

The complaint

Ms B and Mr S complain about the way Society of Lloyd's has dealt with a subsidence claim on a buildings insurance policy and about the amount offered to settle the claim.

References to Society of Lloyd's include its claims handlers acting on its behalf.

What happened

Ms B and Mr S own a property that was let to tenants. Although they own the property jointly, Ms B made the claim and has dealt with it throughout, so for ease I'll refer to her.

The tenants moved out of the property in December 2019 and Society of Lloyd's says the claim was made then, though Ms B says it was made earlier.

Society of Lloyd's appointed loss adjusters to handle the claim and a structural engineer was also instructed. The engineer's first inspection was in February 2020 and a preliminary report was then provided.

In December 2020 a recommendation was made for an arboriculturist report and in January 2021 the engineer recommended 12 months of monitoring.

There was a further site visit in February 2021 and precise level monitoring started in March 2021. By this time, Ms B had appointed a loss assessor, who dealt with Society of Lloyd's on her behalf.

Ms B made a claim for loss of rent which Society of Lloyd's accepted and payments were made in respect of this. It later agreed to include council tax and utility charges.

Ms B's loss assessor suggested that temporary repairs should be carried out, so she could let the property to tenants again. Society of Lloyd's considered the request but did not agree to it.

In November 2021 Ms B was advised to contact all her neighbours regarding removal or pollarding of nearby trees for which they were responsible. Monitoring was to continue at six-weekly intervals.

In January 2022 Society of Lloyd's agreed to carry out recommendations made, including to dig a borehole at the rear of the property; ask the council to remove or pollard a tree outside the front of the house; ongoing monitoring to ensure the property was now stable; and further discussions with Ms B's loss assessor about the cellar.

In September 2022 it was recommended that monitoring continue. The loss adjuster confirmed the outcome of a distortion survey Ms B had requested, which confirmed there was historic movement but did not confirm underpinning was needed as contended by Ms B's loss assessor.

By November 2022 the loss of rent claim had been paid up to the limit of indemnity.

Ms B complained about the way the claim had been handled. She said there would not have been an ongoing loss of rent if Society of Lloyd's had agreed the temporary repairs, which would have allowed her to rent the property again. She also disagreed that some of the damage, including in the cellar, was not related to the subsidence.

In its final response to her complaint, Society of Lloyd's said:

- Temporary repairs were not agreed because, looking at how long the claim was expected to take, the loss of rent claim would have been paid up to its limit in any event.
- It had followed the advice of experts, whose advice was very clear, and there was no reason not to follow it when deciding how to deal with the claim.
- Investigations had taken a long time but given the complex nature of the claim that was reasonable and there was no unavoidable delay.

In the meantime, a schedule of works had been prepared. The consulting engineer advising Society of Lloyd's said some of the issues at the property were historical and not caused by the subsidence, and proposals made by Ms B's loss assessor were not supported by the monitoring data. In particular, Ms B's loss assessor said underpinning had to be done but Society of Lloyd's didn't think this was needed.

Ms B referred the complaint to this Service.

Society of Lloyd's then offered a cash settlement to Ms B of £118,717.56 to settle the claim, which she didn't accept.

After reviewing the complaint and the offer made by Society of Lloyd's, our investigator said:

- There was some unexplained delay between February and July 2020; and between July and December 2020. The claim was progressed in a reasonable way after that, except that trial pits and bore hole investigations should have been done earlier.
- Ms B hadn't shown that the damp in the cellar was caused by the subsidence.
- Society of Lloyd's had made a cash offer for repairs, not including underpinning, and the evidence didn't show that underpinning was needed.
- If temporary repairs had been done, it's likely the cracks would have reappeared; the evidence didn't show that temporary repairs would have allowed them to rent the property again.
- The delays had caused some distress and Society of Lloyd's should pay compensation of £350 for this.

Ms B disagreed. Her loss assessor provided detailed comments on her behalf. The key points include:

- Precise level monitoring and borehole investigations are standard and should have been done sooner; the delay in implementing these impacted on the rental cover (irrespective of the argument over temporary repairs).
- The damp that had been referred to in the cellar was a separate issue. But if Society of Lloyd's was correct that the cellar was not affected by subsidence, there would be no evidence of movement to the front elevation and there's significant movement damage there.
- Before May 2019 Ms B had a sound property in good order and superstructure repairs alone will not return it to that position.

- There has been no expert's report on her behalf for over two years but Society of Lloyd's refused to meet the costs she'd incurred for engineers' fees.
- Society of Lloyd's' focus is on reducing costs not on what's need to resolve things properly. It should have paid for temporary repairs which would have mitigated the loss of rent. Leaving the property empty for four years has caused everything to get worse.

Society of Lloyd's provided further comments from its loss adjuster. Our investigator reviewed all the additional comments. She didn't change her view about the delays, Society of Lloyd's' investigations, the need for underpinning or the loss of rent claim. But she said:

- If the damp in the cellar was due to a leak or escape of water, it might be covered under another part of the policy even if not it's due to subsidence. So Society of Lloyd's needed to assess this.
- Further monitoring is needed at the rear of the property. While Society of Lloyd's hadn't been able to arrange a further visit due to lack of access, it should arrange this now.

