

## The complaint

Mr and Mrs K complain that Lloyds Bank General Insurance Limited won't pay their costs associated with the repair/ renewal of underground pipes in respect of their claim for accidental damage to their underground pipes. Whilst noting they are joint policyholders, as it is Mr K who made the claim, for convenience in this decision I shall refer just to him as being the consumer.

## What happened

Mr K's property's drainage system is "off mains" and consists of a sewage treatment plant (STP), with drainage into a catchpit and ultimately the treated water flows into a pond in a neighbouring field.

In February 2021 Mr K made a claim in respect of a blockage in the pipe leading from his home to the STP. Cracks were found in the pipe and repairs carried out. The pipe was sleeved. Lloyds paid for the repair.

In April 2021 it was noticed that the lawn was unusually wet in the southwest corner of the garden. Another area close to the catch pit also appeared to be saturated. Mr K employed drainage contractors first of all to excavate the areas and then to carry out repairs. The claim was reported to Lloyds on 24 May 2021.

The contractors found that the (clay) pipe downstream of the catch pit was blocked by roots and silt. CCTV footage showed there were open joints. The pipe had to be broken into and a run of 12 m was replaced and sleeved.

From the end of that pipe a UPVC perforated pipe ran down across the neighbour's field, ultimately to a pond. The contractors found this to be blocked with tree roots. They attempted to remove them but this proved difficult. It was decided that a 16m run of the pipe would be replaced and put in a different position. This was because the existing pipe couldn't be located without excavating a large area of the garden, which would have involved destroying the planting, hedging, and fencing in that area and damaging the tree roots of some large adjacent trees. The work was completed and the cost of it notified to Lloyds.

Lloyds considered Mr K's claim. It initially said that it could agree cover for only £216 visible accidental damage in respect of the clay pipe. It said the other repairs to this section of pipe were necessary because each joint along the 12 metres was out of alignment. This evidenced that the pipe was either laid out of alignment or had gradually bedded into the soil over the years and the rigid joints had moved as the ground around the pipe had moved with the seasons. So it said that the damage was gradual (which is excluded under the policy) and wasn't accidental damage as defined in the policy. It pointed out that, in regard to the UPVC pipe, the evidence was that this was blocked by tree roots (at least the 16m section replaced) but no evidence had been shown of physical damage to the pipe.

Lloyds subsequently offered (and paid) the £1,000 limit for the cost of breaking into and repairing the pipe where there is a blockage in an underground pipe connecting the home to the main sewer and normal methods of releasing the blockage to restore service are

unsuccessful. Since the home isn't connected to the main sewer Lloyds said this offer was made in error but said it wouldn't request the return of the money.

Lloyds reviewed the matter when it sent its file to us. It agreed to reconsider the claim for the 12m clay pipe but maintained its decision concerning the UPVC pipe.

Mr K subsequently had an engineer (M) carry out a report.

On review by our Investigator, they said that Lloyds should pay for the cost of both the clay pipe and the UPVC pipe. This was because they were satisfied that the claim was covered under accidental damage to services in the policy. As Mr K had had all the repairs done before Lloyds had an opportunity to review and offer a settlement, they said that it should pay Mr K the amount that it would've cost it to do the same works. They further said that Lloyds should pay the cost of M's report, and pay £150 compensation for distress and inconvenience.

I issued a provisional decision. In it I said that Lloyds should pay for the cost of repairing the broken section of clay pipe and the associated costs of investigation and reinstatement of the lawn. However I said that in my view Mr K hadn't shown that there was physical damage to the UPVC pipe., so Lloyds had no liability to pay for the repair and replacement of the UPVC pipe.

Lloyds accepted my provisional findings.

Mr K didn't accept those findings. In his submissions he said, in summary:

- Part of the repair to the UPVC pipe was to replace a section of the clay pipe, so I should therefore allow a further cost, of 20% of the cost of the new UPVC pipe for this (the clay pipe section).
- The £1,000 paid by Lloyds shouldn't be deducted from the settlement, as that was a payment in respect of the UPVC pipe.
- Lloyds failed to carry out any reconsideration of the claim for the section of clay pipe.
- He has referred me to what he considers to be legal authority for his contention that the blocking of a pipe with roots is physical damage.
- He believes that he should be awarded his legal costs because Lloyds acted in breach of The Financial Ombudsman Service's guidance and in breach of the rules. He believes I should make a finding that Lloyds acted in bad faith.
- He has provided details of the previously uncalculated costs of hedging and fencing.
- He believes I should order Lloyds to pay M's costs as it addressed the arguments made by Lloyds in its final response letter.
- He maintains that £150 isn't adequate compensation. He proposes that the award should be £2,500 each for himself and Mrs K.
- He suggested some changes to my wording.

## 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.

My provisional findings were as follows:

### “the claim

*I think that, notwithstanding the large amount of material provided, the issues to be decided in this case are quite straightforward. That is whether Lloyds should pay the claim for the repair/replacement of the clay pipe and/or the UPVC pipe under the accidental damage to services cover in the policy.*

“Accidental damage” is defined in the policy as:

“An accident that causes physical damage, which is caused suddenly by an outside force and is not expected and not deliberate.”

