

The complaint

Mrs M complains about Lloyds Bank General Insurance Limited's handling of claims made under her home insurance policy.

What happened

Mrs M has an insurance policy underwritten by Lloyds which covers her home's buildings, amongst other things. She made potentially related claims some years ago relating to an escape of water from a mains pipe under her kitchen floor and subsidence damage to parts of the house.

Lloyds accepted the claims and carried out remedial repair work. Mrs M wasn't happy with the outcome of those repairs or with the delays and poor communication / customer service in Lloyds' and their contractors' handling of the claim and the repair work.

Mrs M has made several complaints to Lloyds. They provided final responses to those complaints in: June 2020, September 2020, February 2021, June 2021, July 2021 (two final responses – one on 20 July and one on 30 July) and November 2021.

In total, Lloyds have paid or offered close to £1,300 in compensation to Mrs M for the trouble and upset caused by the delays and service failures.

In January 2022, Mrs M brought her complaint to us. It was about delays, poor communication, poor customer service and failure to complete the repairs in a satisfactory manner.

In terms of the repairs, Mrs M appeared to be concerned about two things in particular.

One, she said the ceiling and walls beneath her bathroom were still damp. She suspects an on-going leak from the pipes in the bathroom, caused ultimately by the subsidence and not repaired satisfactorily by Lloyds' contractors.

Two, she believes a problem with damp on the ground floor is related to the original escape of water. And again, she says this hasn't been properly dealt with by Lloyds' contractors.

In February 2022, Lloyds made an offer to settle the complaint(s). They said they'd pay Mrs M £300 for the trouble and upset she'd been caused by delays and poor communication / customer service.

They said they'd apply warm paint to the walls and ceiling in Mrs M's kitchen, which they believed would resolve any damp / condensation issues in that area. And they said they'd replace her kitchen floor.

Our investigator thought that offer was fair and reasonable. But Mrs M didn't accept it and asked for a final decision from an ombudsman.

I agreed with our investigator that Mrs M's complaint should be upheld. But I disagreed about what Lloyds needed to do to put things right. So, I issued a provisional decision. This

gave both Mrs M and Lloyds a chance to provide further information or evidence and/or to comment on my thinking before I make my final decision in this case.

My provisional decision

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

What we can and can’t consider

I need to be clear first of all about what I can and can’t consider as part of the complaint Mrs M has brought to us.

The Financial Conduct Authority’s rules – the dispute resolution (or DISP) rules – set out our service’s role, including what complaints we are allowed to investigate and consider. We don’t have any discretion to ignore or set aside those rules.

Amongst other things, the DISP rules say that we can’t consider a complaint brought to us more than six months after the business in question has provided its final response to the complainant. That is, unless the business consents to our doing so or there are exceptional circumstances to explain why the complaint could not have been brought earlier.

We don’t have Lloyds’ consent to look at complaints brought by Mrs M to us more than six months after their final response. And I know that Mrs M suffers from serious illness but, given that she’s been in almost constant touch with Lloyds throughout the relevant period, there are no exceptional circumstances which might explain why she couldn’t have brought her complaints to us earlier.

So, we can’t look now at the issues covered by Lloyds’ final responses to Mrs M before 27 July 2021 (the date six months prior to Mrs M bringing her complaint to us). We can look at the issues covered in the latest two final responses – dated 30 July 2021 and 30 November 2021.

This is important because I’m therefore not allowed to go back and second guess the compensation payments made by Lloyds in those five earlier final responses – which covered the trouble and upset caused by delays and poor service (alongside some very specific issues about the repairs) up to 20 July 2021.

Mrs M has been paid almost £1,000 by Lloyds cumulatively over the five earlier final responses. Any award I make relating to compensation for trouble and upset will cover only the period after 20 July 2021.

The DISP rules also say we can only look at complaints the business have had a chance to resolve with their customer themselves. Mrs M got Lloyds’ final response to her two latest complaints to them on 30 July 2021 and 30 November 2021.

However, Lloyds did make a further offer to settle matters in February 2022, after our investigation had begun. And that was an offer to settle all matters up to that date. So, I’m able to look at things up to February 2022.

So, in short, when considering compensation for trouble and upset, I can only look at events between late July 2021 and February 2022 (seven months or so).

I understand the claim – and any further work to be carried out by Lloyds or their contractors – has been on hold since Mrs M made her complaint to us. That appears to be at Mrs M's request.

I mention this only to stress that it would be odd if Mrs M were to make a further complaint - after this one - about delays after February 2022. As far as I can see from the evidence we have to hand, any delays after that point are due to Mrs M's request that Lloyds cease progressing the claim and/or works until our investigation is finished.

The compensation

Lloyds have offered to pay Mrs M a further £300 to compensate her for her trouble and upset between July 2021 and February 2022 (around seven months). This is in addition to the £1,000 or so Mrs M has been paid by Lloyds in relation to the five earlier complaints.

