

The complaint

Mr H and Mrs B complain Society of Lloyd's unfairly declined their structural warranty claims.

References to Lloyd's include, for ease of reading, the underwriter providing the contract of insurance and its agents. Mr H and Mrs B are joint policyholders and complainants. For ease of reading, I've generally only referred to Mr H below.

What happened

In May 2023 Mr H claimed against his Lloyd's structural warranty. He reported issues with floor tiles lifting and moving in his property's kitchen and ensuite bathroom. In August 2023 Lloyd's declined both parts of his claim. Having considered its own investigations, it said the floor tiles hadn't been fitted correctly, but the property was structurally sound - so neither loss is covered by the terms of his policy.

Mr H didn't accept that outcome. He raised a complaint. He felt both areas of damage should be covered. He said in the ensuite a failed floor structure had allowed the tiles to move. He explained in the kitchen, the floor slab, a structural part, had been finished short of the entrance so the tiles lacked support. He complained Lloyd's failure to accept his claim had resulted in further damage and him being unable to use the property. He was also unhappy with how long it was taking to progress the claim.

In December 2023 Lloyd's responded. It continued to decline both parts of Mr H's claim. In February 2024 he arranged for his own surveyor (S) to inspect and report on the damage. It found the ensuite drainage system to be inadequate and defective, allowing escaping water to rot the supporting structure of the shower and causing tiling to move. He found the kitchen problem to result from a gap under the door threshold allowing water ingress, along with an inadequate external slot drain.

Lloyd's considered S' report but still didn't accept the claim for either item. It offered £350 compensation in recognition of delays and poor service. Mr H didn't accept that. He complained again. In March 2024 Lloyd's issued a stage two complaint response. It found the correct decision had been made to decline the claim. It said the problems were with finishing aspects, tiling, rather than a 'waterproofing envelope' or 'structural defect' as required for the policy to pay out.

Unsatisfied with Lloyd's response Mr H, in April 2024, referred his complaint to the Financial Ombudsman Service. He said Lloyd's had progressed the claim too slowly and communicated poorly. He said his claim for both the ensuite floor and kitchen should be covered under the policy. As Lloyd's had unfairly declined them, Mr H said, the property had been out of use as a holiday let since September 2023. To resolve his complaint, he asked that Lloyd's accept the claims and cover his loss of rental income.

Our Investigator felt the kitchen issue was covered by the policy. He recommended Lloyd's cover the cost of rectifying the problem, including repairing tiling. After some back and forth the Investigator ultimately found Lloyd's decision to decline the ensuite claim to be fair and in line with the terms of the warranty. He was persuaded by Lloyd's argument that the loss

didn't meet the policy's definition of a 'defect', so a claim wasn't payable. In his opinion the main reason the property couldn't be let was the damage to the ensuite, not the kitchen, so he didn't recommend Lloyd's cover any loss of rental income. He did recommend Lloyd's increase its compensation offer to £700 - to recognise the impact of it having unfairly declined the claim.

Lloyd's accepted the kitchen part of the claim to be covered by the warranty. It said it would 'reconsider the claim for kitchen tiling'. Mr H didn't accept the Investigator's final proposed outcome, so the complaint was passed to me to decide. Having now paid for the repairs, he wants Lloyd's to accept his claim in full, cover his financial loss and compensate him for delay.

I issued a provisional decision. In it I explained why intended to require Lloyd's to cash settle both the kitchen and ensuite claims, reimburse the costs of P and S' reports and pay a total of £700 compensation. Its reasoning forms part of this final decision, so is copied in below. I requested Lloyd's provide offers of settlement for the two claims. I also invited both Lloyd's and Mr H to provide any further comments or evidence they would like me to consider before issuing a final decision.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr H and Lloyd's have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

the kitchen

Lloyd's has accepted the kitchen part of the claim to be covered by the warranty – under the following cover:

"D1)1. The cost of complete or partial rebuilding or rectifying Work to the Housing Unit which has been affected by Major Damage".

As Lloyd's proposed intention, to 'reconsider the claim for kitchen tiling', lacks clarity I intend to set a specific direction. I'm doing so in the interest of avoiding further dispute about the reconsideration of the kitchen damage.

I will forward Lloyd's Mr H's relevant invoices, allowing it 10 days to consider and propose a fair settlement in line with the terms of the warranty. If it makes a fair offer or one acceptable to Mr H, I will direct it to pay him that amount. If it doesn't, I will decide what I consider to be a fair settlement.

