DRN-5726920

The complaint

Mr C has complained about Society of Lloyd's (SOL's) handling of a claim he made under his new home building warranty.

Any reference to SOL in this decision includes the underwriting syndicate, L, which provided the cover under Mr C's warranty, together with its agents or representatives, including loss adjusters, surveyors, engineers and other experts.

What happened

Mr C is a leaseholder in a building comprised of 34 flats which was completed around 2010. Thirteen flats, including Mr C's, are covered by warranties underwritten by SOL. The remainder, including another property of Mr C's, are insured by a different provider (A). In order to deliver consistent outcomes to the leaseholders, SOL and A have provided largely joined up responses throughout the claims and complaints.

In May 2019, the managing agent (R) notified A of significant concerns about the installation of the building's gas pipework, including unsafe routing, lack of ventilation, and the possibility of gas build-up in enclosed risers. Loss adjusters and engineers instructed by both insurers gradually identified broader fire-safety failings, including inadequate fire stopping, defective compartmentation and non-compliance with Building Regulations relating to fire safety.

Initial reports in 2019 and 2020 focused on unsafe and incorrectly installed gas pipework. By late 2020, an engineering surveyor (F) concluded that the gas system posed an "extremely dangerous" risk and this along with various fire safety issues in localised areas required immediate mitigation. In 2021 and 2022, further fire engineering reports identified serious breaches of relevant regulations and multiple failures of compartmentation, ventilation, and riser construction. These reports confirmed that the building, as constructed, posed an imminent risk to residents.

Because of SOL and A's continued delays and the building insurer's threat to withdraw cover, R commissioned urgent safety works in 2022, funded by the leaseholders through the service charge. Further investigations in 2023 revealed additional compartmentation defects on upper floors. SOL and A continued to debate responsibility, scope, and costs throughout 2023–2024.

As the insurers investigated the issues reported at the building, SOL separated the matters into three heads of claim ("HOCs").

- HOC1, concerning defects in the gas pipe installation, was declined on the basis that gas pipework does not fall within the "Structure" covered under section 3.3 of the warranty, and the evidence did not demonstrate a Building Regulations breach sufficient to engage section 3.5.

- HOC2, relating to inadequate fire integrity and ventilation within the riser cupboards and protected shaft, was ultimately accepted and settled for all leaseholders after the insurers concluded these defects were notified on time, breached fire-safety-related Building Regulations and posed an imminent danger to occupants.

- HOC3, addressing the later-identified lack of adequate fire compartmentation on the second and third floors, was treated by SOL as a separate, later-notified claim and was rejected for Mr C and most leaseholders whose warranty periods had expired by the time the issues were fully identified.

Whilst SOL separated the claims into the three HOCs, A didn't separate the claim in the same way. However, it effectively followed suit over time, in the way it settled and declined various aspects of the claim. So, for ease, I'll refer to the three HOCs in my decision on Mr C's linked complaint against A, as well as in this decision against SOL.

Another leaseholder in Mr C's building (Mr P) had his claim for HOC3 accepted. This was because Mr P's warranty remained in force at the point the issues were fully discovered, during remedial works to HOC2, whereas Mr C's (and most other leaseholder's) policies had expired.

Mr C disputes SOL's position on when HOC3 was notified. He says the claim was effectively notified in 2019 and again in 2020 when detailed engineering evidence was submitted, well within the period of cover. He also complains about SOL's delays, lack of guidance, and refusal to recognise that all defects arise from the same underlying breach of Building Regulations.

An investigator here considered Mr C's complaints as a lead complaint for all the leaseholders whose claims have been declined by SOL or A. To broadly summarise her findings on the claims across both insurers, she said:

- HOC1 (gas pipe installation) was reasonably declined because pipes aren't part of the structure of the building and because no evidence of a breach of the relevant regulations was provided.

- HOC2 was correctly accepted and settled

- HOC3 – the F report in October 2020 should be considered as notification for HOC3 and so the insurers should settle Mr C's proportion of the claim.

Specifically in relation to Mr C's complaint against SOL, she said

- SOL caused unreasonable delays by unfairly declining the claim in 2021, by delaying settlement of HOC2 until 2024 and by continuing to decline HOC3 on the unfair basis of late notification. SOL should pay Mr C £200 compensation to put things right.

Mr C accepted the investigator's assessment, but SOL didn't.

In addition to the investigator's view on Mr C's complaint, one of my ombudsman colleagues decided Mr P's complaint. Her findings only apply to Mr P's complaint, as we decide each case on its own facts and merits. But she provided detailed reasoning within her decision as to why, in her view, F's report amounted to notification of both HOC2 and HOC3 for all leaseholders.