Having reviewed the further comments, the investigator thought the compensation should be increased. She recommended that Society of Lloyd's should:

- review the leaks and consider if these were covered by the policy;
- continue to monitor the rear of the property and then review this;
- pay compensation of £850.

Society of Lloyd's accepted the investigator's recommendations but Ms B did not and requested an ombudsman's decision. Her loss assessor made further comments, including:

- Society of Lloyd's only suggested level monitoring after they pressed for this in March 2021. It has always sought to keep costs down.
- If further monitoring is now carried out, this will lead to further loss of rent for several more months. It's not reasonable to propose further monitoring after more than four years and 10 months.
- Society of Lloyd's should be liable for the unnecessary rental losses, which could have been avoided if it had agreed to temporary repairs in March 2021.
- The proposed settlement is not enough to remedy the damage, even without underpinning, but they need to bring the claim to an end. Ms B would accept £175,000 so she can use that money for works to reinstate the property as soon as possible.

Society of Lloyd's has now told us the cash settlement offer has recently been paid. Ms B's representative says the payment made was without prejudice to the 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.

We have received very detailed comments from both parties. I've summarised some of the key points but haven't set everything out in full. We provide an alternative dispute resolution service and our role is to provide an impartial review, quickly and informally. I use my judgement to decide what's fair, based on the main crux of a case. So, while I've considered

everything, I won't comment in detail on every single point and will focus on the key points that are relevant to the outcome I've reached.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed. The customer should, where possible, be put back in the position they were in before the loss or damage. Where repairs are being done, that means carrying out an effective and lasting repair.

The policy provides cover for subsidence and includes cover for loss of rent. That's not in dispute. The issues for me to decide concern the way the claim was handled and whether there were unnecessary delays, together with the amount offered by Society of Lloyd's to settle the claim. I will deal with each point in turn.

The claim investigation

I agree with our investigator that there was some delay initially in investigating the claim, in particular between mid-February 2020 and July 2020, when the drain survey was carried out. And then from July 2020 until December 2020 when an arboriculturist opinion was recommended. There was communication between the parties from February until December 2020, but the site investigations didn't progress.

After December 2020 the claim was progressed. As both parties have acknowledged, this was a complex claim and there were numerous areas of damage that needed to be investigated. In these circumstances, it was always likely to take a long time.

Ms B says Society of Lloyd's only agreed to precise level monitoring in August 2021 – a year and nine months into the claim. There's no duty to carry out a specific type of investigation with subsidence claims but Society of Lloyd's did accept precise level monitoring was appropriate. Ms B says Society of Lloyd's was trying to cut costs, but I've not seen evidence to support this. I also note that the site investigations she requested were undertaken and the costs for these were covered by Society of Lloyd's.

I've not seen evidence to show why precise level monitoring was needed right from the start of the claim and what impact there has been as a result of this not happening. But the more detailed surveys and monitoring could have been started earlier and I think this did cause some delay in obtaining evidence.

The damage and appropriate repairs

The key point in dispute is whether underpinning is needed. Ms B's representative says the proposed repairs don't go far enough and without underpinning, there will not be a lasting repair.

Society of Lloyd's has had advice from loss adjusters and a consulting engineer. And that advice has taken into account reports from an arboriculturist about the impact of nearby trees.

Ms B has also had some expert advice. An engineer instructed on her behalf said:

- Society of Lloyd's engineer's initial report had said subsidence only affected the rear and movement to the main building was due to drain failure and possible influence of trees, but it was hard to understand this view.
- Later reports did confirm the whole building was affected.

- There were elements of tree-related subsidence, combined with heave associated with failure of the drainage system. Movement was ongoing and needed to be addressed to avoid further damage. Serious damage to the drains was likely due to the movement.

Their view differed from the advice obtained by Society of Lloyd's. But Society of Lloyd's obtained further advice as the claim continued. The last advice provided to Ms B was in 2022 and since then Society of Lloyd's has had the benefit of further reports, after further monitoring had taken place.

In March 2023, its loss adjuster reported that the consulting engineer said a number of issues were related to maintenance or historic issues and not due to the subsidence – including the cellar; and the proposals made by Ms B's loss assessor were not supported by the monitoring data.

In response to points raised in the complaint, Society of Lloyd's sought further comments from the engineer, who said:

- The need for precise level monitoring has never been disputed. The level monitoring started in August 2021 and the drainage works were carried out and paid in full by Society of Lloyd's. Site inspections in May & September 2020 (before the loss assessor's appointment) were comprehensive and included a full drain survey, and trial pits and boreholes.
- The precise level monitoring results together with the crack monitoring records indicate that following drainage works in 2021 and removal of trees at the rear of the house in 2022, the property is stabilising and is almost stable.
- Various leaks were noted in February 2021, including in the cellar, bathroom cupboard, kitchen and utility room. These issues could be contributing to the damp observed by Ms B's expert in the cellar. They are not related to the subsidence.
- There had been a lack of maintenance and there was evidence of past subsidence.