I consider Lloyd's should have accepted this part of the claim on receipt of S' report. No significant further evidence, following it, was provided. Instead, Lloyd's was persuaded by the Investigator's assessment. It shouldn't have required that for it to have accepted the claim. As it didn't agree to it earlier Mr H has unfairly been without the use of the funds used for the kitchen work. To make up for that I intend to require Lloyd's to apply simple interest at 8%, to any settlement for the kitchen work, from the date he paid the invoice to the date of final settlement.

If Mr H hasn't undertaken the kitchen work repair, then Lloyd's will need to complete it promptly - including ensuring there is no longer a failure in the waterproof envelope - or provide Mr S with market value cash settlement based on a quote he provides.

the ensuite

There's been debate about the exact cause of the damage to the ensuite shower area. It seems Mr H's plumber's (P) report has settled the discussion. Lloyd's appears to accept its findings. However, if it's necessary for me to reach a finding, I find P's report and suggested cause of damage to be the most persuasive and plausible. P removed the shower, floor slab and so on, supporting his persuasive opinion with illustrative photos.

To summarise P's report - he found:

- the linear drain had been kept in position with the use of expanding foam,*
- the outlet from the linear drain had been pushed onto the outgoing drainage pipe without the use of mechanical fixing, such as plastic, welding or compression fittings,*
- the waterproof membrane was badly fitted and incomplete, offering no water protection at all to the wooden floor slab,*
- The entire floor slab was saturated despite the shower not having been used for many months, with an affected gas pipe beginning to degrade.*

P concluded its reasonable to believe the drain had been leaking into the floor slab since fitting. For the avoidance of doubt, I accept that conclusion.

I've considered the warranty's cover D1)2.

*"D1)2. The cost of making good any **Defect** in the design, material or workmanship in the drainage system which was newly constructed by the **Builder** in connection with the **Housing Unit** and for which the Insured is responsible".*

Lloyd's has declined to cover the ensuite under this part of the policy as it feels a 'defect' in the design, material or workmanship in the drainage system hasn't been established. It's clear from P's report that there was at least one or two 'defects', when applying the everyday meaning of the word, in the design, material or workmanship of the drainage system. It doesn't seem necessary to discuss that any further.

The warranty, however, has its own definition of 'defect'.

*'**Defect:** any failure to comply with, but not limited to the following:*

- The current building regs in England and Wales*
- The current building regs in Scotland...'*

Lloyd's has said Mr H hasn't established non-compliance with building regulations, so there isn't a 'defect' as defined by the warranty. S' report didn't confirm any regulation breaches. Neither did P's. I can't disagree with Lloyd's point here. But neither did it, after receiving those reports, take any steps to consider relevant building regulations.

I accept it's, ultimately, for a policyholder to demonstrate they have a claim covered by a policy's insured perils. But on the other hand, I expect insurers to take

reasonable steps to investigate a claim and support its customers, including reference to relevant regulations where necessary.

Lloyd's hasn't provided any building regulations to show the drainage construction did comply. Mr H has made a reference to a British Standard (BS), recommending waterproofing behind tiling etc. I can't say if there was breach of regulations there.

Mr H's argued that regulations or standards would expect a reasonable level of workmanship - something he feels was missing for his ensuite. He makes a good point. So in the absence of Lloyd's consideration of regulations, and under this Service's investigative remit, I've considered what I've found to be the relevant regulations.

The property is in England. I refer to The Building Regulations 2010, Drainage and waste disposal, Approved Document H, 2015 edition. Section One covers 'sanitary pipework'. If this isn't relevant Lloyd's can correct me.

Section 1.37 states 'Good workmanship is essential. Workmanship should be in accordance with BS 8000 Workmanship on Building Sites Part 13 Code of practice for above ground drainage'.

Unfortunately, I haven't been able to view BS 8000. To do so I would need to pay a charge. However, it seems likely to me that a code of practice for 'good workmanship' will have some sort of requirement for drainage pipes to be fitted and supported securely, using appropriate, suitable or manufacturer approved fittings. I would be surprised if it doesn't, or that the use of expanding foam fits its code of good workmanship. Again, Lloyd's can correct me if finds I'm wrong.

In the event BS 8000 is silent on supporting pipework, I consider it probably includes some sort of requirement for when joining two sections of drainage pipe. I would be surprised if it doesn't demand something along the lines of appropriate, suitable, secure, manufacturer approved or other fittings. If Lloyd's finds BS 8000 doesn't, it can provide evidence.