I asked SOL to consider its position on Mr C's complaint given my ombudsman colleague's decision on Mr P's complaint. But SOL has maintained that it's reasonable to consider HOC3 was not notified until after Mr C's policy expired. SOL and A have jointly provided detailed legal analysis in support of their position. In summary, this said:

- Mr C's complaint must be assessed independently and cannot rely on reasoning from the earlier Mr P decision.
- They argue no fire-compartmentation defect was discovered or notified during Mr C's policy periods, meaning the policy conditions for a valid claim were not met.
- Notifying one fire-safety issue (e.g., gas pipework) does *not* amount to notifying all other unrelated defects.
- The first report suggesting issues with fire compartmentation came in 2023, after Mr C's policy expired, and therefore cannot count as valid notification.
- The insurers maintain they acted reasonably and that the claim *"never got out of the starting blocks"* due to lack of timely discovery, notification, and evidence.

I also asked Mr C to confirm what his position was in light of my ombudsman colleague's decision on Mr P's complaint. Mr C confirmed agreement with my ombudsman colleague's conclusions on the three HOCs but said he also wanted SOL to cover his share of the increased buildings insurance premiums dating back to 2020 and the costs he'd incurred in paying for regular inspections of the gas installation, which remain required until the works required under HOC3 are concluded. He also confirmed he wanted equal compensation to that awarded by my ombudsman colleague to Mr P.

Because no agreement has been able to be reached, I'm now moving ahead with my decision on Mr C's complaint.

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've reached largely the same conclusions as the investigator, save for a different compensation award. Where my conclusions differ from the investigator's, I have communicated them to the parties and allowed them the opportunity to comment before reaching this, my final decision – which I'll set out in detail below.

But first, I want to explain that given how closely SOL and A have worked, I'm issuing largely identical decisions against each, except for a few minor differences. This means I've made some references to A in this decision, even though it is against SOL, and vice versa in my decision against A.

I also want to highlight 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 every single issue there has been throughout. I also don't intend to go into the same level of detail that my ombudsman colleague did on Mr P's complaints. This is because I'm aware that all parties have already seen and reviewed that decision – including Mr C. Instead, I intend to focus on the key issues which remain in dispute in relation to Mr C's complaint, and which I need to decide in order to deliver a fair outcome. This isn't meant as a discourtesy to either party, rather it reflects the informal nature of our service and my role within it. I do, however, want to assure the parties that I have read and considered all the evidence provided when reaching my decision.

Mr C has seemingly accepted SOL's, and the investigator's, position on HOC1. So, as this matter appears to no longer be in dispute, it doesn't require any detailed findings from me. But, for completeness, I agree that SOL's decision to decline HOC1 was in line with the policy terms, and was fair and reasonable, because the defective gas pipework did not fall within the definition of the "Structure" under section 3.3 of the warranty, and the available evidence didn't show a breach of the Building Regulations required for cover under section 3.5. HOC2 is likewise no longer in dispute as it has already been accepted and settled.

This means the key issue which remains for me to decide, in relation to the claim, is whether SOL's position on HOC3 not being notified in time is fair or not.

Distinctions between Mr C's complaint and Mr P's

SOL and A's joint legal submission emphasised that Mr C's complaint must be treated entirely separately from Mr P's. But the reality is that both arise from the same building, the same warranty scheme and the same fire-safety issues.

The main difference highlighted is that Mr C's policy expired several years earlier than Mr P's, which is why SOL accepted Mr P's claim for HOC3 and not Mr C's. However, my ombudsman colleague's decision on Mr P's complaint went into great detail about why the fair and reasonable notification date to both A and SOL – for all leaseholders – for HOC3 should be October 2020, the date it was provided with F's report. Applying those findings logically would mean Mr C's claim for HOC3 was also made in time, despite his policy having expired earlier than Mr P's.

The insurers' response has relied heavily on the fact that my colleague's decision can only strictly be applied to Mr P's complaint and that it is not *"precedent setting".* And it's true that the Financial Ombudsman Service considers complaints in this way – each case on its own merits, not on precedent. But it's also true that industry rules and guidance – particularly that set out in DISP 1.3 and 1.4 – require insurers to learn from and apply ombudsman determinations in future complaint handling. So, it's disappointing that instead of doing so here, in these largely identical set of circumstances, they have instead sought to continue to dispute the conclusions of my ombudsman colleague.