“Services” are defined as:

“Underground cables, pipes, drains, tanks, and their inspection covers serving your home and for which you are legally responsible.”

*I think both pipes would fall to be considered under this particular cover. I will go on to decide whether there was accidental damage.*

### clay pipe

*As well as being blocked with roots, Lloyds' engineer's review of this section of pipe showed structural damage for part of the run and also displaced joints. Our approach in respect of accidental damage to underground pipes is that, unless the business can show that an exclusion applies it is fair to say that there was accidental damage (if it complies with the definition in the policy). This is because the consumer couldn't be expected to notice any damage until some evidence of it occurs above ground (here - saturation of certain areas). As regards Lloyds' indication that it won't pay any settlement until Mr K has confirmed compliance with the Binding Rules, I don't think that's reasonable. The repairs have been done, and not by Lloyds' contractor. It isn't being asked to pay for any upgrade to comply with those rules and it is up to Mr K if he needs to carry out any further work to so comply.*

*I am in agreement with the Investigator concerning Lloyds' liability in this respect. It has had ample opportunity to consider its position, and I see no point in prolonging matters further by allowing further investigations. I think Lloyds should pay Mr K a cash settlement to cover the repairs to this pipe. I'll set out below what I think it should pay.*

### UPVC pipe

*I have to revert here to the definition of this in the policy – there must be physical damage to the pipe (my underlining). The review of the CCTV footage, photos, and reports from both the contractors and M, show that the pipe was blocked (up to the boundary of the property) by roots. Whilst a blockage in itself can be damage, it isn't physical damage to the pipe as it can be fully functional after removing the blockage. I understand the reason why the pipe run was completely replaced, and no doubt this was a sensible preventative measure. But I bear in mind that this work was undertaken without any consultation with Lloyds.*

*Mr K says that a new connection had to be made from the UPVC pipe to the repaired pipe, which had been broken into in order to clear it, and therefore shortened in the process.*

However, the end of the UPVC pipe on the property could not be traced in order that this may be done. And parts of the pipe were dug up during the excavation. I'm inclined to think that if this happened, more care should have been taken and such damage would have been expected. So I think the issue here, in line with our approach to this or similar definitions in policies is whether it can be shown that there was actual physical damage to the pipe. Unlike the clay pipe however I don't think that has been shown here. So I don't think that Lloyds has a liability to pay for the repair and replacement of the UPVC pipe.

I haven't addressed Lloyds other issues here, concerning the foreseeability of root blockage to a perforated pipe because I don't think they're relevant. Although I would observe that I haven't seen any indication that that type of pipe is inappropriate for this sort of system.  
legal costs

Mr K submits that he is entitled to claim his legal costs based on his own charge out rate. His justification is that Lloyds deliberately failed to comply with the Financial Ombudsman Service's and industry guidance.

I should remind Mr K that we are an informal complaint resolution service. I would point out that DISP 3.7.10 of the Dispute Resolution Rules says:

"In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service so awards of costs are unlikely to be common."

As I've said the case involves two quite straightforward issues concerning two sections of pipe. Mr K didn't in my view require legal advice to pursue his claim. And we don't award the consumer their costs for bringing a complaint to us. I would question whether a prudent consumer would incur £28,000 of costs to pursue a claim for less than £9,000. There's no concept of awarding indemnity costs in our approach to cases, and we are not the regulator so do not make awards to "punish" businesses. The cases Mr K quotes may be relevant to court proceedings but not to the Financial Ombudsman Service complaints procedures.

To the extent that Lloyds may have prolonged the claim if it failed to comply with any particular rules/guidance, that may be grounds for a compensation award. But every case is different and I do note here that Lloyds was willing to change its stance when it forwarded its file to us. And the fact that I have upheld only part of the complaint would justify its stance on the UPVC pipe.

I don't intend to award Mr K's legal costs.

#### premiums

Mr K seeks the return of three years' premiums for the same reasons as he seeks to claim his legal costs. If this meant cancellation of the policies for those three years, that would leave Mr K uninsured and liable to pay back any claims he had made in those three years. If he is simply proposing that Lloyds refund the premiums and keep the policies intact, that would be extra compensation. I will deal with compensation below, but I won't award any return of premiums."

Mr K's comments on my provisional findings:

- Part of the new UPVC pipe was to replace a section of the clay pipe, so I should therefore allow a further cost, of 20% of the cost of the new UPVC pipe for this.

I have to say that the report from the drainage contractors doesn't make this clear, nor is the

cost of the UPVC pipe broken down between materials, labour etc. But putting together the evidence I believe that a small section of the clay pipe was broken into and replaced with a UPVC pipe which then formed part of the longer run of that pipe. I think the bulk of the work concerning that pipe was because of having to replace the blocked old UPVC pipe which I have found isn't covered. I assess the cost of this small section of pipe, taking that into account to be £200 (inclusive of VAT).

- The £1,000 that Lloyds paid was in respect of the UPVC pipe, so shouldn't be deducted from the settlement.