I accept it's possible the construction of the shower drainage didn't breach BS 8000 Part 13, but without evidence to support that, it seems unlikely to me. So I intend to proceed, unless it's shown otherwise, on the basis there was at least one responsible 'defect'.

Considering it's a provider of a structural warranty, with requirements around regulations, the insurer, Lloyd's, or its agents, should be able to access BS 8000. If it can show there wasn't a breach, following from Section One 1.37, I will revise my position.

I also consider it likely there was a breach of 1.38 of Section One. This states 'The pipes, fittings and joints should be capable of withstanding an air test of positive pressure of at least 38mm water gauge for at least three minutes.'

I assume this requirement is to ensure pipe joints are secure and watertight under pressure. It can't be known for certain, now the drainage has been removed, if this test would have been passed. I acknowledge my lack of expertise of plumbing and drainage, but it seems likely to me that an unsecured join, that leaked from the outset under standard use, would fail a test designed to ensure a suitable level of watertightness. I will consider any evidence or comments Lloyd's provides on this point.

I appreciate that Lloyd's may think, I may have misunderstood and misapplied this issue of regulations and defects. Of course, if Lloyd's had used its resources to consider the matter there would be no need for me to look into it.

Based on the above I intend to find there most likely was at least one 'defect'. I'm not aware of any other objections from Lloyd's to the claim meeting the requirements for D1)2. So I intend to find Lloyd's unfairly declined the claim for the ensuite and so must settle it under D1)2 of the warranty.

Again, for the same reason as given for the kitchen claim, I will send Lloyd's Mr H's invoices, allowing 10 days for it to make an offer of settlement in line with the policy coverage.

I request that even if Lloyd's wishes to challenge my finding on D1)2, it still sets how much it should and will pay under the warranty for the claim. If I change my position on the claim outcome, following its response I won't require it to pay. Outlining a prospective settlement will allow for a quicker resolution of this complaint, should I maintain my position on the claim. If Lloyd's doesn't make an offer, I will instead decide what I feel is a fair settlement.

Based on what I've seen it was necessary for Mr H to undertake substantial work, including replacing the entire shower area and associated tiling, to 'make good the defect'. If Lloyd's considers part of the ensuite loss may not be covered by D1)2, I will consider its points. I may also consider if the claim is also payable under D1)1, and if there would be a benefit for Mr H there.

I intend to require the addition of simple interest at 8% from September 2024 to the date of final settlement. The choice of September 2024, when I consider it should have accepted the claim, is explained in the following section.

loss of rental income

I'm not persuaded the warranty cover for Alternative Accommodation (AA) applies here. Lloyd's has said its to cover residents of the property's AA costs. Mr H stayed, as I understand, occasionally at the property, but lived primarily elsewhere. So I'm not persuaded he is due any AA payment under warranty. However, I've also considered if Lloyd's omissions or failings were responsible for any loss of rental income - and if it should reimburse the loss outside of the terms of the warranty.

I agree with the Investigator, based on the extent of damage, that the key reason for Mr H not letting the property was likely the condition of the ensuite, rather than the kitchen. A lack of sanitary facilities is reasonable grounds for not letting a property. So I need to decide when Lloyd's should have accepted the ensuite claim, and if a failure to at that point caused the property to be unlettable for longer than necessary.

I will consider Mr H's comments on this finding, as he will likely be disappointed, but I don't intend to require Lloyd's to cover any loss of rent. As I've said its ultimately for the policyholder to demonstrate a payable claim to the insurer. The two key pieces of evidence are S' and P's reports. S' accurately assessed the cause, inadequate drainage. However, the report didn't go quite far enough for me to find Lloyd's should have accepted there was a payable claim. It comes back to the issue of 'defect' again. The specific issues, expanding foam support and lack of mechanical fixings, that should have triggered Lloyd's to consider the relevant regulations aren't demonstrated as probable causes.

That information was set out in P's report. Lloyd's should have accepted the claim on consideration of that report in September 2024 (unless of course it can show there hasn't been a breach of regulations). By then the ensuite had been repaired, and the property was presumably available to let again. So I can't say it caused a loss of rental income.

report costs

S' report made a material difference to the kitchen claim. So, I intend to require Lloyd's to reimburse Mr S its cost, plus simple interest. P's report significantly influenced settlement of the ensuite claim. If Mr H was charged for it, Lloyd's will need to reimburse the cost. I request he provides any invoices in response to this provisional decision. I will require Lloyd's add interest to any payment.

compensation

Our Investigator recommended Lloyd's pay a total of £700 compensation, including £350 already offered, to make up for the impact of delays in accepting the claims. I consider that a fair amount in the circumstances. Mr H experienced extended disruption to a non-main residence and had to go to a lot of additional effort to sort matters out.

