

The complaint

A company, which I'll refer to as S, complains that Society of Lloyd's (SOL) unfairly declined its claim for flood damage and business interruption under the policy.

For ease of reading, I'll refer to all comments and actions of S' representative as being those of S.

What happened

The details of this complaint are well known to both parties, so I won't repeat them in detail here.

To briefly summarise, S took out a Nelson Sport and Leisure Golf club insurance policy. In December 2019 S made a claim following flood damage to its golf course. S said the course flooded waist deep which resulted in the complete cessation of golf and other related activities at the club. The claim made by S was in relation to the damage caused and the business interruption (BI) as a consequence of the damage.

SOL appointed a loss adjuster to investigate the claim. The loss adjuster said that he was told the first occurrence of flooding happened on 1 November 2019 which resulted in some holes becoming unplayable and others inaccessible. The loss adjuster also contacted the Environment Agency (EA) for their expert technical advice having reviewed a report provided by S from the EA regarding the underlying geology of the golf course land, the surrounding area, and relevant changes in the water table level.

The EA confirmed to S that the water on site was due to a change in the water table level. SOL therefore concluded that this was the proximate cause for the golf course flooding. As such, SOL declined S' claim and relied on a policy exclusion for change in water table level.

S argues that there were storm conditions on 7 and 8 November 2019 which caused serious regional flooding, followed by a succession of 'named' storms over the next few months. S said the weather conditions were not taken into account by SOL. S also said the golf course is on a well-drained light/sandy soil, and in the last 100 years there had only been two previous reports of flooding on the course.

SOL didn't agree that the course flooded as a result of the storms. They said that the course had already been become waterlogged prior to the named storms occurring, and based on the evidence from the EA, they believed the flooding was because of a change in the water table level due to the underlying geology of the golf course, and the subsequent periods of heavy rainfall during the named storms between January and February 2020 had simply added to the levels of the rising water table which didn't have anywhere to drain away.

Consequently, S' BI claim was also declined on the basis that the material damage proviso hadn't been satisfied as SOL had not accepted liability for the damage claim under this insurance policy. SOL said if S provided further evidence, such as a hydrologist report, to support its case, they would give it further consideration.

SOL wasn't satisfied that S had provided evidence to demonstrate that the proximate cause of the damage were the storms, and not a change in the water table level. SOL therefore maintained its position that the policy exclusion applies and therefore S' claims weren't covered.

Unhappy with SOL's response, S brought its complaint to the Ombudsman Service.

Our Investigator considered S' complaint but didn't think it should be upheld. He thought that SOL acted fairly and reasonably when relying on the policy exclusion for a change in the water table level to decline S' claim.

S didn't agree with our Investigator and therefore the complaint was referred to me to consider.

S provided further information about a subsequent flood claim which occurred in late 2023. S says that the same weather conditions and circumstances applied, as well as policy exclusion for a rise in water table level. S says its current insurer has accepted liability for an identical claim, which should be taken into consideration when considering the claim in question.

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.

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to be good industry practice at the time.

I will start by explaining that I'm not an expert in weather conditions or geology. My role is to consider the available expert opinions to decide whether SOL made a decision which was fair and reasonable in all the circumstances, based on those expert opinions.

S has provided detailed submissions to the Ombudsman Service. Within this decision I won't be responding in similar detail. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. This is not intended as a discourtesy, but a reflection of the informal nature of this Service.

The crux of this complaint centres on SOL's decision to decline S' claim. The relevant rules and industry guidance say that SOL have a responsibility to handle the claims promptly and fairly and they shouldn't reject a claim unreasonably. I have to decide if I think SOL have applied the terms of the policy in a fair and reasonable manner when declining S' claim. Having reviewed everything available to me, overall, I think they did. I'll explain why.

The term most relevant to the claim S wants to make says:

“Section 1 – Property Damage – What is covered & Extensions:

What is Covered

“We will cover You for Damage to the Property Insured at the premises described in the Schedule during the Period of Insurance subject otherwise to the limits, terms, conditions and exclusions of this Policy.”

Damage is defined as:

“Means accidental direct and unforeseen direct physical **Loss** or destruction of or damage to the **Property Insured** or as otherwise defined in the **Policy** or section.”

Loss is defined as:

“A potential Loss, claimed Loss, actual Loss or circumstances which may give rise to a claim.”

Firstly, it's important to note that S' policy covers accidental direct and unforeseen direct damage as defined above, unless an exclusion applies.

In line with the policy term above, S has cover for damage and there's no dispute that damage occurred. The issue in dispute in this complaint is in relation to causation, and whether the storms or a change in the water table level were the proximate cause of damage.

