DRN-5378723

The complaint

Mr and Mrs K complain that Society of Lloyd's ("SOL") charged them two excesses when they made a claim under their self-build warranty following a leak in the roof of the property and water ingress through the window frames.

What happened

Mr and Mrs K hold a self-build ten-year structural warranty with SOL which covers major damage to various parts of the property listed in the policy definitions.

In 2022 they noted some staining to the timber trusses in the kitchen ceiling and made a claim for water ingress. Loss adjusters were appointed to investigate and report on the cause of the damage. Following various reports and a further claim for water ingress through windows, SOL applied three excesses to the claim, to reflect the three causes of loss identified by its loss adjusters. It later reduced this to two excesses because of the proximity of two of the areas of damage.

Mr and Mrs K complained. They said only one excess should be applicable because the water ingress and associated damage was all caused by the same poor workmanship and not two or three separate causes.

In its response to the complaint, SOL said two excesses had been applied because there had been water ingress into the vaulted ceiling of the kitchen, as well as water ingress via the windows and doors. It said it had relied on the expert reports which confirmed that one of the causes of the damage was poor workmanship in relation to the roof tiles, and another was a defect in the cracking mortar. A third defect was also identified in the mastic sealing around the windows. So it was satisfied it was fair for it to apply at least two excesses.

SOL did however accept that the level of service its underwriters had provided fell short of their usual standards – but that any distress and inconvenience this caused had been adequately addressed by the underwriters in their offer of £600 compensation.

Mr and Mrs K didn't accept SOL's response, so they referred their complaint to this service. Our Investigator considered the complaint, but didn't think it should be upheld. As Mr and Mrs K didn't agree with our Investigator's opinion, 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 raised or comment on every piece of evidence Mrs K and SOL have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. 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.

Mr and Mrs K's policy provides the following definition of *"**Excess**":*

> *"As the amount noted on the **Initial Certificate** and **Certificate of Insurances** by the **Insurer** being the amount relating to each and every loss in respect of the **Housing Unit**, below which the **Insurer** has no liablity under this **Policy**. A separate **Excess** shall apply to each and every separately identifiable cause of loss or damage for which a payment is made under this **Policy**, regardless of whether more than one cause of loss is notified at the same time."*

So in order for me to uphold this complaint and agree that only one excess is applicable, I'd need to be satisfied that there was only one cause of all the damage claimed for.

It's important to note that the policy covers *"**Major Damage**",* which is defined as *"Any defect in the design, workmanship, materials or components of the **Structure** affecting or causing destruction or physical damage".* As this clearly shows Mr and Mrs K's warranty is designed to provide cover for damage caused by poor workmanship or materials, I don't agree with Mr and Mrs K's position that only one excess should apply if all the damage was a result of poor workmanship, as this would apply to all claims made under the warranty.

If Mr and Mrs K's interpretation was correct, then one excess would only ever apply to all instances of poor workmanship irrespective of when the damage was claimed for, or which part of the property was affected – and the policy term about separate excesses would be redundant.

So I've looked in more detail at the proximate causes of the damage. And I've considered the expert evidence I've been provided with, which identifies the following three causes:

1. *"The minimum gauge for these tiles on slopes >22.5 degrees is 75mm. The gauge on this affected roof slope has been stretched to the maximum limit on the majority of the tile rows, with some being stretched past the 75mm minimum headlap. To compound this issue with the slight lack of headlap on the tiles which appears to be allowing some wind-driven rain to drive in under the roof tiles and reach the underlay, issues with the surface of the underlay has occurred"* – (From the loss adjuster's interim report dated 14 June 2023).

2. *"The mortar verge at eaves-level however was found to be cracked and crumbling in vast number of areas. In their professional opinion, the mortar is cracking because an incorrect mix was used, leading to a much softer mortar that has now cracked and started to fall out on the verges and along the ridgeline."* – (From the loss adjuster's interim report dated 16 November 2023).

3. *"The mastic sealing around windows has deteriorated completely, with remnants of previous sealant visible. Over the span of 10 years, the sealant has degraded, leaving windows vulnerable to water intrusion. Unsheltered windows exhibit clear signs of water damage, indicating a lack of maintenance over the past decade. Areas of missing lime mortar pointing around window perimeters are identified, facilitating water ingress."* – (From the loss adjuster's interim report dated 4 March 2024).

Mr and Mrs K say the evidence shows the waterproof envelope has suffered loss and damage due to rainwater ingress in multiple areas, due to a single identifiable cause – that being poor workmanship and/or materials, which they believe is the primary reason for the damage occurring. But this isn't in line with my interpretation of the policy and how excesses are usually applied. I believe the terms of the policy are clear; I've mentioned the policy defines Major Damage as any defect in the design, workmanship, materials or components of the structure. This doesn't mean that two or more instances of poor workmanship, in

unrelated areas of the property, claimed for at different times, would only attract one excess.

SOL has said that its investigations show at least two distinct causes of water ingress and damage – the first being through the roof due to the defective tiling and the second through the windows. I've considered SOL's decision to group together the mortar verge and roof tile issues as one claim, as these are close in proximity and involve water ingress through the ceiling. But I don't consider the water ingress through the window frames to be close enough in proximity to the ceiling damage, or due to the same identifiable cause as the ceiling damage, based on the evidence provided.

I say this because the expert report states the sealant around the windows has deteriorated and there are areas of missing lime mortar pointing around window perimeters, also mentioning lack of maintenance – which is not the same as the issues with the roof tiles, which are to do with the lack of headlap on the tiles and cracks in the mortar. Further, the time between the two claims is relevant, as it wouldn't be reasonable to apply only one excess when the claims for the two different areas were made almost a year apart, in circumstances where there are two different identifiable causes – even if both are related to poor workmanship or materials.

So, overall, I'm afraid I don't agree with Mr and Mrs K's view that SOL is effectively trying to avoid or limit its liability by applying two excesses here, and I don't consider it would be able to apply excesses to every defective component within a portion of the building as Mr and Mrs K have said. Each defect would be considered on the basis of its proximate cause, in line with the policy terms, which state that separate excesses shall apply for each identifiable cause.

I've read all the comments Mr and Mrs K have made in support of their complaint, including the comments made in their email of 2 February 2025. They refer to all the damage occurring to the waterproof envelope, but this is an area listed in the policy, not a cause of damage. And I don't agree that the insurer's stance is akin to routing the cause all the way back to the starting point, i.e. the initial conversion of the barn. The cause in cases such as these is usually an identifiable defect in the workmanship or materials – it is not enough to simply state that there has been poor workmanship throughout and so every defect in the property that can be attributed to poor workmanship or materials would fall under one claim with one excess payable.

I've considered the overall handling of the claim and can see that Mr and Mrs K have been offered £600 compensation for the length of time it took to deal with the complaint and the failure to keep them informed. I think the level of compensation offered is fair in the circumstances, as it's in line with our approach in instances where poor communication and claim delays over several months have caused distress and inconvenience, as I can see they have here.

I'm sorry to disappoint Mr and Mrs K, but it follows therefore, that as I don't consider SOL's decision to apply two excesses unreasonable and I consider the compensation offered to be fair in the circumstances of this complaint, I'm not requiring SOL to do anything differently.

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 K to accept or reject my decision before 3 April 2025.

Ifrah Malik
Ombudsman