To conclude I intend to require Lloyd's to settle both the kitchen and ensuite claims, reimburse the costs of P's and S' reports, all plus interest and pay a total of £700 compensation.

I will forward Lloyd's Mr H's relevant invoices and request it provides two offers of settlement (one for each area) within 10 days of the date of this provisional decision.

If Mr H hasn't had the kitchen repaired yet I request he provides quotes to demonstrate the likely cost.

Unfortunately, Lloyd's response to the provisional decision didn't include the requested offers of settlement for the kitchen and ensuite claims. So in line with my provisional decision, I proposed to Lloyd's and Mr H what I considered would be a fair settlement for both aspects of the claim. I added that I wouldn't award the ensuite settlement if Lloyd's challenges to my intended uphold of the ensuite claim changed my mind.

the kitchen

Mr H completed the kitchen work himself. He asked for a settlement of £1,650. He based that on a quote from a contractor, with a 25% discount to reflect his lack of overheads. The work in the contractor's quote, and Mr H reports undertaking, appear to be covered by D1)1.

I said I didn't intend to require Lloyd's to pay the full amount Mr H requested. I acknowledged circumstances restricted his options, resulting in him doing the work himself. I said however, I'm considering the loss he's been caused by Lloyd's not accepting his claim. His loss wasn't £1,650.

I instead intended to require Lloyd's to cover the cost of the materials. Mr H had said the total was around £120. I explained I also intended to require Lloyd's to compensate him for the inconvenience involved in him doing the work himself. I said that likely took him more than a full day. I considered £250 a fair amount to compensate him for the inconvenience of undertaking work Lloyd's should have covered.

I concluded Lloyd's should settle the kitchen part of the claim by paying £370, without application of the £1,000 policy excess as Mr H had already contributed to this loss by undertaking the work himself.

the ensuite

Mr H had provided two invoices for material, including tiles. These total £1,209. He also provided a contractor's invoices for a total of £10,044. I was satisfied the materials and labour were likely appropriate for the 'making good the defect' etc as set about in D1)2.

I said unless I'm persuaded by Lloyd's response to my provisional decision that this part of the claim isn't payable, or it isn't an appropriate amount, I intend to require it to settle the claim at £11,653 - subject to the £1,000 policy excess and simple interest as set out in the provisional decision.

I also said I intend to require Lloyd's to reimburse the cost of S' report - £630.

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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr H and Lloyd's have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Lloyd's challenged my intention to require it to settle the ensuite claim on two main grounds – identification of a failure to comply with building regulations and coverage of drainage.

drainage

Lloyd's said I hadn't commented on the loss adjuster's (LA) argument that the policy only provides cover for below ground drainage. The LA considers the policy only covers 'substantial external pipework'. It considers the shower drainage to not be 'below ground', but instead to be an internal fixture and fitting.

The relevant policy term is:

*"D1)2. The cost of making good any **Defect** in the design, material or workmanship in the drainage system which was newly constructed by the **Builder** in connection with the **Housing Unit** and for which the Insured is responsible".*

Lloyd's referred to the policy definition of 'Housing Unit'. The full definition in the policy begins with:

'Housing Unit

The property described in the confirmation of cover and certificate of insurance including:'

The definition goes on to list various items. I haven't listed all those specified, but it includes the 'structure', all non-load bearing elements and fixtures and fittings and any path or road providing access for the disabled.

Lloyd's argument for the policy covering below ground drainage only appears to be based on a further listed item - *'the drainage system within the perimeter of such property for which the insured is responsible for'*.

However the relevant term states *'...any Defect in....the drainage system which was newly constructed ...in connection with the Housing Unit...'*. The policy terms don't, as far as I can see, include a definition of 'drainage system' that excludes shower drainage, linear drainage or above ground drainage. I'm satisfied the shower drainage, whether above or below ground, fixture or fitting or otherwise can reasonably be considered as part of the 'drainage system'.

The 'housing unit' definition first, before the word *'...including,'* reads as *'The property described in the confirmation of cover and certificate of insurance...'*. That is Mr H's property. I'm satisfied the shower part of the drainage system was constructed *'in connection with'* that property. It wasn't constructed in 'connection with' any other property. So there's no need for me to go on to consider, as Lloyd's has, the items listed under *'including'*.

defect

Lloyd's objected to my approach to the likely existence of a defect (failure to comply with building regulations). I explained in my provisional decision why I had taken that approach, including expecting insurers to take reasonable steps to investigate a claim and support its customers. Lloyd's hasn't provided anything that has changed my mind on that.

