

## **The complaint**

Mr and Mrs R complain Society of Lloyd's unfairly declined their holiday home insurance claim.

The insurance policy is provided by a syndicate at Society of Lloyd's. For simplicity, I refer to the syndicate and Society of Lloyds simply as 'Lloyd's'. For the same reason, in places, I've referred to actions by agents, acting for the syndicate, as being those of Lloyd's.

## **What happened**

In September 2022 Mr and Mrs R claimed against their Aviva holiday home insurance policy. Water had entered and damaged their building and some contents - leaving it in need of repair and unlettable. Despite investigations the source of water ingress wasn't identified and addressed until May 2023. So between those two dates there had been further water ingress. The property suffered extensive damage, requiring significant reinstatement works.

After some back and forth, in January 2024, Lloyd's declined the claim. It said it didn't consider the damage to result from a single incident involving an insured peril - such as escape of water, flood or storm. It added the policy doesn't include accidental damage (AD) cover for buildings.

In February 2024 Mr and Mrs R complained about the decline. They said the damage had been caused by a single incident - a build of water due to a blocked drainpipe. They said they were unaware of the incident until flooding within their property. They considered Lloyd's to be obliged to cover the loss to their building and contents plus loss of earnings. They were also unhappy about delay to the claim and Lloyd's communications.

In April 2024 Lloyd's issued a complaint response. It found the decision to decline the claim to be correct and in line with the policy terms. In summary it said the damage didn't result from a one-off incident, as insurance policies are designed to cover. Instead, it considered the damage to have been caused by rainwater entering the property over a prolonged period. It also referred to various exclusions in the policy, including against gradually occurring damage. Lloyd's accepted there had been some avoidable delay and failing to provide Mr and Mrs R with adequate updates. To recognise the resulting distress and inconvenience it offered £450 compensation.

Mr and Mrs R weren't satisfied with that outcome, so referred their complaint to the Financial Ombudsman Service. As a resolution they ask for Lloyd's to cover the cost of repair and replacement of their damaged building and contents. They also asked for it to cover their ongoing losses resulting from the property being unlettable. At the time of writing they had, using their own funds, partially reinstated the property. Further works are required to enable to return the property to a lettable condition.

Our Investigator felt the damage should be considered as resulting from flood, or as a series of floods. He didn't think it reasonable to apply the gradual damage exclusion to decline the claim. He recommended Lloyd's reconsider the claim, accepting an insured event occurred, without reference to the gradual damage exclusion. He said if that resulted in the claim being

accepted it should reimburse any claim costs already paid by Mr and Mrs R - with simple interest. He felt Lloyd's should cover Mr and Mrs R's loss of rental income and pay £500 compensation.

Mr and Mrs R accepted that proposed outcome, but Lloyd's didn't. It said it hadn't relied on an exclusion to decline the claim - but instead didn't accept the cause to be one of the policy's insured perils. It initially said it didn't consider the damage to have been caused by flood. It then said if it was caused by flood, it wasn't a single flood event, but instead a series of floods. So Lloyd's considered the cause of damage to be continual and gradual - not a one off as it considers is required for the loss to be covered by the policy. As the complaint wasn't resolved it was passed to me to decide.

I issued a provisional decision. In it I explained why I intended to require Lloyd's to accept Mr and Mrs R's claim under the 'flood' peril, reimburse their expenditure on reinstatement work and replaced contents (applying simple interest as set out above), cash settle the outstanding reinstatement works and contents replacement at market rates, cover their monthly rental income losses from February 2024 until three months after the date the outstanding works are settled (amount to be determined as set out above - with simple interest applied) pay £5,000 loss of rent benefit (applying simple interest from January 2023 until date of final settlement) and pay £1,600 compensation in total (including the £450 already offered).