That all being said, as required, I have reached my decision here based on the specific facts of Mr C's complaint and what I consider to be fair and reasonable in all the circumstances.

SOL's decision on HOC3

HOC3 has been considered under section 3.5 of the warranty. Cover under this section is described as follows:

> *"The Underwriter will indemnify the Policyholder during the Structural Insurance Period against the cost of repairing, replacing or rectifying the Housing Unit where such repair, replacement or rectification cost is the result of a present or imminent danger to the physical health and safety of the occupants of the Housing Unit because the Housing Unit does not comply with Building Regulations that applied to the work at the time of construction, conversion or refurbishment in relation to the following:"*

The following list includes: *"Fire Safety".*

What the above means in practice is that cover will be provided under the warranty where the Housing Unit doesn't comply with Building Regulations that applied to the work at the time of construction if the breach causes a present or imminent danger to the physical health and safety of the occupants of the Housing Unit.

Section 8.5 of the policy booklet also explains the notification requirements for a claim under section 3.5:

> *"On discovery of any occurrence or circumstance that is likely to give rise to a claim under this section of the Policy the Policyholder shall as soon as reasonably possible:*
>
> *(i) Give written notice to the Scheme Administrator*
>
> *(ii) Take all reasonable steps to prevent further loss or damage;*
>
> (iii) *Submit in writing full details of the claim and supply all correspondence, reports, plans, certificates, specifications, quantities, information and assistance as may be required."*

Taking the above into account, and applying the fair and reasonable remit afforded to me under the powers of the Financial Ombudsman Service, I don't think SOL's position on notification of HOC3 is fair. I say this because, in my view, the terms of Mr C's warranty require the policyholder to notify the insurer of *any occurrence or circumstance* likely to give rise to a claim. I don't consider it can fairly or reasonably be interpreted to require leaseholders in a multi-occupancy building to identify the precise technical defect(s), the full extent of the problem, or to commission invasive, specialist reports at their own expense before notification of such an occurrence or circumstance can be accepted – as suggested by SOL and A.

While the insurer's arguments *might, arguably*, stand up to strictly technical scrutiny, when considered through the lenses of what the insurer's knew in October 2020, general fairness and the reasonable intention of the policy – to provide protection for leaseholders against the significant risks and costs associated with breaches of Building Regulations – I don't think their position stands up. I therefore consider it fair and reasonable to conclude that the October 2020 report from F amounted to notification of HOC3. This is because this report placed SOL on notice about systemic fire safety failures, including:

- poor or missing fire stopping
- breaches in compartmentation
- non-compliant riser arrangements
- inadequate ventilation
- unsafe escape corridors

This report clearly highlighted building-wide fire-safety defects resulting in an *"extremely dangerous"* situation, and that it was likely that further, as-yet-unknown problems existed in concealed areas. In these circumstances, I consider it would be reasonable for an insurer receiving a report of this nature to take proactive steps to understand the potential scale of the issues and associated risks, rather than placing responsibility solely on the policyholders to do so. Particularly given the seriousness of the issues in question, and the significance of the works required to properly investigate and/or remediate even just the issues already known at the time. Had SOL have done this promptly, I think it's likely the issues which became HOC3 would have come to light much sooner than they did, and before Mr C's policy expired.

SOL was put on notice in 2020 about building-wide, systemic fire safety issues, and that further expert investigation was necessary to establish the full extent of the problem. I think at this point the onus to carry out those further investigations reasonably shifted to the insurers. I say this because the notification requirements had, in my view, been met and so SOL's duty to assess the claim had been triggered. And because SOL (and A) have the expertise and resources to properly investigate significant, dangerous and costly breaches of Building Regulations leading to a present or imminent danger to the occupants. I don't think it is fair or reasonable for SOL to seek to rely on its failure to fairly investigate the wider issues more quickly as a reason to support its refusal of Mr C's claim.

I also think it's fair to say that the later-identified compartmentation failures on the second and third floors (HOC3) became visible when remedial works for the already-accepted fire-safety issues (HOC2) required opening up concealed areas. I consider it reasonable then to conclude that these discoveries were therefore a natural extension of the risks already identified and notified in the 2020 report. In my view, it is neither fair nor reasonable to conclude that they represent a separate, newly arising issue requiring separate notification. The underlying problem – deficient firestopping and likely non-compliant compartmentation throughout the building – had already been reasonably notified.