Lloyd's did provide helpful comments, from the LA, on the content of BS 8000. The LA considered its requirements for seals for 'sanitary appliances'. This requires sealants to be applied in accordance with the manufacturer's instructions.

The LA said that without knowing the exact linear drain product, it's difficult to comment on the installation process used. But they added none of the recommended installations of linear drainage they had seen, included the use of expanding foam as a fixing method. Instead, the usual recommendation is for the screed to extend underneath the drain.

Based on this, the LA said there are grounds to suggest that section of the code had been breached, by the incorrect seal (expanding foam) being used to assist in fixing the linear drain in place.

I accept the manufacturer's installation recommendations aren't known, but based on what I've seen, including P and the LA's comments, I consider they are unlikely to include the use of expanding foam.

I've considered the counter arguments offered by the LA. One being that there's no specific professional evidence to confirm the exact issues with the linear drainage. I don't agree with this point. P's report is quite clear that it considers the use of expanding foam and lack of mechanical fixings as being the relevant issues.

The LA also said there's no specific wording in BS 8000 relating to surface water drainage, so it might not be suitable to apply the seals for sanitary appliances wording. I'm satisfied it's reasonable to consider the 'sanitary appliances' as relevant to shower linear drainage, even if that exact facility isn't specifically referenced in the wording. Showers are commonly considered as 'sanitary' fittings.

So it seems likely there was a breach of BS 8000, and in turn the building regulation referred to in my provisional decision. I'm satisfied there most likely was at least one 'defect' as defined by the policy. That means I require Lloyd's to settle Mr H's claim for the ensuite.

settlements

In response to my proposed settlement of the ensuite part of the claim Lloyd's calculated Mr H's total costs as being £11,253 rather than the £11,653 I'd suggested. Lloyd's figure is the correct calculation, mine seems to have involved an error of some sort. After application of the excess the cost is £10,253. So Lloyd's will need to reimburse that amount - plus simple interest, at 8%, from September 2024 (this is explained in the provisional decision) to the date of final settlement.

Lloyd's accepted my proposal to settle the kitchen part of the claim by payment of £370. Mr H doesn't accept the £250 inconvenience element as representative of the work he undertook. I'd said the work likely took him more than a full day. He said it took more than two. I understand his point, but the award isn't intended to pay him for work as a builder. It's intended as an approximate amount to recognise the inconvenience involved in him doing the work himself. I'm satisfied £250 is enough, even if it did take more than two days.

So Lloyd's will need to pay Mr H £370 to settle the kitchen claim. It will also need to pay him £630 to reimburse the cost of S' report. This payment, and that for the kitchen materials, will have simple interest applied from the date the cost was paid to the date of final settlement.

loss of rental income

In my provisional decision I said I didn't intend to require Lloyd's to cover any loss of rental income. Mr H challenged that finding. His first point refers to the details of the policy as it was sold to him. That is essentially a mis-sale complaint. I'm considering here the terms of the policy as they are, not how they might have been had Lloyd's (or whoever arranged the policy) acted differently. If Mr H would like that point considered he should first raise it with the firm that sold the cover.

Mr H's additional arguments for loss of rent focus on delay - that his loss has predominantly been caused by poor customer service, along with a failure to agree a valid claim. I've considered this, but I'm still satisfied, for the reasons given in the provisional decision, that Lloyd's should have accepted the claim in September 2024. By then the ensuite had been repaired, and the property was presumably available to let again. So for that reason I can't fairly require it to cover loss of income.

compensation

I said in the provisional decision that I considered a total of £700 compensation, including £350 already offered, as a fair amount to make up for the impact of delays in accepting the claims. I still consider that as a fair award. Mr H experienced extended disruption to a non-main residence and had to go to a lot of additional effort to sort matters out.

My final decision

For the reasons given above, I require Society of Lloyd's to:

- settle the ensuite claim by paying £10,253 - with simple interest applied* as set out above,
- settle the kitchen claim by paying £370 - with simple interest applied* as set out above,
- pay £630 for S' report costs – with simple interest applied* as above and
- pay a total of £700 (including £350 already offered) compensation.

If Lloyd's considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell **Mr H how much it's taken off. It should also give him a tax deduction certificate if **he** asks for one, so **he** 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 and Mr H to accept or reject my decision before 28 April 2025.

Daniel Martin
Ombudsman