

The complaint

Mrs G has complained about Society of Lloyd's decision to decline a claim she made under the structural defects warranty covering her property.

Reference to SOL also includes the syndicate which underwrites the warranty.

What happened

The subject of this complaint is a development comprised of multiple buildings each comprised of multiple flats. Damage has been caused to Mrs G's flat as a result of a defect with the balcony on the flat above. Other leaseholders within Mrs G's development have been affected by the same issue. But this complaint has been brought by Mrs G only and concerns only what she is entitled to under her individual warranty policy.

In 2020 a block of offices was converted into residential properties. Mrs G purchased a flat within one of the blocks, which came with a structural defects warranty underwritten by SOL. In 2024, water ingress to multiple flats was reported. Following various investigations and claim decisions which focused on exclusions which didn't actually apply, SOL declined the claim on the basis the defect causing the damage is with the upstairs balcony – which is the responsibility of that leaseholder, and so not something covered under Mrs G's warranty.

SOL says Mrs G's warranty would only respond to damage in her flat caused by a defect also originating within her flat. SOL says this is effectively a civil dispute between Mrs G and her upstairs neighbour, and not something the policy needs to respond to. SOL did accept the service Mrs G received had fallen short at times and offered £300 compensation to reflect this.

An investigator considered Mrs G's complaint and thought it should be upheld. She said the relevant section of the policy covers damage, caused by a defect, rather than the defect itself. So, she said Mrs G's claim for damage to her flat ought to be covered because her flat had suffered damage, as a result of a defect. And the investigator said in order to deliver a lasting and effective repair to the damage Mrs G was entitled to claim for under her individual warranty, SOL should consider liaising with the neighbour about repairing the defect or find another solution that would prevent the damage from reoccurring. The investigator agreed SOL had caused Mrs G some avoidable distress and inconvenience but thought the £300 compensation it had paid was enough to fairly put things right.

Mrs G agreed with the Investigator's findings, but SOL didn't. So, because no agreement has been reached, the complaint has been passed 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.

Having done so, I agree with the investigator's findings. I'll explain why.

But first, I want to explain that while there has been extensive background and multiple issues of contention throughout the life of this claim and complaint, I don't intend to comment on everything which has happened in detail. Instead, I'll focus on the key issue which remains in dispute, and which I need to decide in order to deliver a fair outcome to this complaint. That is, how the policy terms should reasonably be interpreted in the context of Mrs G's claim.

This isn't meant as a discourtesy to either party, rather it reflects the informal nature of the Financial Ombudsman Service and my role within it. But I'd like to assure the parties that I have read and considered all the evidence provided when reaching my decision.

Mrs G's warranty document explains the cover it provides under section 3 – which is the section relevant to the claim she is seeking to make in this case. This states:

“Section 3 - Structural Insurance

The Underwriter will indemnify the Policyholder during the Structural Insurance Period against the cost of:

1. Complete or partial rebuilding or rectifying work to the Residential Property which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Residential Property to its original specification....”

The warranty defines 'Residential Property' as:

“Residential Property

The property described in the Certificate of Insurance comprising:

- *The structure;*
- *All non-load bearing elements and fixtures and fittings for which the Policyholder is responsible;*
- *Any Common Parts retaining or boundary walls forming part of or providing stability or strength to the Structure;*
- *any path or roadway within the perimeter of such property;*
- *The drainage system within the perimeter of such property for which the Policyholder is responsible;*
- *Any garage or other permanent out-building.”*

The warranty defines 'Major Damage' as:

“Major Damage

C. Physical Damage to any portion of the Residential Property for which a Certificate of Insurance has been issued by the Underwriter.

D. A condition requiring immediate remedial action to prevent actual Physical Damage to any portion of the Residential Property for which a Certificate of Insurance has been issued by the Underwriter.

In either case caused by a Defect in the design, workmanship, materials or components of:

A. the Structure: or

B. the waterproofing elements of the Waterproof Envelope, which is first discovered during the Structural Insurance Period.

'Defect' is defined as:

"Defect

A failure to comply with a functional requirement in the Technical Manual in respect of the construction of the Residential Property. Failure to follow the performance standards or guidance supporting the functional requirements does not in itself amount to a Defect, as it may be possible to achieve the recommended performance in other ways.

For any Residential Property insured under this Policy relating to the Conversion, refurbishment or renovation of a Development the definition of Defect shall only be deemed to include any of the works constructed or installed by the Developer as part of the Conversion, refurbishment or renovation."

And 'Structure' is defined as:

"Structure

The following elements shall comprise the Structure of a Residential Property:

- *Foundations;*
- *All load-bearing structures essential to its stability or strength including parts of ceilings, floors, staircases and associated guard rails, walls and roofs, together with retaining walls necessary for stability of the Residential Property;*
- *Non-load bearing partition walls;*
- *Chimneys and flues;*
- *Roof covering;*
- *Any external finishing surface (including rendering) necessary for the water-tightness of the external envelope;*
- *Floor decking and screeds, where these fail to support normal loads;"*
- *Wet applied plaster;*
- *Double & triple glazed panes to external windows and doors;*
- *Underground drainage, comprising pipes, channels, gullies and inspection chambers, within the perimeter of the Residential Property for which the Policyholder is responsible for maintaining."*

What the above means in practice is that section 3 of Mrs G's warranty is designed to cover her for major damage to her flat caused by a defect with the works undertaken as part of the conversion. This section provides cover for the damage which results from the defect, rather than covering the defect itself in isolation. So, in my view, it's the location of the damage which is key, not the location of the defect. And here, it's indisputable that Mrs G's property has suffered from major damage, in the form of water ingress.