SOL concluded that the proximate cause of damage was a change in the water table level and as such, they relied on the following policy exclusion when declining B's claim:

“Section 1 of this **Policy** does not cover:

1.1 inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, or **Damage** to any property resulting from its own faulty or defective design or materials;...”

The onus is on SOL to show it would be fair to rely on the above policy exclusion. I therefore need to consider whether SOL have correctly applied the exclusion in the policy when declining S' claim.

I note that during the claim investigation, both SOL and S sought advice from an expert Technical Groundwater Specialist at the EA. It is noted by the loss adjuster that the EA reported the groundwater near the course was at the highest recorded since 1975, and a nearby river had its highest levels since 2000. The loss adjuster refers to the EA's report in which he says, when considering the geology underlying the course, the EA suggested there were two potential causes of groundwater flooding, one being the sand and gravel being likely to be saturated to the point that any hollows or dips will be filled with groundwater, and with the high level in the river it is suggested that there is little opportunity for the groundwater to drain away. Furthermore, it is suggested that there is a chance that the groundwater will be upwelling from the limestone adding to the groundwater in the sand and gravels.

Further to the above comments, SOL then spoke to the EA and they say he confirmed that the damage was due to changes in the level of the water table.

It's not in dispute that the EA confirmed a change in the water table level, and whilst I haven't seen the report the EA provided to S, I have no reason to doubt what the loss adjuster said about the EA's comments on the underlying geology of the golf course land, the surrounding area, and relevant changes in the water table level.

S said that following the EA's conversation with the loss adjuster, he contacted S to make it aware of his discussion with the loss adjuster because he didn't know how S' policy was written or how “water table” was interpreted, and he also suggested that other factors, such as nearby watercourses, can play a role too, therefore he did not wish for his comments to

be taken out of context. S said that 'other factors' would also include the storms. While I have no reason to doubt this conversation happened in the way described by S, I haven't seen any evidence, apart from S' own comments about the storms. And in any event, even if the storms were mentioned by the EA, it's not clear which context they were referred to i.e. whether they were considered by the EA to be the cause for the damage or whether it added to the water table level which had already arisen and had nowhere to drain away. While I take on board S' comments here, I haven't seen enough evidence to persuade me that the EA was referring to the storms being the cause.

S says there were reported storms in the local area between November 2019 and February 2020. But whilst that may be the case, I don't think they were the proximate cause of damage. I will explain why.

From the evidence I have seen, I think on balance, the damage was caused by a change in the water table level. I say this because, I am persuaded that since 1 November 2019 the course started to flood, this gradually happened over a couple of weeks. The storms which S refers to didn't happen until mid-November and most of which were reported in the new year. By this point, S had reported that the water level on the course was receding well. I think the storms mentioned by S added to the flood which already commenced prior to the storms happening. I'm therefore persuaded from the evidence I have seen that it's more likely than not that the course flooded due to a change in the water table level, which is specifically excluded under S' policy.

SOL gave S the opportunity to provide further evidence for example from a hydrologist, for further review. As far as I'm aware, no such evidence was provided. In the circumstances it's neither unfair nor unreasonable for SOL to rely on the expert evidence of the EA and to find it persuasive. So, on balance, I think the decision that SOL have come to, that the damage was caused by a change in the water table level, was fair.

Taking everything into account, I think SOL's decision to decline the claim, based on the exclusion they relied on, was fair and reasonable. I understand that this won't be the outcome S would've liked but, currently, I can't reasonably ask SOL to do anything further to resolve this complaint

S also made a BI claim as a consequence of the damage. Under this section of cover, there is a condition precedent which states the following:

"It is a Condition Precedent to **OUR** liability that:...

Property Damage Cover

- a) there is in force at the time of the **Occurrence of Damage** insurance under this **Policy** covering your interest in the **Property Insured** at the **Premises** for the **Damage**; and;
- b) payment has been made or liability admitted by **Us** for such **Damage** or payment would have been made or liability would have been admitted by **Us** for such **Damage** but for the exclusion of losses below a stated amount in such insurance **Policy**.

SOL said that because the flood damage wasn't covered under this insurance policy due an exclusion applying, it therefore follows that there is no cover for the BI claim either.

As per the policy terms, I'm satisfied that for a BI claim to be considered there must be damage by an event which is covered under this insurance. I'm satisfied that because the damage caused by the flood wasn't covered under this insurance, the BI cover wouldn't

respond. I don't consider that SOL acted unfairly or unreasonably when declining S' BI claim. I therefore won't be requiring SOL to do anything differently here either.

S provided information relating to a subsequent claim for flood damage which it says has been accepted by its current insurer. Each claim needs to be decided on its own individual circumstances and policy terms, and so I can't comment on another insurer's decision on the subsequent claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 July 2024.

Ankita Patel
Ombudsman