DRN-5848709

The complaint

Mr and Mrs M have complained about the way an 'insurer' who is a member of The Society of Lloyds (SOL) has handled their claim under their home insurance policy.

Any reference to the insurer includes its agents.

What happened

The background to this complaint is well known to both parties and has been set out in great detail by Mr and Mrs M in their submissions to us. So, I do not propose to repeat it here.

Our investigator issued her view on what she considered to be the fair and reasonable outcome to the complaint. First of all, she explained that several businesses had been involved with Mr and Mrs M's claim. She then went on to acknowledge that, as Mr and Mrs M are unhappy with the actions of their insurer, their complaint to us is set up as if SOL is their insurer.

And she explained that she could only consider Mr and Mrs M's complaint up to the point SOL issued its final response on 28 March 2024. She then commented in some detail on what had happened and concluded that the insurer hadn't delayed the progression of the claim to the repair stage. She determined that this was because tenders were not obtained and sent to the insurer's loss adjuster by Mr and Mrs M's engineer until 28 July 2023. She did however acknowledge that there was a four-month delay by the insurer in appointing a solicitor to review the claim and decide on the way forward on its behalf. She also pointed out that there had been a delay by the insurer in settling and reimbursing what Mr and Mrs M had paid to cover invoices for services provided by their agents. She said SOL should pay Mr and Mrs M a further £250 in compensation for the distress and inconvenience they'd experienced due to these failings, in addition to the £400 the insurer had already paid.

Mr and Mrs M did not agree with the investigator's view on their complaint. And they made extensive representations in a document of 36 pages. As we're an informal service, not a court, I do not propose to set out these representations in detail in this final decision. However, I did set out Mr and Mrs M's main representations in my provisional decision dated 3 September 2025, which means both parties are aware of them already.

In my provisional decision I also set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I would firstly like to set out my understanding of why this complaint and this decision is about SOL, i.e. it is the respondent business. I do of course understand that Mr and Mrs M's claim has been dealt with by their insurer. And that the insurer is responsible for its own actions. But the insurer is a member of SOL. Under the Financial Conduct Authority (FCA) rules that cover complaint handling by regulated businesses, and our rules, I think this means Mr and Mrs M's complaint needs to be set up against SOL. And that any final decision I issue with SOL as the respondent business, which Mr and Mrs M accept, will still

be legally binding on the insurer.

I would also like to say again that we are an informal dispute resolution service, not a court. And I'd like to reassure Mr and Mrs M that I've considered all of their points, but I've only addressed those I consider relevant to the outcome of the complaint. This isn't meant as a discourtesy, it merely reflects the informal nature of this service.

I should also say that the key duty their insurer has in dealing with their claim is set out in the FCA Handbook in the Insurance Conduct of Business sourcebook at 8.1.1. and is as follows:

An insurer must:

1. handle claims promptly and fairly;
2. provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;
3. not unreasonably reject a claim (including by terminating or avoiding a policy); and
4. settle claims promptly once settlement terms are agreed.

Mr and Mrs M have obviously detailed what they consider to be numerous breaches of the insurer's duty when dealing with their claim. But I do not see the need to comment on all of these. Essentially, what are key are the abovementioned obligations and these are the main ones I have taken into account when considering the fair and reasonable outcome to Mr and Mrs M's complaint.

Before I address what I consider to be the key issues in respect of Mr and Mrs M's complaint and their response to our investigator's view, I should also make it clear that I am only considering Mr and Mrs M's concerns about what happened up to SOL's final response on 28 March 2024. However, I am not limiting my consideration to the complaint that SOL decided to consider as put to them by H. This is because I think it was clear at the point Mr and Mrs M submitted their complaint to SOL that they were not happy with the insurer's decision to appoint B. And this and the impact of it is clearly something that happened prior to SOL's final response. However, despite what Mr and Mrs M might think, I do not think I can consider the report actually provided by JC, as their concerns about the contents of this report clearly did not form part of their complaint to the insurer or SOL prior to SOL issuing its final response on 28 March 2024.

The first issue I consider key to Mr and Mrs M's complaint is the delays caused by the insurer and its agents due to their failings when dealing with their claim. And I agree with Mr and Mrs M's detailed analysis of the delays caused directly by the insurer and its agents. And I am persuaded that these did directly cause an overall delay to the settlement of their claim, which should not have happened.

However, I do not think if these delays had been completely avoided Mr and Mrs M's claim could ever have been ready for settlement within two years. I say this because a period of investigation was needed, as well as a period of monitoring. And this would have needed to continue after the trees on their neighbour's property had been removed. And I doubt all this could have been completed before the end of 2020, even if everything had gone completely as it should have from the outset. And, in view of the extent of the rectification work Mr and Mrs M's surveyor thought was required, I doubt very much that the works required to their home and associated costs could ever have been finalised, agreed and the works scheduled to start before the end of 2021.

This means that, as I see it, as at 28 March 2024 when SOL issued its final response there had been a delay of just over two years on Mr and Mrs M's claim. And this combined with some clear and obvious failings by the insurer and its agents in settling invoices paid by

Mr and Mrs M would clearly have caused them a considerable amount of distress and inconvenience. This having been said, any insurance claim for damage caused by subsidence is a distressing and inconvenient experience, and by its nature can take up a great deal of the insured person(s) time.

I class the level of inconvenience Mr and Mrs M experienced due to the insurer's failings as being what we describe on our website as follows:

"substantial distress, upset and worry – even potentially a serious offence or humiliation. There may have been serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year. It could also be fair to award in this range if the business's actions resulted in a substantial short-term impact."