SOL has sought to argue that there is no cover under Mrs G's warranty for the issues with her property because the defect causing the issue is with her neighbours' property rather than her own. SOL says the policy will only respond to damage to Mrs G's residential property caused by a defect within her residential property. But I don't think this is fair for several reasons.

Firstly, I consider that the main purpose of a building warranty policy is to protect the policyholder against significant repair costs due to structural issues resulting from the construction or conversion works (as applicable). As such, I can't see how it could reasonably be the intention of the policy to avoid cover for major damage to Mrs G's property caused by such a defect, on the basis that the defect is to part of the building Mrs G isn't directly responsible for.

It may be the case that the policy terms and conditions lack clarity as to exactly how this cover ought to be provided. But I don't think it can reasonably be argued that SOL's "Structural Defects Insurance Policy" is designed for the leaseholders to receive cover for damage to their individual flats, but not when caused by issues with the structure of the wider building, outside the limited confines of their individual demise.

Secondly, I think that by seeking to apply the policy wording in the way it has, SOL is interpreting the policy in a way that significantly limits the cover available. If I were to accept that interpretation, I'd effectively be concluding that the policy doesn't provide cover for the majority of structural issues which could occur given that, under the lease, responsibility for maintaining the retained parts and common parts of the structure of the building rests with the freeholder and not the leaseholder (Mrs G in this case).

Instead, I think a more reasonable interpretation of the above definitions would mean that Mrs G is covered for major damage to her residential property caused by a defect with the structure of the building, resulting from the works undertaken during the conversion – not limited to damage caused by a defect within the structure of her residential property in isolation.

I say this, at least in part, because the definition of structure includes parts of the buildings that would clearly not be unique to one 'residential property' such as foundations, roof coverings, chimneys and external finishing surfaces necessary for the water tightness of the external envelope. These parts of the building serve, at least in some capacity, all the residential properties within the building. And it seems to me that defects to these parts of the building, which result in damage, are intended to be covered.

In this case, it isn't disputed that defective finishing of the upstairs balcony is causing water ingress to Mrs G's property. So, I consider that a fair interpretation of the policy wording demonstrates that Mrs G's property has suffered from major damage (as defined) to her residential property (as defined) caused by a defect (as defined) with the structure (as defined). It therefore follows that I consider SOL's decision to decline Mrs G's claim to be unfair and unreasonable in the circumstances. To put things right, I think SOL needs to accept and settle Mrs G's claim.

As explained, Mrs G's policy covers her for the major damage to her property – not the defect itself. So, in my view, Mrs G is covered for repairs to the damage in her flat (or the equivalent cost to Mrs G of having those repairs carried out), not for the repairs to the defect itself. However, it's widely accepted good industry practice (and a well-defined approach of this service) that any repairs carried out, or funded, under a contract of insurance should be lasting and effective.

In this case, repairing the damage in isolation would not deliver a lasting and effective repair because the water ingress will simply reoccur. In order to deliver a lasting and effective repair, SOL will either need to liaise with the neighbour (who is also one of its policyholders) to gain access to remedy the defect (or cover the cost to Mrs G of doing so) or find an alternative way to deliver a lasting and effective repair which doesn't require repairing the defect.

To be clear, I'm making no finding on whether Mrs G's neighbour has a valid claim for the issue under their own warranty, as such a finding would be out of the scope of this complaint. Instead, I find that SOL is required to take action to prevent further damage to Mrs G's property in order to deliver the cover provided by her individual warranty. That is, to provide a repair to the damage to her property, caused by the defect, which is both lasting and effective.

I'm also making no specific direction to SOL as to how it should go about achieving this. But it is my decision that Mrs G's claim for damage to her flat caused by the defect in the upstairs balcony should be covered. And that SOL is responsible for ensuring any settlement it provides is sufficient to deliver a lasting and effective repair to the damage.

Customer service

It isn't in dispute that SOL is responsible for some avoidable delays and service issues. SOL initially declined the claim based on exclusions and endorsements which weren't relevant to the cover under Mrs G's actual warranty – which would have been understandably confusing, upsetting and frustrating. Mrs G has also been forced to make a complaint and pursue it all the way through the Financial Ombudsman Service just to get the cover she was, in my view, reasonably entitled to from the outset of her claim.

SOL has accepted responsibility for some of the service issues and has offered Mrs G £300 compensation. Considering all the issues, and the impact they've had on Mrs G, I think £300 in addition to the claim being settled, in line with my recommendations above, is sufficient to fairly put things right.

As I understand it, the £300 compensation has already been paid to Mrs G. But should this not be the case, SOL should pay this amount, in addition to dealing with the claim, to fairly resolve this complaint.

My final decision

For the reasons set out, I uphold Mrs G's complaint.

Society of Lloyd's must:

- Accept and settle Mrs G's claim, ensuring that any claim settlement is sufficient to deliver a lasting and effective repair.
- Pay Mrs G £300 compensation for the avoidable distress and inconvenience it has caused her – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 8 October 2025.

Adam Golding
Ombudsman