I'll accept that and note that even though strictly speaking the policy term it was paid under doesn't apply, Lloyds has not sought to recoup that cost. My revised calculations are set out below.

- Lloyds failed to carry out any reconsideration of the section of clay pipe.

I think there's been a misunderstanding here. When Mr K sent in his complaint summary to the Financial Ombudsman, in March 2022 he said that "*Full reasons and supporting evidence, including photographs, will be provided in a detailed Statement of Case including photographs together with a paginated bundle of correspondence to follow.*"

Lloyds asked for that so that it could review the complaint. As it wasn't forthcoming (and wasn't supplied until January 2023) our Investigator asked Lloyds to submit its file. As a part of that Lloyds proposed that its claims team be asked to re-open the claim and give consideration to the full repair of the (clay pipe) section of the drain. But there was no point in it doing that if that proposed resolution wasn't accepted (as indeed it wasn't). But I still consider that at that stage Lloyds had changed its stance – the customer services agent specifically said that they disagreed with its previous review of this part of the claim.

- Mr K maintains that there is legal authority for his assertion that there was physical damage to the UPVC pipe.

The case he refers to he has shown us before. It doesn't address the issue of physical damage (as opposed to just damage). So I don't think that's relevant. I have made my position on this clear in my provisional findings and I've seen nothing to cause me to alter my view on this point.

- Mr K believes that his claim for legal costs is justified because Lloyds acted in breach of the Financial Ombudsman Service's rules and guidance. He asks that I make a finding that Lloyds acted in bad faith.

I decline to make such a finding. As far as accidental damage is concerned it's still open to a business to argue that gradual damage applies and that it was foreseeable. I understand from the internal emails that Lloyds disagrees with our position (which we've held for some years) that the effects of a blockage can occur suddenly. I've already set out in my provisional findings my views on that point. And I've not seen any further evidence to persuade me that Mr K was justified in seeking his legal costs.

- Mr K believes he should be paid the cost of M's report.

As regards M's costs I appreciate that Mr K told us he was going to instruct an engineer. But he still has to justify the costs of that. M's findings and summary related exclusively to the section of clay pipe (referred to as the "downstream pipe"), it didn't address whether the UPVC pipe should be covered. When Mr K instructed M Lloyds had already offered to reconsider the section of clay pipe. So the report didn't add anything new. I won't award the

cost of this report.

As regards compensation for distress and inconvenience, I've already set out my view on this in my provisional findings and have seen nothing further to persuade me otherwise.

Lastly, I've set out the background above as it appeared in my provisional decision. I've amended it to reflect that M didn't carry out a site inspection and to delete the wording concerning deducting £1,000. Otherwise I don't see the need to alter it any further.

Otherwise, my provisional findings, apart from where I've set this out above, haven't changed and are therefore final and form part of this final decision.

### *compensation*

Mr K will be aware of our guidance on compensation awards. I think that he was put to some distress and inconvenience in having to argue his claim. But in line with our awards in similar cases I think £150 is a fair award in this respect.

As for Mr K's costs, I don't think it's in his or Lloyds' interests to prolong this further by arguments over what Lloyds should pay to settle matters. The costs for repairing/replacing the broken section of clay pipe appear reasonable to me, and have been paid by Mr K including VAT. And Mr K has sent in estimates of the cost of hedging, planting, and fencing. I think it reasonable to award the following:

Excavation and repair work for the repaired clay pipe:	£ 3,228 inc. VAT
New UPVC section of that pipe:	£ 200 inc VAT
Initial excavation, trace, and repair work:	£1,260 inc VAT
Reinstatement of the lawn:	£ 420
Lawn dressing for reinstatement of lawn:	£ 250
Pump	£ 99
Fencing: fence posts	£ 36
wire mesh	£ 113
labour:	£ 120
Hedging: mature plants and compost	£ 510
labour	£ 120 (as per the fencing) <sup>1</sup> .
reseeding grass verge	£ 50 allowed <sup>1</sup>
other plants	£ 290
<b>Total</b>	<b><u>£ 6,696</u></b>
less policy excess:	£ 150
less paid on account	£ 216.84

Total payable: £ 6,329.16

<sup>1</sup>future maintenance (watering etc) not included

I have advised both parties about the extra costs. Mr K has also provided us with an interest calculation, he should provide that to Lloyds. I won't set a figure for this as it will change depending on when it is paid, I've set out the formula for calculating this.

### **Putting things right**

Lloyd's should pay Mr and Mrs K £150 compensation for distress and inconvenience, and the total payable set out under "compensation" above, subject to Mr K providing

the relevant invoices where not already provided.

It should add simple interest at 8% from the dates of payment of the invoices until reimbursement.

\*HM Revenue & Customs may require Lloyds to deduct tax from any award of interest. It must give Mr and Mrs K a certificate showing how much tax has been taken off if they ask for one.

### **My final decision**

I uphold the complaint in part and require Lloyds Bank General Insurance Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 26 May 2023.

Ray Lawley  
**Ombudsman**