As the provisional decision's reasoning forms part of this final decision, I've copied it in below. I also invited Mr and Mrs R and Lloyd's to provide any further evidence or comments they would like to consider before issuing this 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 and Mrs R 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.*

*was there 'flood' damage?*

*It's for a policyholder to show the loss or damage they are claiming for is likely caused by one of the perils covered by their policy. Lloyd's has declined the claim, on the basis that hasn't been shown. Its position has evolved, with it now seeming to accept there was flood damage. Just not the type of flood damage covered by the insurance policy. It was continuous and gradual damage, from a series of floods rather than as a result of a one-off insured event.*

*Having considered everything I don't consider that a fair and reasonable position. So I intend to find Lloyd's decision to decline the claim to have been unfair and unreasonable. I set out my reasons below, followed by the actions I intend to require it to take to put things right for Mr and Mrs R.*

*The policy covers contents and buildings against '...loss or damage...directly caused by: flood...'. Flood isn't defined by the policy. The Investigator used this definition: 'the buildup of water over what should be dry land'. As that's a reasonable everyday understanding of the term I've also used it.*

*I've also considered relevant caselaw, in particular Rohan Investments Ltd v Cunningham (1998). It's established that a flood can occur in a property gradually and through a slow and steady buildup of water. The key factor is that water has built up in the property, regardless of where the water came from. I'm satisfied it can be said there was loss or damage directly caused by flood.*

*I won't go into detail about how water entered the property, but essentially a drainage fault allowed rainwater to enter the property. It can be seen from a video provided by Mr and Mrs R that water entered at such a rate as to cause a build-up of running water. It's also clear from the spread of damage that the water entered in such a volume to allow it to spread throughout a great deal of the property - going under, and causing damage, to flooring (and much more including walls and furniture).*

*A surveyor (S) visiting the property, on Lloyd's behalf, found the property to have flooded. He commented - 'However, over Xmas 2022 and after a particularly heavy storm the property was flooded again, but on a much more severe scale. The whole of the building was damaged by water entering through the rear of the structure.'*

*Overall, I'm satisfied there was a sufficient build-up of water in the property, relative to its size, for it to be reasonably considered that there was 'flood' - and that flood directly caused the extensive loss or damage claimed for by Mr and Mr R. The accounts of the damage, supported by photos, are typical, in my experience the type of damage caused by flood.*

*one flood or a series of floods?*

*But as I've set out Lloyd's doesn't accept it have been the correct type of flood damage to be covered by Mr and Mrs R's insurance policy. It notes if there was flood damage, it resulted from a series of floods happening over a period of time - not just one flood. In its opinion this loss from multiple floods, rather than a single event, isn't covered by the insurance policy.*

*I could get involved in a detailed discussion about the difficulty in determining one flood against a series of floods. For example, to what extent did the property need to dry out to allow a later ingress of water to be considered to have caused a second flood, rather than a topping up of the first and so only flood. But I don't consider that to be necessary, as either way - if there was one flood or a series of floods - I consider Lloyd's to have unfairly declined the claim.*

*The key consideration for me is, when Mr and Mrs R became reasonably aware of the water ingress issue, did they take reasonable steps to prevent further damage? So in the event of there being a single long running flood, did they take reasonable actions to prevent further water entering, for it to become a bigger, more extensive and long-standing flood with all the resulting additional damage? Or if there were instead a series of individual floods - after the first one, did they take reasonable steps to prevent further floods resulting in more extensive damage?*

*I'm satisfied that the answer to both questions is – yes Mr and Mr R did, once becoming aware of the issue, take reasonable steps to prevent further water ingress, flooding and damage.*

*It seems once they were aware of water ingress, Mr and Mrs R took reasonable actions to identify the cause and prevent further damage. In 2021, the year before their claim, after noticing signs of minor water ingress, they took various actions they believed to have addressed the problem. Unfortunately, they were mistaken, with further and more severe water ingress happening in Autumn 2022.*

*Mr and Mrs R have outlined the actions they, and their neighbour, took from that point on to identify the cause, prevent further water ingress and minimise damage. Drying machines were installed. Various individuals were tasked with identifying the source of the water ingress. Relevant parts of the property were stripped back for investigation. Tests were undertaken. CCTV was installed to help identify the source of the water. They claimed against their insurance policy, but Lloyd's doesn't appear to have taken any significant action to assist with preventing further ingress. Unfortunately, it wasn't until March 2023 that the cause of the problem was accurately identified. Remedial work was soon undertaken by the neighbour with responsibility for the problem, preventing further water ingress.*

*I will consider any further comments from Lloyd's but I'm satisfied Mr and Mrs R acted reasonably here. Unfortunately, before the cause could be accurately identified the property experienced further water ingress and damage. The policy is, in my opinion, intended to cover the property against flood damage - something that happened here. Lloyd's was, as far as I'm aware, the property's insurer, for the entire period in discussion. And as the loss didn't result from an omission or unreasonable action on the part of Mr and Mrs R, whether a single or a series of floods, I consider the fair outcome will be for the loss to be covered under the policy's 'flood' peril.*