Throughout the claim, Society of Lloyd's has instructed experts and followed their advice. That was a reasonable approach to take.

Ms B has sought her own advice, which differs from that provided by Society of Lloyd's' experts. The recommendation by Ms B's expert in their report from August 2021 said underpinning was required because this was the only practical solution. But they didn't go on to explain in detail why that's the case and why the repairs as proposed by Society of Lloyd's would not be suitable.

Having weighed up all the evidence I'm satisfied it was reasonable for Society of Lloyd's to follow the advice it received. This is more up to date and reflects the additional monitoring that has been done over the last two years.

I appreciate Ms B says she hasn't obtained further expert advice in the last two years because Society of Lloyd's wouldn't pay for reports she obtained. Nevertheless, the advice it has received is more up to date. And it has specifically addressed the points raised on her behalf. In these circumstances, I'm satisfied the approach taken by Society of Lloyd's is reasonable.

The evidence from Society of Lloyd's' expert about the cellar is that there were cracks in the front wall with accumulation of dust which indicated the cracks are old. And there were loose bricks in the wall beneath the partition entrance hall and cracks out of plumb, significant sagging to the timber plate (not the sloping plate, as expected if it was subsidence), and

significant sagging to the timber plate supporting the ground floor partition. Their expert opinion was this indicated the damage is historic and not related to the current subsidence claim. I don't have comparable evidence from a structural engineer to contradict this.

Society of Lloyd's has paid a cash settlement based on the expert advice and recommendations it has received. Ms B says it was accepted without prejudice to the ombudsman's decision and is seeking a higher amount. Based on the evidence Society of Lloyd's has to date I think it's fair and so it doesn't need to pay more.

It was planned that further monitoring would be done but that didn't happen because Society of Lloyd's wasn't given access to the property. It has accepted the investigator's recommendation that it continue to monitor the rear of the property and then review this. If that review leads to any further recommendations, Society of Lloyd's can then consider those.

Society of Lloyd's now says there was a leak or water ingress in the cellar and other parts of the property. It has carried out some investigation into how these leaks were caused so it should review this in line with the policy terms and decide if there's cover for any damage caused by this. If there is a dispute about the outcome of this, Ms B can make a fresh complaint about that.

Ms B is concerned that, if the repairs do not resolve things fully, there may be further problems and this could affect her insurance in future. As there is a subsidence claim I'd expect Society of Lloyd's to take into account the ABI Guidance on continuation of cover. If there are disputes over continuous insurance cover this could, if necessary, be considered as a new complaint.

Loss of rent

Ms B says if Society of Lloyd's had agreed to temporary works in March 2021 she would have been able to find new tenants and have a rental income. So she wouldn't have incurred the losses she's experiencing now that the loss of rent limit has been reached.

Society of Lloyd's decided not to carry out temporary repairs because there were other works that needed to be carried out including drainage works and tree works. It was anticipated it could have taken a further 20 months to complete the claim and so the loss of rent policy limit would have always been reached.

The evidence suggests the damage to the property (including crack damage) was first visible in May 2019. But the individual managing the property didn't think this was subsidence related and carried out temporary repairs on the cracks so the tenants at the time continued to rent the property. By December, the cracks had reappeared and the tenants left as they didn't feel safe. That was within six months of the repairs.

This suggests that even if Society of Lloyd's had agreed to temporary works it's likely the damage would have reappeared soon after; the property was suffering from movement. So to maintain the property in a rentable condition, it's likely Society of Lloyd's would have had to keep doing temporary repairs. Given the costs involved I don't think that would have been reasonable. And it's not clear temporary works would have meant tenants would have been willing to live in the property anyway, since there was an ongoing claim and investigations.

In these circumstances, I'm not persuaded the decision not to agree to temporary works was unreasonable or that it's likely Society of Lloyd's could have prevented the policy limit for loss of rent being reached in any event.

Summary

For the reasons set out above, I think the approach taken by Society of Lloyd's overall to deal with the subsidence, based on the expert advice it obtained, was reasonable and the cash settlement it has paid is fair. But there were some delays and this should be recognised.

Ms B and Mr S don't live in the property and so the claim hasn't impacted their daily lives directly. But they would have been worried about the condition of the property, the impact on its value and the loss of rent. Any delays made that worse and would have been upsetting.

Putting things right

To put things right, Society of Lloyd's should:

- review the leaks and consider if these are covered by the policy;
- continue to monitor the rear of the property and then review this;
- pay compensation of £850 for the distress and inconvenience caused.

My final decision

I uphold the complaint and direct Society of Lloyd's to take the steps and pay the compensation set out above.

Society of Lloyd's must pay the compensation within 28 days of the date on which we tell it Ms B and Mr S accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Society of Lloyd's considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B and Mr S how much it's taken off. It should also give Ms B and Mr S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr S to accept or reject my decision before 19 July 2024.

Peter Whiteley
Ombudsman