

The complaint

Mr and Mrs W complain Society of Lloyd's ("Lloyd's") has unfairly declined a claim they made for damage caused by subsidence.

What happened

In 2021, Mr and Mrs W contacted Lloyd's to report cracks found in their property. Lloyd's declined the claim. It said Mr and Mrs W had had a previous subsidence claim in 2014, with a different insurer, where a drain was repaired to resolve the subsidence issue. Its view was that the damage wasn't new, but a result of the work carried out by that insurer. It said this wasn't covered by the policy. It directed Mr and Mrs W back to the previous insurer.

Mr and Mrs W complained but as Lloyd's didn't agree to change its position, a complaint was brought to this service.

Our investigator thought Lloyd's hadn't done enough to show the damage was related to the previous claim. She said Lloyd's should carry out further investigations to establish whether this was a new occurrence of subsidence. She also said Lloyd's should pay £500 compensation for the distress caused in delaying the investigation.

Lloyd's didn't accept that. It said Mr and Mrs W had accepted this damage was linked to an old claim, and so the previous insurer should carry out any further work.

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.

It's accepted that Mr and Mrs W had a previous claim for damage caused by subsidence in 2014. As far as I'm aware the claim, and repairs, were finished a couple of years later. Mr and Mrs W's policy with Lloyd's started in 2019. Mr and Mrs W contacted Lloyd's about further damage in 2021. So under the Association of British Insurers (ABI) Domestic Subsidence Agreement, where the claim is made more than one year from the start of the current policy, the current insurer – Lloyd's should accept the claim.

Lloyd's argues that the damage relates to substandard repairs from the original claim. It says the cracks are to the front right-hand side of the property, which was the same area previously affected. It says previous cracks have reopened and the damage should be classed as happening before the policy started. So not covered under the policy.

Having reviewed all the evidence, I'm not satisfied Lloyd's has shown the damage happened before the policy started. Mr and Mrs W didn't report the issue until 2021. I haven't been provided with any persuasive evidence from Lloyd's to support its claim the damage was there when the policy was taken out. So it's unreasonable for Lloyd's to decline the claim on the basis of the damage pre-dating the policy.

Lloyd's has said Mr and Mrs W admitted in a phone call that the damage was historic, so it shows there were issues. But there is no recording of this conversation, and I'm not persuaded their comments – if made – are enough to demonstrate the damage pre-dates the policy. Mr and Mrs W were aware of the previous claim; if damage had appeared earlier

than 2019 (when the policy started) I see no reason why they would delay in reporting it for more than two years.

It also seems Lloyd's don't consider the damage to be caused by subsidence. As it doesn't consider the property to be progressively moving. It says due to poor initial repairs, the cracks have reopened. But Lloyd's accepts it hasn't done any monitoring of the property, or any drain survey to check the previous repair. So I'm not persuaded it can say the damage isn't progressive. It seems to rely on the fact that the cracks are largely in the same area as the previous claim as a means to say it's not progressive. But the previous repairs were carried out a number of years ago. And Mr and Mrs W haven't reported any issues in the interim. Lloyd's also accepts in its report that its conclusions are based on "*limited investigations*". So I'm not persuaded Lloyd's has shown the damage isn't caused by a new occurrence of subsidence.

I accept that it is for an insured (so in this case Mr and Mrs W) to show they've suffered a loss which is covered by the policy. But subsidence claims can be complex, and this service would expect an insurer to help its customer by carrying out monitoring, or further investigations to assist in determining the cause of the damage. In the circumstances of this case, I'm not satisfied it has done enough to show the property isn't suffering from subsidence.

So Lloyd's will need to carry out further investigations to determine whether Mr and Mrs W's property is suffering from damage caused by subsidence.

Lloyd's also needs to pay compensation for the unnecessary distress and inconvenience caused to Mr and Mrs W for the delay in these investigations starting. A considerable amount of time has passed since Mr and Mrs W reported the damage. And having damage to their home will cause distress and inconvenience. Mr and Mrs W were also inconvenienced by being repeatedly referred back to a previous insurer, then they shouldn't have been. So Lloyd's needs to pay Mr and Mrs W £500 compensation to reflect the distress and inconvenience caused.

My final decision

My final decision is that Society of Lloyd's needs to carry out further investigations to determine if Mr and Mrs W's property is suffering from subsidence. It should start these investigations without delay.

It also needs to pay Mr and Mrs W £500 compensation for distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 17 July 2023.

Michelle Henderson
Ombudsman

