

The complaint

Mr P is complaining about the way Society of Lloyd's (SOL) has handled a claim he made on his commercial property insurance policy.

Mr P has been represented through the claim and complaint, but for ease of reference, I shall refer to anything his representative has said to have been said by Mr P.

What happened

Mr P owned a building which contained a number of flats over three floors, some of which he was in the process of renovating. In October 2021 Mr P looked to make a claim for malicious damage from his commercial property insurance policy. He said people had broken into the building and caused damage by throwing things at the walls and deliberately left the taps running, causing water damage.

SOL instructed a loss adjustor to handle the claim on its behalf. The loss adjustor attended the property and had concerns about the claim. He said all the damage appeared to be caused to areas that were being renovated. And I understand he advised Mr P to think about making a claim if he was going to exaggerate what had been claimed for.

Mr P accepted that some of the damage to the ground floor wasn't covered as he was renovating it. However, he said he wasn't renovating the first floor and was selling it in the condition it was. He said the flats were already on the market for sale and had had viewings. So he said SOL should cover this.

In November 2021, the loss adjustor asked Mr P to provide a quote for the damage and photos of the damage claimed for. Mr P provided a quote for the repairs in May 2022. The loss adjustor asked for photos which were provided in July 2022. Following this, the loss adjustor set out that the policy only covered loss or damage to the building – i.e. it didn't cover contents. But Mr P said this should include fixtures and fittings – i.e. should include the carpets and furniture.

The loss adjustor then attended the property a second time. Following this he contacted the estate agent to understand whether the property was on the market or not.

Mr P raised a complaint about the way the claim was being handled. In December 2022, SOL responded to the complaint and acknowledged it had caused delays and offered Mr P £500 in compensation. It also offered to settle the claim by paying Mr P £3,616.80 less the excess of £1,000.

Mr P didn't accept SOL's response, so he referred his complaint to this Service.

I issued a provisional decision partially upholding this complaint and I said the following:

"I'm conscious that it took around 14 months from Mr P raising the claim until SOL made an offer to settle the claim. But I think the majority of this was down to delays caused by Mr P. SOL had concerns at the start that Mr P was making a claim for damage that he was always

going to repair before the event – i.e. it had concerns Mr P was looking for SOL to pay for pre-existing issues. I don't think it was unreasonable SOL had these concerns and that it wanted to carry out further investigation works.

In November 2021, the loss adjustor asked Mr P to provide a quote for the repairs and photos of the damage Mr P said was covered under the policy. But Mr P didn't provide the quote for a further six months. The loss adjustor asked for photos again, but these weren't provided until July 2022. The loss adjustor then visited the property again the following month and discussed the matter with the estate agency. I'm not persuaded SOL or its agent caused any delays up to this time. However, it seems nothing happened on the claim from this point until SOL responded to the complaint in December 2022 – a delay of around five months. SOL has offered £500 in compensation for this. I think this is fair compensation and in line with what I would have awarded.

Mr P's primary concern is the amount SOL offered to settle the claim. SOL has set out it calculated the offer by reviewing its loss adjustor's assessment of the property, who has set out what areas have been damaged that wouldn't otherwise have required repairing or replacing before – in particular damage to the ceilings of the ground floor flat, certain damage to the bathroom on the first floor and replacing the main door's lock.

I note Mr P thinks SOL is being unfair. But it's a fundamental principle of insurance that a consumer shouldn't be put in a better position than they were immediately prior to the insured event – a principle often referred to as betterment. So SOL weren't required to replace items that were already beyond repair and needed replacing before the event. Mr P is unhappy that SOL hasn't included a number of items that he says were damaged in the event. But it needs to be remembered that Mr P's policy didn't include contents cover.

Mr P has reiterated that SOL should cover the damage to the first floor flats. I agree it should cover some of the damage, but it's clear that the flats were in a poor state of repair before the incident. Mr P's quote for repair includes quotes to replace kitchen units and worktops. But photographs show that these were in a poor condition before the incident and already needed replacing. So I can't reasonably require SOL to pay for that.

