

The complaint

Mr and Mrs R complain that Society of Lloyd's ("SOL") unfairly declined a claim made under their building warranty.

What happened

Mr and Mrs R bought a property within a listed building in November 2021. Within weeks of moving in, they discovered damp and an ingress of water through the walls of their home. On further investigation, it became apparent that there was a trench under the flooring which ran underneath the bathroom and bedroom, which Mr and Mrs R then found was a result of poor workmanship.

In August 2022 Mr and Mrs R were provided with the warranty documents, and saw that endorsements had been added to the cover, due to the developer having breached building regulations and not following planning regulations.

When a claim was made however, SOL declined it, saying the endorsement added to the policy meant the insurer wouldn't cover any defective waterproofing. It also said that the developer hadn't installed the walls or flooring, so these were existing building elements which were not covered by the policy. It added that the endorsement relating to defective waterproofing had been added because the developer hadn't complied with the original design of installing a secondary tanking system to the walls and floor of the apartment.

Mr and Mrs R complained. They said the apartment had been sold to them with an inherent defect, which wasn't disclosed to them. They said that, as a result of this, they had to live in horrendous conditions due to the severe damp and mould, which had destroyed their furniture and caused serious health issues for both Mr and Mrs R, as well as for their dog.

SOL maintained its position to decline the claim. So Mr and Mrs R referred their complaint to this service. Our Investigator considered it, but didn't think SOL had applied the endorsement unfairly. Because Mr and Mrs R didn't agree with our Investigator's view, the complaint has now come to me to decide.

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 and Mrs R and SOL 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 parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The developer of the property went into voluntary liquidation shortly after the sale. Section 2 of Mr and Mrs R's warranty provides cover in the event that a builder fails to carry out repairs due to insolvency. It's under this section of the policy that the claim was considered.

I've looked carefully at the loss adjuster's report, which comments on the damage and the likely cause of it. It says:

"We believe that the newly constructed block paved walkway that serves the main entrance to the building has been built higher than the original ground level and any precipitation that falls on to the paving then soaks into the brickwork, penetrating the solid wall and into the property.

We understand from the insured that... no secondary waterproofing/tanking was installed to the external walls due to the quotes received during the build...

The ground-bearing concrete floor appears to pre-date the conversion of the property by many years, as such we do not believe there to be any form of Damp Proof Membrane (DPM)."

Furthermore, the report provided by Mr and Mrs R also recommended waterproofing works. It mentions an inadequate seal between the wall and floor junction, as well as a lack of damp proof membrane and faulty lead flashing, among other things. Seals and flashing are both waterproofing elements of a property, which should serve the purpose of preventing water entering a building and causing damage. So having considered all the expert evidence, I'm satisfied that the defect was in the waterproofing elements of the property.

However, the policy also states:

"The following endorsements attach to and form part of the Policy:

- 1. All defective waterproofing, including those areas below ground, is excluded from the Policy;*
- 2. All loss or damage caused by the deterioration of the re-claimed slate is excluded from the Policy; and*
- 3. Any loss or damage caused by or attributable to the absence of mechanical fixings to the ridge and verge tiles is excluded from the Policy".*

So it's clear to me that any defects in the waterproofing of the property won't be covered by the warranty. Mr and Mrs R's representative has said that SOL has sought to apply too broad an interpretation to the endorsement, but I don't agree.

The representative suggests that a lack of waterproofing due to defective works carried out by the developer does not constitute "defective waterproofing". But looking closely at the expert reports provided, both comment on defects in the waterproofing of the property. The loss adjuster's report refers to a lack of DPM but also inadequate waterproofing. And Mr and Mrs R's report refers to waterproofing works that are required to rectify the issue. Whilst I agree that the waterproofing is an element of the Waterproof Envelope that is covered, it is the waterproofing itself that is defective. So I'm persuaded that the particular defects identified are excluded from cover and SOL has not applied too wide an interpretation here.

Mr and Mrs R have raised the point that the warranty documents were not provided to them at the point of sale, and that had they been, and had they known of the defect, they wouldn't have gone ahead with the purchase of the property. But I'm afraid I don't hold SOL liable for this. Mr and Mrs R may wish to make enquiries with the solicitors acting for the parties when they bought their property, to find out more about why they weren't provided with the documents, and whether any of the surveys and searches that were carried out should've revealed more information about the defective waterproofing of the building.

I've watched the videos provided and viewed the photographs provided by Mr and Mrs R. But these haven't changed my mind, because despite demonstrating that there is a problem

with the waterproofing, I'm afraid the policy endorsement means the issue isn't covered. Whilst I have a great deal of empathy for Mr and Mrs R in this situation, particularly given the health issues they've said they and their dog have unfortunately experienced as a result of the severe mould, I'm afraid that I can't consider the impact this situation has had on them, as I'm unable to conclude that SOL has declined the claim unfairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 6 February 2025.

Ifrah Malik
Ombudsman