I can see from the evidence we have on file that there were issues around communication and customer service in the period that I can consider in this decision. I don't need to go into too much detail, because Lloyds have admitted those failings – hence their offer to pay the further £300 to Mrs M.

Given the time period in question, I'm minded to agree with Lloyds that £300 is fair and reasonable compensation given the stress, distress and inconvenience Mrs M suffered as a result of Lloyds failings.

Remaining complaint issues

It's fair to say that there has been a lot of correspondence exchanged about Mrs M's claims and complaint. And there have been a significant number of issues raised at different times.

For the sake of our understanding and clarity, we recently asked Mrs M to tell us what issues remained live, as far as she was concerned, as opposed to those which had now been resolved.

Of course, I'm aware that Mrs M was concerned about delays, poor communication and poor customer service – between the operative dates (late July 2021 to February 2022) – and I've dealt with those issues in the section above.

She also told us she remained concerned about the effectiveness of the repairs carried out to address the escape of water under her kitchen floor. And she said she felt Lloyds had overlooked a leak in the bathroom pipes which continued to cause damp problems with her kitchen ceiling and walls.

She said there was an on-going issue with the plumbing of the waste pipe under the sink in her kitchen – which had been replaced as part of the repair work after the escape of water claim. Mrs M was also concerned about repairs carried out in her yard, which had left an uneven and dangerous surface.

And she said that two different builders had told her that the subsidence ought to have been addressed by underpinning the house, whereas Lloyds had used a different means to address the problem and cracks were now re-appearing in her house.

I'll deal with these remaining issues in turn below.

The escape of water under the kitchen floor

The original escape of water appears to have been caused by a split mains water pipe under the kitchen floor. It appears this may have remained on-going and undiscovered for a prolonged period, given that it was hidden.

Lloyds say they carried out work to repair the pipes and sufficiently dry the house before carrying out the replacement work in the kitchen itself.

In a nutshell, Mrs M says Lloyds have refused to give her a copy of a drying certificate. And she believes the issues weren't properly addressed, leaving her with an on-going issue with damp.

Lloyds had an inspection carried out in October 2021 by a damp expert. There's no formal report of that visit, but there is a detailed summary contained in an email from the damp expert to Lloyds.

The expert says that there is still a damp issue on the ground floor of the property. He says this may be because the property never had a damp proof course, or because it had one, but it's no longer effective or has been breached in some way.

Mrs M has at least implied that she thinks the damp issues which remain are related to the original escape of water and the fact it was never dried out properly.

As part of the settlement offer Lloyds made in February 2022, they said they'd replace Mrs M's kitchen floor, which is made of flag stones.

We asked whether they intended to also install a damp proof course or membrane and/or to repair the existing one (if there is one). Lloyds told us they didn't intend to do so - and they'd been advised that the flag stones would act as their own damp proof course, in essence. I should note here that we haven't seen copies any such advice at present.

Everyone agrees that Mrs M has an on-going problem with damp, seemingly throughout her ground floor. It seems to me that Lloyds don't know with any reasonable degree of certainty what the cause of that damp issue is.

The expert only says that it may be a problem with the damp proofing. And he clearly hasn't carried out enough of an inspection to know whether there was in fact a damp proof course at all – or, if so, how it's been breached or rendered ineffective.

Given that there is also a subsidence claim at the property, it's not beyond the bounds of possibility that if there is a damp proof course and it has been breached, that may have been caused by an insured event.

At the moment Lloyds appear not to have much idea about why Mrs M's ground floor is still damp. And I don't see that replacing the kitchen floor alone, as Lloyds offered to do, is any guarantee at all that the damp issues will be resolved. It seems inherently more likely to me that they will not.

Unless I receive further information or evidence which changes my mind then, I'm minded to require Lloyds to have a thorough damp inspection carried out by a qualified expert (and not the one who carried out the previous inspection).

That inspection should determine whether there is still a damp problem on the ground floor at the property. It should also determine whether there is or was any damp proofing on the ground floor at the property. And if there is or was, it should determine what the most likely cause of its being breached or rendered ineffective was – and whether this was likely an insured event.

On receipt of that report, Lloyds should reconsider their response to Mrs M's claim. If it's likely the on-going damp is not caused by an insured event, then they need to explain this to Mrs M.

If it is likely to have been caused by an insured event – either the original escape of water or another insured event – then Lloyds would need to consider Mrs M's claim in line with the remaining terms of the policy and if no exclusions or conditions apply, put together a comprehensive plan for repair works.

The damp issue in the kitchen walls and ceiling

Mrs M believes there's an on-going leak in her bathroom which is causing the ceiling and upper walls of the room below (the kitchen) to be damp.

