part.

2019 onwards

I've considered Mr B's comments no works were carried out from early December 2018 until March 2019. When asked, SoL acknowledged this seemed correct, but couldn't see any reason for the delay. It follows I'm not persuaded this part of the claim progressed without avoidable delay. I'll set out below how I think this should be put right.

Mr B says there were also a number of delays in the repairs being completed. He said works should have been completed by July 2019, but it wasn't until November 2019 that the property was able to be let out again.

SoL's position here is that not all of the repairs the property needed could have been identified at the outset. For example, it says the leak in the upstairs ensuite couldn't have been identified earlier nor could the damp in the downstairs cupboard have been identified earlier. And, in the round, I think it's not unusual that with repairs of the scale carried out on Mrs B's property, there would be some occasions where unexpected works would be identified.

For example, I note there was some discussion about whether all damage caused by works by the neighbouring property or whether some of it was caused by subsidence. And some of the works that needed to be carried out (such as to the ensuite and the leak in the dormer) couldn't have been identified before the works got underway. This isn't to take away how long the repairs took, but rather that I'm more persuaded these were repairs that needed to be carried out and the extra time they added was unavoidable. So, I'm not minded to conclude SoL was responsible for these delays.

The issue for me to decide is whether or not SoL should make a payment to Mrs B that is over and above the requirements set out in the policy. On balance, I'm more persuaded than not that there was a delay in SoL's handling of the claim, and this occurred towards the end of 2018 and into the spring of 2019. I'm intending to require SoL to compensate Mrs B for this.

I'm aware SoL offered Mrs B £500 in its final response, for the additional inconvenience for the length of the claim. But it seems to me had SoL really thought nothing more could be done, then a payment wouldn't have been solely due to the length of time the claim took to be resolved. I can see this has been a significantly difficult period for Mrs B, and I consider SoL contributed to this with the delays identified at the end of 2018 and into early 2019.

However, I think it's important to note SoL isn't required to make a payment for the distress and inconvenience of having to make the claim, but for the impact of their actions on Mrs B. I consider the compensation payment should be increased to £750 (less anything that's already been paid) to recognise the worry and distress experienced as a result of the avoidable delay between late 2018 and March 2019. It was clear Mrs B was reliant on the rental income, so every delay had a significant impact on her, and this timeframe could have been reduced."

SoL said it received my provisional decision but didn't have any further comments to make. Mr B responded and, in summary, said:

- He thinks I've too easily accepted the position put forward by SoL on a number of areas including the information about the tenants remaining in the property, the tender process, and the number of contractors carrying out works.
- More weight should be given to the delay in early 2018, and Mr B believes this could and should have been avoided.
- Mr B feels that I've also disregarded the later end of the timeframe when repairs took much longer than initially indicated.

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.

I appreciate my provisional decision didn't require SoL to put things right to the extent Mr B and Mrs B hoped for. I want to offer both sides some assurances I've carefully considered the further points in response to my provisional decision, and this final decision again focuses on those issues I consider most relevant. And in considering what's happened, I think it's helpful to set out I'm not disputing this claim took a long time to resolve. What I need to be clear about is whether any of the time taken was as a result of an avoidable delay SoL is responsible for. As I said in my provisional decision, it's important to be mindful that periods of what seem to be inactivity are not the same as avoidable delays.

Mr B expressed concern about the tender process and the selection of the contractor who submitted the lowest quote. His concern stems from the fact the costs escalated significantly beyond the original tender.

I've reconsidered Mr B's concerns and the comments made by the loss adjuster appointed by SoL. In considering all three tenders, the loss adjuster specifically commented there weren't any "obvious errors" with the tender submitted by the contractor appointed. The loss adjuster suggested the tender might be lower because the contractor was already familiar with the property. I acknowledge the repair costs ended up costing significantly more than outlined in the original tender. But I haven't seen anything to suggest there was anything unusual about why the tender was awarded to the contractor.

I'm satisfied from the evidence I've seen the loss adjuster considered the differences in tender costs and the reason why one was lower than the others. That being said, I can see how this looks to Mr B and Mrs B, especially against what we now know is the history of the claim. But I don't share their concerns about how or why the tender was awarded to the contractor in question.

I'll turn now to Mr B's concerns about the tenants and the information given about whether they should have been asked to vacate the property sooner. It's accepted by all involved the condition of the house worsened during the first three years of the claim. However, what I

haven't seen is evidence the house was uninhabitable before the point the tenants were asked to leave.

I can understand the frustrations Mr B says he and Mrs B experienced as a result of renewing the tenancy agreement and relatively soon after asking the tenants to leave. But based on the information provided by both sides, I'm not persuaded if the tenants vacated the property sooner, it would automatically have resulted in the repairs being carried out more quickly.

I say because of the complexity of this claim and the number of different parties involved. And all of those different parties undertook a different function. I appreciate there were complications that contributed to the time taken to the later repairs. I'm referring here to the leak and repair to the dormer. But there were also events that occurred that were beyond anyone's control – such as the property developer for the house next door going into receivership.

However, I think it is understandable SoL wanted to understand what the repairs to the property next door would look like before moving into the space of underpinning the property. Given the properties are part of a terrace there was a strong possibility of repairs impacting the other property or needing to be revisited if they were carried out on the other property.

I don't dispute there were times when repairs could potentially have gone ahead. However, I consider the explanation SoL provided for moving at the pace they did to be reasonable, and persuasive based on the information SoL had available to it at that particular time.

In deciding what I think is fair and reasonable, I also need to consider what the intention of the policy was. And this was to cover a potential loss of rental income for up to three years. The policy provided this. I consider there was a very clear timeframe when a period of inactivity was as a result of an avoidable delay SoL was responsible for. As a result, SoL should compensate Mrs B for this for the reasons I set out in my provisional decision.

This avoidable delay impacted Mrs B and added to the worry and distress she experienced as a result of the long running claim. I still consider £750 is a reasonable amount to compensate her for this, for the reasons I set out in my provisional decision.

My final decision

I uphold this complaint. To put things right I require Society of Lloyd's to:

- Pay Mrs B an additional payment for the loss of rental income between December 2018 and March 2019.
- To pay Mrs B £750 (less any compensation already paid) for the distress and inconvenience experienced as a result of the avoidable delay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 February 2023.

Emma Hawkins
Ombudsman