I say this because ultimately, the covered peril under section 3.5 is non-compliance with Building Regulations in relation to fire safety which results in a present or imminent danger. In this sense, both HOC2 and HOC3 stem from the same underlying cause – a failure to comply with the same Building Regulations in relation to fire safety, present from construction of the building. In my view, this is exactly the type of *"circumstance"* the policy contemplates – a building-wide fire-safety failure where the full extent could not be fully known until intrusive works or further investigations were carried out. The fact that the specifics of the construction issues later coined HOC3 were only fully diagnosed later doesn't alter my view that SOL was properly notified in October 2020, based on the F report.

In summary, the F report provided the first clear notification of the building-wide fire-safety failings that underpin the aspects of both HOC2 and HOC3. The report highlighted systemic breaches of Building Regulations and an *"extremely dangerous"* lack of fire integrity across the risers and service routes suggesting a single underlying insured peril likely to be present across the wider building. Although the specific upper-floor compartmentation gaps were only uncovered during later opening-up works, they were simply further consequences of the same regulatory non-compliance first identified in 2020. They would also likely have been discovered earlier had the insurers acted promptly and fairly in line with their own regulatory obligations under ICOBS 8.1.1R. For these reasons, I consider the fair and proper notification date for HOC3 is October 2020, not 2023.

It therefore follows that I think SOL will need to settle Mr C's claim for his proportion of the repair costs for HOC3. In calculating these costs, SOL must ensure any settlement it pays (or carries out) is sufficient to deliver a lasting and effective repair to the issues covered under the claim, based on repair costs calculated as at the date of this decision.

Gas inspection costs and buildings insurance premiums

I'm not intending to decide Mr C's claim for increased buildings insurance premiums or the ongoing gas-inspection costs in this decision. Instead, these items will need to be considered separately, and by SOL in the first instance, should Mr C wish to pursue them.

I would expect SOL to review Mr C's claim for these additional costs, subject to receipt of detailed evidence from Mr C, in the context of my above decision. I.e., that HOC3 was validly notified in October 2020 (when F's report was provided), not in 2023. Should SOL not accept responsibility for some, or all, of the costs, and Mr C remains unhappy with its position after receiving its final response letter, he can refer those concerns to the Financial Ombudsman Service as a new complaint, subject to our normal rules and timescales.

Service issues and compensation

I've next considered the impact that SOL's handling of the claim had on Mr C personally.

As set out earlier in this decision, SOL didn't handle the claim in line with the standards required by ICOBS 8.1.1R. The same service issues that affected Mr P also affected Mr C.

In particular:

- There were lengthy and avoidable delays at several stages of the claim, including extended periods where little or no meaningful progress was made.
- The responsibility for gathering and submitting evidence was repeatedly placed on the leaseholders, even after expert reports had already identified significant fire-safety concerns.
- Communication from SOL was limited and inconsistent, leaving Mr C without a clear understanding of how the claim was progressing or what further action was needed.
- And SOL's unfair approach to notification dates directly affected Mr C's ability to benefit from cover under his policy.

These failings meant Mr C owned properties in a building that experts had assessed as presenting a present or imminent fire-safety risk, and he faced prolonged uncertainty about whether the claim would be accepted, when essential remedial works would be completed, and what financial responsibilities might fall on the leaseholders. This reasonably caused Mr C considerable and avoidable worry and frustration — both about his financial exposure and about the safety and welfare of his tenants.

I'm mindful that, unlike Mr P, Mr C didn't live in the building, and hasn't described any personal circumstances that further elevated the impact of these delays. So, I've taken that into account. But Mr C still owned properties with serious fire-safety defects, still experienced extended uncertainty due to SOL's delays and poor communication and still faced anxiety about whether insurers would ultimately meet the cost of making the building safe.

Having weighed SOL's service failings alongside their specific impact on Mr C, I consider a compensation award of £800 to be fair and reasonable. This reflects both the seriousness and duration of the errors and the distress and inconvenience experienced by Mr C, while recognising the differences between his circumstances and those of Mr P.

Finally, I want to be clear here that this decision only strictly applies to Mr C's complaint against SOL. However, all parties are clear that Mr C's complaint has been taken forward as a lead complaint for all the leaseholders whose claims were declined by SOL based on the notification date. So, SOL may wish to consider applying what I've said to the other leaseholder's claims, to avoid the need for separate, identical complaints being brought to the Financial Ombudsman Service.

My final decision

For the reasons explained above, I uphold Mr C's complaint.

Society of Lloyd's must:

- Accept and settle Mr C's claim for HOC3 as at the date of this decision and, in line with the warranty terms, pay Mr C his proportion of that amount.

- Pay Mr C a total of £800 for the avoidable distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 April 2026.

Adam Golding
Ombudsman