

The complaint

Mrs B complains about Lloyds General Insurance Limited (Lloyds) who declined her claim under her home insurance policy.

What happened

Mrs B contacted Lloyds to make a claim as she noticed that there was a leak in her home. Lloyds sent a surveyor to assess the damage. The surveyor said that the leak had been caused by a failed shower seal and as this wasn't an insured event, Lloyds declined her claim.

Mrs B accepted the decision to decline the claim and went about getting a contractor in to carry out the repairs. The contractor also assessed the damage and found that the source of the leak wasn't the shower seal but the bath trap. He also found that damp readings were higher in the bath area, and none was found in the shower area.

Mrs B found that as the escape of water from the bath trap was an insurable event, went back to Lloyds and asked it to re-consider the claim, in light of her contractor's conclusions.

In its final response, Lloyds said that her claim had been declined fairly, as there wasn't enough evidence to overturn the decision. It also said that there had been delays in the service that Mrs B experienced for which it apologised and offered £400 compensation for the trouble and upset caused.

Mrs B was given her referral rights and referred a complaint to our service. One of our investigators considered the complaint and thought it should be upheld. She said that she was more persuaded by Mrs B's expert report who found that the source of the leak was the bath trap, than the report from Lloyds' expert. She said this was due to the photographs (from both party's experts) that showed damage under the bath and damp readings in the bath area. So, she recommended that Lloyds cover the cost of the repair work (£9,090) that was done, as well as give Mrs B a further £100 compensation for the additional trouble and upset caused.

Mrs B accepted the view, Lloyds did not. It requested Mrs B's builder's invoice, as she had had the work completed. It offered to pay 50% of the invoice cost, as it believed that it was likely that the leak had started around 4 years earlier. But as there was no evidence to fully support this contention, it made this offer, as well as agreed to paying a further £100 compensation, as recommended.

Our investigator put the offer to Mrs B, who accepted the offer. And this was communicated to Lloyds. Following this, Lloyds then asked for Mrs B's builder's invoice and said that it would only now pay for items that had been damaged as a direct result of the leak. It also said that the other items on the invoice it considered to be betterment and it wouldn't cover the cost of those items. It asked for a full breakdown of the costs, so that it could determine how much it would cover. Lloyds did not make a payment (despite having had a copy of the invoice) as such the matter has been referred for an ombudsman's decision.

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 considered the complaint, and I thought the complaint should be upheld. I issued a provisional decision on 13 April 2023 and asked both parties to send me anything else by 11 May 2023. In my provisional decision I said:

Having done so, I intend to uphold this complaint, but for slightly different reasons than that of our investigator. And I hope my provisional findings explain why I think this is fair.

Mrs B contacted Lloyds as she discovered a leak at her home. It sent a surveyor to assess the damage. He found that the source of the leak was due to failed shower seals, which wasn't covered as an insurable loss under the policy and the claim was declined.

During the remedial works, Mrs B's contractor found that the source of the damage came from a bath trap, and not the shower seal. There was further evidence of the leak originating from the bath, such as, rotten floorboards, high damp readings in the bath area compared with no damp readings in the shower area (which was located in another part of the bathroom) Mrs B asked Lloyds to reconsider the claim.

Although Lloyds didn't accept Mrs B's contractor's opinion, it agreed to pay for 50% of the contractor's costs as well as a total of £500 compensation for service failings. Mrs B accepted this settlement offer from Lloyds, but Lloyds didn't pay the settlement. It asked for a breakdown of the costs instead. As Mrs B didn't get a resolution, I think the main issue of this complaint is whether the 50% contribution offer from Lloyds, was fair.

Lloyds made the 50% contribution offer after it had been sent a copy of the invoice from Mrs B's contractor. Lloyds asked for a breakdown of the work, after the offer had been accepted by Mrs B. Having reviewed the invoice, I'm satisfied that all the work undertaken was particularised. For instance, it mentions: 'to cut out four rotten joists and replace with treated timber'.

Equally, the invoice mentions work that could be deemed as extra work such as: 'remove the complete bathroom suite, fit shower valve, run cold and hot feeds to shower'. So, I can understand why Lloyds wanted a further breakdown, as to the costs attributable to the damage the leak caused.

In addition, Lloyds mentioned that the leak could have been historical, in that it could have started around four years earlier. But I have seen no evidence to support this contention, and I'm not persuaded by it.

Nevertheless, I'm persuaded by the report from Mrs B's contractor as to the source of the leak and the actual damage caused. The report stated that the source of the leak came from the bath trap and joists were damaged under the bath due to being saturated with water. It also mentions that due to the leak, there was damage to the room below and some of its contents.

I note that the bath wasn't in the same area as the shower, toilet, or sink, yet on Mrs B's contractor's invoice it indicates that the entire bathroom suite was removed. All the flooring was removed, and a towel rail was replaced. From the evidence, I can't see that all of these items were directly affected by the leak.