I note a lot of the items Mr P has set out are damaged, would be considered contents. But, as I said, Mr P didn't take out contents cover alongside the buildings insurance policy. So SOL is not required to cover any loss or damage to items that are considered to be contents – i.e. aren't a fixture or fitting.

Mr P is unhappy that SOL hasn't paid to replace the carpets as he says they should be considered a fixture or fitting. SOL says it considers carpets to be contents. The policy sets out that Mr P's fixture and fittings form part of the existing structure. But I'm conscious that SOL hasn't defined what it means by fixtures and fittings. So I have to think about what's a reasonable interpretation of the contract in these circumstances. And in thinking about this I'm also conscious the contract doesn't refer to the fixture and/or fitting being a permanent fixture. So I think a reasonable interpretation of this would be something secured to the floor or wall.

Any carpet is generally made to measure for a room and is fitted with an underlay and secured to the floor by grippers. So I think a reasonable interpretation of what is meant by a fixture and fitting under this specific contract would include a carpet.

I note SOL has set out that this Service has issued guidance that we would consider a carpet as contents. But we consider each complaint on its own and I'm also conscious that insurers will often make it clear in its policy terms that it doesn't consider carpets to be a fixture or fitting. SOL hasn't done so in this case. Taking everything into consideration, I think

a reasonable interpretation is that the carpets would be considered a fixture and fitting under the terms of the policy. So I don't think SOL can say the carpets don't fall within the definition of the building's existing structure. So I think SOL should reconsider the claim to assess whether the carpets have suffered insured damage by the insured event."

SOL didn't agree with my provisional decision and, in summary, said the following:

- The policy is not a buildings insurance policy – it's a specialist policy covering renovations and conversion projects. It said the terms of the policy set out that it only covers property that has been declared as being those structures which are being renovated, refurbished, extended or worked upon as part of the contract works. It said Mr P had set out that the property in question was not being renovated, so by this nature it would mean the carpet wasn't covered.
- The policy guides and the policy terms for contents make it clear that carpets are considered to be contents.
- The guidance on the Service's website is unambiguous in stating *"We treat carpets as contents, even though they're often fitted"*. So it disagreed that there are circumstances in relation to this particular complaint that would allow me to depart from this approach.
- It said the damaged carpet was in such a poor state before the insured event that it would have required replacing anyway. So it said, even if I was to say that the carpet should be considered under fixtures and fittings, it would not be covered under the terms of the policy in any event.

I then issued a second provisional decision saying I now thought SOL had settled the claim fairly and I said the following:

"I've considered all the additional points SOL have raised and, having done so, I now don't intend to uphold this complaint.

Neither party has made any comments about my findings on SOL's compensation payment or my thoughts surrounding SOL's claim settlement, other than SOL's comments that it thought it was unfair for me to say carpets were fixtures and fittings. So I shall only now address what SOL has said about the carpets. Having done so, I now don't think SOL needs to cover this.

SOL has provided a number of documents for me to consider. It's provided the guide that it sent to all its policyholders which said:

"PERSONAL CONTENTS

If you plan to stay living in your property during the renovations, you may find your normal contents insurers will consider providing cover. This is because, unlike buildings cover, alterations to your home are unlikely to affect the contents as significantly. That said, there may be an increased risk of accidental damage to carpets and furniture so you can expect to see the 'damage caused by the works' exclusion added, as with buildings cover."

I think the reasonable interpretation of this is that SOL has set out that it intended carpets to be considered as contents. As I said in my provisional decision, where a contract doesn't define a specific word or phrase, I have to think about what's a reasonable interpretation of the contract in these circumstances. I think a Court is likely to take the guide SOL has provided into consideration as part of thinking what a reasonable interpretation is. And, given the above, I now think a Court would reasonably interpret the contract to say that carpets are contents. Mr P didn't take out contents cover, so I don't think the terms of the policy cover damage to the carpets.

But, even if I'm wrong on this, I think SOL has also provided sufficient evidence to show that the damage to the carpets isn't covered under the policy.