*Lloyd's has said it hasn't relied on the gradually occurring exclusion in the policy to decline the claim. For the avoidance of doubt, should it assert that exclusion, I would consider it an unfair position. My reasons would be very similar to those set out above – that Mr and Mrs R, once aware of the issue, took reasonable steps to prevent further loss.*

*The Investigator recommended Lloyd's reconsider the claim. In my opinion the claim has progressed past that stage. Lloyd's had opportunity to investigate and raise any further objections. Allowing further consideration would likely cause further delay, exacerbating the inconvenience and distress financial and otherwise, already experienced by Mr and Mrs R. So I intend to require Lloyd's to accept the claim. That will involve it reimbursing what they have paid for the reinstatement work and any replacement of damaged contents already taken - in line with the cover provided by the policy.*

*The reimbursement must be at the rate Mr and Mrs R paid, not at discount rates available to Lloyd's. In addition, simple interest, at 8%, should be applied to the reimbursement - from the date of payment by Mr and Mrs R to the date of final settlement by Lloyd's. Mr and Mrs R have reported borrowing money to cover the repairs and using their own funds. The simple interest is to be paid in recognition of the associated costs and inability to make use of their own funds.*

*I don't intend to get involved in a forensic analysis of Mr and Mrs R's expenditure on repairs to determine how much Lloyd's should pay. Instead, I expect both parties to act in good faith to arrive at an appropriate settlement - based on the work covered by the policy and Mr and Mrs R's evidence of their expenditure.*

*Lloyd's will also need to cover the outstanding repairs and contents replacement. I will consider Mr and Mrs R's and Lloyd's comments on this proposal, but I currently intend to require Lloyd's to cash settle the outstanding repairs. As works are already underway that would appear to be more practical than Lloyd's arranging its own contractors to complete repairs. Cash settlement for repairs must also be at market rates. To inform the settlement Mr and Mrs R should arrange for quotes for all outstanding work they consider to be claim related.*

*Loss of rent*

*The condition of the property has meant Mr and Mrs R have been unable to let it, as a holiday home, since September 2022. Whilst they have, using their own funds, partially repaired it they haven't been able to fund completion of the works.*

*Mr and Mrs R have asked Lloyd's to reimburse that loss of income. They reported that up to around May 2024 their loss was around £60,000. That included cancelled bookings and their associated costs. It also includes periods where there weren't bookings, but Mr and Mrs R were unable to let the property.*

*The policy covers the loss of rentals, pre-booked in advance, resulting from damage to the property or contents by one its insured events. But that has a limit of £5,000. It also doesn't cover any loss where there isn't a pre-booking. So I've considered if Lloyd's should, as a result of its failing, cover additional losses outside of the insurance contract benefits.*

*I consider the claim was unfairly declined by Lloyd's. Had that not happened it seems very likely the property would have been repaired and available for let significantly earlier than it will be. And, having seen its booking record, I'm satisfied it would have been let out, with income generated. So I'm satisfied Lloyd's failing has resulted in a loss of income for Mr and Mrs R. As a fair and reasonable outcome I intend to require it to reimburse that loss.*

*To understand the loss Lloyd's is responsible for I've considered what likely would have happened, had it accepted the claim. I will though consider any responses from Mr and Mr R and Lloyd's on my reasoning.*

*The claim was made in September 2022. Bookings were cancelled from that month. Lloyd's should have accepted the claim at some point between then and March 2023. The exact date doesn't make a difference. That's because reinstatement works wouldn't have started until after the source of water ingress had been identified and resolved. That happened in May 2023. It seems unlikely a contractor would have been available and ready to start immediately. So July 2023 seems a reasonable date for the commencement for reinstatement.*

*I'm not aware of estimates for the timescales of reinstatement. In the absence of that information and based on my knowledge of the damage, I estimate six months might be a reasonable realistic time. The works required were fairly extensive. So allowing for some tolerance in timescales the property might reasonably have been available to let, with bookings taken, in February 2024.*

*Instead, in practice, the property is still out of use - and will continue to be for a further period from now. Having spoken to Mr and Mr R I'm satisfied that isn't because of any failure, on their part, to take reasonable action to mitigate their losses. They say they haven't been able to fund the full reinstatement works. Instead, they have been paying for the work they can afford in incrementally. They report taking out loans and selling a car in order to fund work. Mr R say he has used his annual leave to undertake some work himself.*