When the damp expert visited, he noted that there was damp to the walls and ceiling. But he inspected the bathroom and could find no evidence of a leak at all. He thought the problem might be due to condensation – a suspicion that solidified when he spotted that ventilation fitted into the outside wall of the kitchen had been fitted (by a third party) partly upside down.

That inspection appears thorough and the conclusions the expert reached are well-reasoned and persuasive. Lloyds offered to apply a coat of warm paint to the affected areas in Mrs M's kitchen, which they felt would likely solve the problem, in conjunction with the necessary adjustment to the ventilation.

Given that the inspection visit took place what is now almost two years ago, we took the view that it should by now be blindingly obvious whether there was any on-going leak from the bathroom pipes. If there were, we might expect the damage to Mrs M's kitchen to be by now quite extensive.

We asked Mrs M recently whether the situation with her kitchen ceiling and walls had become worse. She didn't answer our question or provide any further evidence that the supposed leak was continuing and/or making the situation worse.

Unless I get any further information or evidence to change my mind then, I'm going to assume that the situation has stabilised and that it's now apparent that there is no continuing leak from the bathroom through to the kitchen.

If that is the case, then Lloyds offer to help Mrs M deal with condensation or ventilation issues by applying a coat of warm paint in the affected areas would be entirely fair and reasonable.

The sink waste pipe, the yard and the underpinning

We asked Mrs M whether she'd ever raised any of these three issues with Lloyds. And if so, could she provide evidence that she'd done so. Mrs M didn't answer our question about these issues. And provided no evidence to suggest that she'd ever raised them specifically with Lloyds at any point.

So, I'm assuming they have not been raised as complaints with Lloyds. And if they haven't, then we can't look into them (for the same reason I set out above – the DISP rules say we can't look into issues the business hasn't had a chance to look into and resolve themselves).

If Mrs M wants to raise a further complaint with Lloyds about these three issues, she'd be entitled to do so – and then bring it to our service if she wasn't satisfied with Lloyds' response. But unless and until she does so, we can't look into them.

It's not our role to become, in effect, a substitute claims handler for Lloyds and/or to deal with new issues as they arise after the complaint has been brought to us."

And so, in summary, I said that for those reasons, I was minded to require Lloyds to: pay Mrs M £300 in compensation for her trouble and upset; carry out the promised works on the walls and ceiling in the kitchen; carry out a further damp inspection to determine the cause of the damp issues on the ground floor; and reconsider their response to the claim in light of that inspection.

The responses to my provisional decision

Lloyds responded simply to say that they thought a further expert inspection to, as they put it "*review the issues with the kitchen flooring*" would be beneficial. And they proposed an independent chartered surveyor to carry out that inspection. I'm going to assume that Lloyds had no objection to my other proposals around compensation and the works to the kitchen walls and ceiling.

Mrs M responded to my provisional decision at some length. I'll summarise what she said and hope Mrs M will understand that I won't repeat here everything she mentioned. The main issues raised by Mrs M were as follows.

The proposed further damp inspection

Mrs M agreed that a further inspection was necessary. She asked that she be allowed to commission that inspection to ensure the independence of the appointed expert. Although Lloyds should be required to pay for it.

She said the inspection should determine whether the damp was caused by the original escape of water from the main water pipe or by a failure of the damp proof course. And she thinks soil testing would assist in this.

The works to be carried out after the inspection

Mrs M thinks it should be possible for Lloyds to provide a copy of a drying certificate after the works suggested by the inspection are carried out.

She thinks her skirting boards on the ground floor should be replaced because they are rotten. And that Lloyds should ensure, when they replace her kitchen floor, that there is a match with the flooring in her lounge – which she describes as continuous from the kitchen.

Damp by her front door resulting from a leak from a gutter

Mrs M believes Lloyds should also include in their future works repairs to a damp area near her front door, which she believes is the result of a leaking gutter. The gutter has now been replaced, but there has been nothing done to address the potential damage inside the property.

Two excesses

Mrs M says she was charged two excesses for two claims – relating separately to: (a) the escape of water under her kitchen; and (b) subsidence in her property. She says that if the subsidence was caused by the escape of water, she shouldn't have paid two excesses for what in effect was one insured event.

Damage to the kitchen walls and ceiling

Mrs M says that the damage to her kitchen ceiling and walls has not become any worse. But she believes this is because she hasn't used the bath. And she thinks the supposed leak may be from the overflow pipe to the bath.

She says the original problem was nothing to do with the ventilation in the kitchen being fitted upside down. This issue was resolved by the original contractors within a very short space of time.

The sink waste pipe, the yard and the underpinning

Mrs M says she's spoken to Lloyds' contractors about these issues (set out in the section above). And so, they should come within the ambit of this complaint – and this 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 agree with Lloyds that it would be best to appoint an independent chartered surveyor to carry out the proposed damp inspection at the property.