As SOL has pointed out, the contract specifically says it only covers areas which are being declared as being renovated. Mr P has gone to great lengths to say that the flat in question where the carpets were allegedly damaged wasn't being renovated. So I think it could be argued that there's no cover under the policy for this damage. However, I'm also not convinced whether to say as such would be fair and reasonable. But I don't think I need to make a finding on this, because, even if I didn't think SOL could rely upon this term, I'm not persuaded the policy would cover the damage. I'll explain why.

As I set out in my first provisional decision, SOL isn't required to cover anything that would have required replacing beforehand. I'm persuaded by what it's given us that the carpets were in a poor condition before the insured event. And I think, any potential buyer would have had to replace them anyway. So I'm not persuaded Mr P has suffered any financial loss as a result of the additional damage to the carpets. It follows, therefore, that I can't reasonably require SOL to cover the damage to the carpets."

Mr P didn't agree with my provisional decisions and said the following:

- He never said he was renovating the ground floor. The ground floor was occupied by commercial retail. He said he was only building studio flats in the loft space to create a new second floor. Any water damage to ground floor ceilings were to commercial retail units and not flats.
- The claim was not for any items beyond repair. And he said, the first floor flats were occupied only a few months prior to the incident. He disputes pre-incident pictures show any items beyond repair. He said the photos taken after the incident show the flats with damage. And he wanted to see evidence that the kitchen worktops and units were in a poor condition before the incident.
- He said the estate agent confirmed the flats were being sold in the pre-incident condition.
- He said the policy was sold to him as covering all the aspects of the previous landlord building policy but to include the construction works as well. And he said he was advised to cancel his existing landlord policy. He thinks the insurer is admitting that he was mis-sold the insurance policy and that it did not cover the entire building but just the works in the loft space. He says he clarified this at the outset and the insurer never disputed it.
- He doesn't think my decision is based on the facts, and thinks I've misunderstood various photos and the layout of the building. And he said I've not made any reference to the basis on which this policy was sold in the first place.

SOL didn't add anything further for me to consider.

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.

Firstly, I can't see that Mr P raised a mis-sale complaint with SOL before this Service started to look at this complaint. Further to this, SOL didn't sell the policy to Mr P as he took it out through a broker. Any complaint regarding the mis-sale of the policy would need to be directed to the broker as SOL is not liable for anything the broker did or didn't say as part of the sale process. So I'm unable to consider it in this complaint.

I note Mr P has disputed that the items he claimed for were beyond repair before the incident. But the question I need to ask is whether this damage would have caused Mr P to suffer a loss.

I think the photos I've seen show the properties were in a poor state of repair before the incident. Further to this, I can see SOL discussed the state of the kitchen with Mr P's estate agent who said he'd discussed replacing the kitchen with Mr P but it seems it was agreed that it wasn't worth replacing it as the increase in property value wouldn't likely be as much as it would cost to replace the kitchen. I'm still persuaded by the photographs that any potential buyer of the property would have wanted to replace the kitchen as part of a renovation. So I can't reasonably conclude that any additional damage to the kitchen will have impacted the retail value of the property. And, it follows, that I still think it wasn't unreasonable for SOL to not cover this.

Finally, I've thought about Mr P's comments that he wasn't renovating the retail premises on the ground floor. I'm aware Mr P wasn't renovating the ground floor property – it was a retail shop. But he was renovating the hallway adjacent to it. However, as he wasn't renovating the property, I don't think the insurance policy with SOL covered this. And, as SOL has set out, Mr P may wish to look to claim for this from any buildings insurance policy the property has. But, I can't reasonably say SOL was unreasonable in not covering this.

Ultimately, I'm not persuaded Mr P has provided me with anything to conclude that the outcome I reached previously was unreasonable.

My final decision

For the reasons I've set out above, I think Society of Lloyd's offer to settle the claim by paying £3,616.80 less the excess of £1,000 plus compensation of £500 is fair. I don't award anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 April 2024.

Guy Mitchell
Ombudsman