*So I consider had Lloyd's accepted the claim the property would have been relet from February 2024. For that reason, I intend to require Lloyd's to cover Mr and Mrs R's rental income related losses from that month. It will need to continue covering the loss up until a date exactly three months from the date it pays the cash settlement for outstanding reinstatement work and contents. That period will to allow a reasonable time for Mr and Mr R to complete the outstanding works. So if Lloyd's settles the reinstatement works on 1 July 2025, for example, it will need to cover the rental income loss for July, August and September 2025.*

*For this period, I intend to require Lloyd's to cover Mr and Mrs R's actual losses, not simply the rental income not received. My intention is to put them in the position they would have been but for Lloyd's unfair decline for the claim. They would have incurred costs associated with the letting. The income they receive from the letting may be taxable, as examples. I request they provide, in response to this provisional decision, an evidenced calculation of an estimated average monthly loss - taking into account usual income, costs and taxes.*

*Usual income should be based on an average monthly income for the entire calendar years of 2019 and 2020 - plus 10% uplift to allow for inflation. I've selected that period in order to avoid the impact of loss of bookings for Covid related reasons.*

*I will then, based on what I receive, set an amount Lloyd's will be required to pay for each month - to cover from February 2024 until three months after the date of the reinstatement works settlement. To recognise them being unfairly without the funds I will require Lloyd's to add simple interest at 8%, from the date of each monthly loss until the date of final settlement.*

*Lloyd's will also need to pay Mr and Mrs R the full £5,000 policy benefit. If it had accepted the claim this payment would have been due. Mr and Mrs R have evidenced loss of rental income, far exceeding that amount, for the period between September 2022 and February 2024. I can share that evidence with Lloyd's if it wishes to see it.*

*I realise Mr and Mrs R may be frustrated at only receiving £5,000 for that 15 or so month period. However, for the reasons I've given above, I consider that even if Lloyd's had fairly accepted the claim they wouldn't have received any income for the property until February 2024 - when the property would have been relet. Unfortunately, their policy only provides £5,000 cover. So that means Lloyd's responsibility for their loss, under the terms, is limited to £5,000. It will need to add simple interest, at 8%, from the date (I'll say January 2023 to avoid further dispute) it should have paid the benefit to the date of final settlement.*

### **Compensation**

*Our Investigator recommended Lloyd's pay Mr and Mrs R £500 compensation to recognise the distress and inconvenience it had caused them. I intend to increase that to £1,600 (including the £450 already offered by Lloyd's). That's because Lloyd's unfair response to their claim has caused them significant distress and inconvenience over a long period.*

*It's clear from discussing the matter with them, Mr and Mrs R have been greatly distressed by the need to fund the reinstatement work themselves. They have had to take loans and release funds from pensions. They have had the distress of being unsure where the required funds to complete the work will come from. The loss of rental income has caused them unnecessary worry. They have also been significantly inconvenienced. As examples, Mr R says he has, to reduce costs, undertaken some reinstatement work. They have also been unable to use the property for their own holidays.*

### **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.*

*Lloyd's agreed to my provisional decision. Mr and Mrs R didn't raise any objection, other than to request further consideration of the compensation award. They referred to her missing work and him using annual leave to work on the property. They said this had been a great inconvenience, in particular as they live quite a distance from the insured property.*

I had already taken into account, for the provisional decision, the type of inconvenience Mr and Mrs R raised. And having considered their latest comments, I'm still satisfied £1,600 is fair compensation. So, I'm not going to increase the compensation award.

As there hasn't been any other objections to the provisional decision, the only remaining issue is the amount Lloyd's needs to cover rental income losses. Having considered income and expenditure evidence from Mr and Mrs R, I proposed £991 as a monthly figure. As neither of Mrs R or Lloyd's objected I've settled on that amount.

### **My final decision**

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

- accept Mr and Mrs R's claim under the 'flood' peril,
- reimburse their expenditure on reinstatement work and replaced contents (applying simple interest as set out above),
- cash settle the outstanding reinstatement works and contents replacement at market rates,
- cover their monthly rental income losses from February 2024 until three months after the date the outstanding works are settled - at £991 per month with simple interest applied as set out above,
- pay £5,000 loss of rent benefit (applying simple interest from January 2023 until date of final settlement) and
- pay £1,600 compensation in total (including the £450 already offered).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 16 July 2025.

Daniel Martin  
**Ombudsman**