I think this covers Mrs M's request that she be allowed to appoint the surveyor in order to ensure their independence. I don't think that would be necessary in all the circumstances - and Lloyds' proposal is fair and reasonable.

Mrs M asks that the inspection determine the cause of the damp issues. I agree – and that's what I said in my provisional decision. I don't propose to instruct the surveyor how to carry out their job. They are the expert in this situation. And they will no doubt decide whether soil testing is appropriate and/or necessary.

In terms of the work to be carried out *after* the inspection, I'm afraid Mrs M might be jumping the gun slightly here. The inspection will determine whether – and what - damage has been caused by an insured event. If the inspection determines that there *is* remaining damage caused by an insured event, then Lloyds will need to address that. That's why my provisional decision said that Lloyds must reconsider their response to the claim in light of the inspection report.

To be clear though, if the on-going damp issues *were* caused by an insured event – and assuming no policy exclusion applies - then Lloyds will need to carry out works to repair any resultant damage, in line with the terms of the policy.

And I should emphasise that may not be restricted to the kitchen floor, as Lloyds' response to my provisional decision appeared to suggest. The purpose of the proposed inspection is to ascertain whether and where there is damp through the whole of the downstairs of the property (the original damp report suggested the damp was widespread) – and to determine the cause of that damp.

I would expect any repairs would include Mrs M's skirting boards if the damp was caused by an insured event and the damp caused the damage to the skirting boards.

And if Lloyds *do* replace Mrs M's kitchen floor – which again will be determined by the inspection report – then they'll have to consider whether the damp issues also caused damage elsewhere downstairs. If so - and that damage was caused by damp caused by an insured event – then Lloyds will need to put that damage right too. That might include repairs the floor in the lounge.

Alternatively, if the lounge floor is undamaged by any insured event but the kitchen floor has to be replaced, then Lloyds will need to consider whether the terms of the policy require them to replace the lounge floor - or contribute to the cost of replacing it. It's not for me to determine that now – particularly since we don't yet have the inspection report.

If Lloyds accept that the current damp issues were caused by an insured event and they carry out repairs, I can see no reason why they wouldn't provide Mrs M with a copy of the drying certificate. Although again, that's not something for me to determine now.

I don't believe Mrs M has made any complaint to Lloyds about having to pay two excesses relating to the escape of water claim and the subsidence claim. So, I can't look at that in this decision – for reasons I explained in my provisional decision.

For the same reasons, I can't determine what Lloyds should do about the damage near Mrs M's front door caused by the leaking gutter. I'm not sure whether Mrs M is suggesting that this damage is related to the original subsidence claim. If so, she'll need to raise this issue with Lloyds now. If not, she'll need to make a separate claim if she hasn't done so already.

This wasn't an issue brought to our attention until now - and it appears not to have been subject to any complaint Mrs M made to Lloyds. So, I'm not going to consider it in this decision.

Mrs M has now confirmed that there appears to be no on-going damage to her kitchen walls and ceiling. Which suggests Lloyds were right to propose the repairs they suggested originally.

Mrs M's view is that the supposed leak is likely from her bath overflow pipe – which has not been used.

However, the original inspection said there was no detectable leak at all from the pipes in the bathroom – and there is no evidence at all to contradict that at present. All the available evidence – including Mrs M's own comments – suggest there is no on-going damage and no on-going leak.

If Mrs M uses her bath and the overflow pipe and this leads to further damage, then I'd expect Lloyds to consider that and respond accordingly. But as things stand, I can't reasonably ask them to do anything more.

As regards the issues with the sink waste pipe, the yard and the underpinning, Mrs M tells us she discussed these with Lloyds' contractors. Whilst I have no reason to doubt her, Mrs M still hasn't provided any evidence that she raised these issues with Lloyds as part of any of her formal complaints to them. So, I can't consider them here.

In summary, I appreciate both Lloyds and Mrs M responding to my provisional decision with helpful information and comment. However, I can see no reason to change my mind about

what the outcome of this case should be.

Putting things right

I explained in my provisional decision what I thought Lloyds needed to do now to put things right for Mrs M – and why. I won't repeat that here. As I say, the responses to my provisional decision have given me no reason to change my mind about the outcome of this complaint.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mrs M's complaint.

Lloyds Bank General Insurance Limited must:

- pay Mrs M £300 in compensation for her trouble and upset;
- carry out the work they offered to do to address the issues with damp / condensation in the ceiling and upper walls of Mrs M's kitchen;
- carry out a further damp inspection – by a qualified expert who hasn't been involved with this claim before – to determine the causes of the on-going damp issues with Mrs M's ground floor; and
- reconsider their response to the claim in light of that report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 December 2023.

Neil Marshall
Ombudsman