I must also take into consideration, that the purpose of insurance policies is to put a policyholder back into their pre-loss condition. They are not in place for betterment, and I do think some of the work carried out was for betterment. For this reason, I think its fair that Lloyds pay Mrs B half of the cost of the remedial works as it originally offered. I say this as it had sight of the invoice before it made the offer. And I think by contributing to half of the invoice costs, this would consider any issues regarding betterment.

Lloyds accepted that there were service failings, in particular the delays that Mrs B experienced and I do think that compensation is warranted. I'm satisfied that given the trouble and upset caused, Lloyds should pay Mrs B a total compensation of £500 (a further £100) as it originally agreed to.

Taking all the circumstances into consideration, I intend to ask Lloyds to put matters right by making a 50% contribution to the invoice costs namely, £4,545. As well as pay a total of £500 compensation for the trouble and upset caused.

If either party has any further evidence for me to consider, I will ask that this be provided. But currently, I think this is a fair and reasonable outcome.

Responses to my provisional decision

Mrs B had nothing further to add to my provisional decision but did accept it.

Lloyds said that it didn't dispute the compensation of £500 in total. But it felt that as Mrs B had undertaken work that wasn't necessary as it didn't remedy the damage caused, it wasn't fair or reasonable for it to pay 50% of the entire value. It said that its offer, which it was reiterating, was for it to pay 50% of the necessary works to remedy the damage.

It felt that the source of the leak came from the shower seals and not from under the bath. It sent two surveyors to find the source of the leak. The first surveyor couldn't be sure of the source of the damage until strip out works had been carried out. Lloyds then sent another surveyor and that surveyor found that the source of the leak was due to the defective shower seals. That surveyor also said that there was no leak under the bath but removed the bath panel and saw rotten floorboards.

Lloyds said that as Mrs B's claim had been declined, she then carried out a strip out of her bathroom and refurbished it, which it said was logical for a homeowner to want to update the area. But it felt that Mrs B's expert was too specific in what they concluded was the cause of the leak.

Lloyds felt that the actual leak under the bath occurred most likely some time ago (although it accepted that there was no actual evidence to support this contention) and prior to the policy inception. It still maintained that the leak originated from the shower seals that had failed. And that it was fair and reasonable for it to make a 50% contribution to the necessary repairs to remedy the damage caused by the leak.

I have carefully considered the comments made by both parties. Mrs B has accepted the provisional decision and I make no further comment regarding this.

Lloyds said that the offer it originally made was to pay 50% of the necessary works to remedy the damage caused solely by the leak. So, I've had a look into this further and in particular what it said about the contribution it would make.

In an email sent to our investigator Lloyds said the following: *'I propose that a contribution of 50% is made to the cost of the remedial works'*. I'm satisfied that the offer did not specify that the contribution would only extend to the damage caused solely by the leak. But in any event, I took into consideration that some of the reinstatement works included repairs that could be considered to be betterment. And as a result, I didn't think it was fair or reasonable that Lloyds contribute towards that. Which is why I think a fair and reasonable contribution would be for Lloyds to pay 50% of the total costs of the repairs carried out.

I understand that Lloyds has said that the damage was due to failed shower seals and that the damage under the bath pre-dated the policy inception. But I'm more persuaded by Mrs B's expert and I'll explain why.

Lloyds sent in two surveyors. The first one couldn't provide an opinion as to the cause of the leak. This it said was due to the fact that no strip out had occurred. The second found that the shower seals were the cause of the leak. But at the time, no strip out had occurred. By the time that a strip out had happened by Mrs B's expert, he found that the cause of the leak was coming from under the bath. There were rotten floorboards, high damp readings and no damp readings from the shower area.

I have found the following communication from Lloyds in March 2021, who appear to question whether the shower seal was the proximate cause: *'We await a response from Absolute as they said that the pipe works were fine under the bath, but they made no comment to the extent of damage under the bath. We would need confirmation that the shower sealant failure is the sole proximate cause. I find this unlikely looking at the extent of the damage under the bath.'*

In addition, given that there was little evidence of damage or high damp reading from the shower area, I'm satisfied that the proximate cause came from the bath and not as a result of the failure of the shower seals. Especially as Mrs B's expert had carried out a full strip out before arriving at their opinion. And that the first surveyor sent by Lloyds said that a full strip out would be required before a definitive opinion could be given about the source of the leak.

Putting things right

Taking all the circumstances into consideration, I think it's fair and reasonable for Lloyds to put matters right by making a 50% contribution to the invoice costs namely, £4,545. As well as pay a total of £500 compensation for the trouble and upset caused.

My final decision

I uphold Mrs B's complaint.

Lloyds General Insurance Limited to make a 50% contribution towards the total cost of the invoice of £4,545.

Lloyds General Insurance Limited to pay Mrs B £500 for the trouble and upset caused.

Lloyds General Insurance Limited must pay the above amounts within 28 days of the date on which we tell it Mrs B accepts my final decision. If it pays later than this, it must also pay interest at 8% a year simple on the above amounts, from the date Mrs B paid for the repairs to the date of settlement to reflect that she has been deprived of these funds.

If Lloyds General Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 2 June 2023.

Ayisha Savage
Ombudsman