In our guidance we say this level of distress and inconvenience generally warrants a compensation payment of between £750 and £1,500. In Mr and Mrs M's case, I think the level of distress and inconvenience they experienced warrants compensation at the higher end of this scale. I say this because it went on for a period of over two years and involved a great deal of worry for them. And a great deal of effort on their part to get their insurer and its agents to address their concerns. This means I think they should receive a lot more compensation than the £400 SOL paid them as set out in its final response and more than our investigator suggested. I think they should receive £1,000 in total. This means I've provisionally decided SOL needs to pay Mr and Mrs M a further £600 for the distress and inconvenience they experienced due to the delays on their claim up to 28 March 2024.

I do not consider it would be fair and reasonable for Mr and Mrs M to receive any compensation for the cost of their professional time spent dealing with their claim and complaint or for any secretarial costs they have incurred. This is because I do not think they are financial losses that flow directly from the insurer's failings. Rather, I think they have resulted from choices Mr and Mrs M made as to how to use their time and to enlist support. In my experience, very few people have access to secretarial support or can afford to pay for it. And very few people can deal with personal claims or complaints in their work time.
I should also say that, as Mr and Mrs M will no doubt have seen from the FCA rules, it is not my role to direct a business to make changes to their processes or direct them to take steps to make sure they do so or do not treat other customers in a certain way. So I will not be instructing their insurer or SOL to do anything other than what I consider they should do as part of the fair and reasonable outcome to this complaint.

Turning now to the appointment of B, whether this was appropriate and – if it was not – the impact on Mr and Mrs M and the fair and reasonable outcome to this aspect of their complaint.

I should say at the outset that I think the insurer's decision to appoint a firm like B so late in the day, after its loss adjuster had essentially agreed settlement of Mr and Mrs M's claim, subject to a couple of further items needing quantification, was highly unusual. SOL has not explained why the insurer decided to do this, although I suspect it was due to changes around who was assessing and dealing with outstanding claims. And I suspect it was the concern with the likely cost of settling the claim that led to B's appointment and its decision to appoint JC. I can of course understand this, as no insurer wants to pay more on a claim than they are obliged to pay. And, if the insurer felt its loss adjuster may have got it wrong in terms of his assessment of the extent of the damage caused to Mr and Mrs M's home by subsidence, I can see why the insurer would have wanted to check this. Notwithstanding the fact it would feel very unfair to their customers and the fact that it was their agent who had managed the claim for them all the way through and essentially agreed the way forward.

However, I do not consider in appointing B the insurer treated Mr and Mrs M fairly and acted

in accordance with its duty under ICOBS 8 as mentioned above. I say this because their claim had not been handled promptly or fairly and B's appointment delayed it further. And, as far as I am concerned, it can't be fair to a customer to appoint a solicitor to scrutinise a claim so far down its course, when the loss adjuster that an insurer has appointed has handled it all the way through and is happy with the settlement proposal put forward, subject to a couple of issues around quantification of parts of the claim. I also think it was inappropriate for the insurer to ignore the fact that – essentially – settlement terms had already been agreed and that B's appointment meant that there would now be a further significant delay on the claim.

So, I need to decide the fair and reasonable outcome in light of what I consider to be the inappropriate decision by the insurer to appoint B and the consequences of this. But I consider I need to balance this against the fact that the insurer did have a genuine concern about the size of the claim and, seemingly, a concern about what its loss adjuster had agreed. In view of this, I do not consider it would be fair and reasonable for me to simply direct the insurer through a legally binding decision against SOL to settle the claim as Mr and Mrs M have suggested. But equally, I do not consider it would be fair to put them in a mediation process without them having some element of control in it.

So, what I've provisionally decided as part of the fair and reasonable outcome to Mr and Mrs M's complaint, is for Mr and Mrs M to be given the opportunity to put forward three expert firms of surveyors/structural engineers who can provide an individual with qualifications that SOL require who can provide an expert report on the damage to their home and state specifically what parts of the damage has most likely been caused by subsidence. SOL can then choose whichever firm it wants from these three firms to provide such a report. Once the report has been provided SOL will need to reconsider Mr and Mrs M's claim in light of it. In doing so, SOL must take into account the previous specifications provided to and agreed by G excluding any repairs included that the report states are not needed as a result of subsidence. SOL must cover the cost of providing this report.

I appreciate Mr and Mrs M might want me to direct that SOL settle their claim for any damage in the report identified as caused by subsidence. But that would essentially make the view of the expert legally binding on SOL. And I do not consider that would be appropriate. Especially, as if there was a dispute around SOL's approach having received the report, it would be unlikely that it would be a complaint we could consider. This is because it would most likely be viewed as a complaint about SOL's failure to comply with an ombudsman's decision, as opposed to a complaint about a regulated activity that had been carried out by SOL/the insurer.

I am also mindful of the fact that the insurer's decision to appoint B at such a late stage, which in itself was unfair and really only due to what seems to have been concerns about the loss adjuster it had itself appointed caused Mr and Mrs M a great deal more distress and inconvenience. And I consider this also warrants a further compensation payment of £250. This makes the total further amount I think SOL needs to pay Mr and Mrs M in compensation for distress and inconvenience £850.

My provisional decision

For the reasons set out above I've provisionally decided to uphold Mr and Mrs M's complaint and require The Society of Lloyd's to do the following:

- *Allow Mr and Mrs M the opportunity to put forward three expert firms of surveyors/structural engineers who can provide an individual with the qualifications that*

Society of Lloyd's set out they require. Society of Lloyd's must then choose one of these firms and ask it to appoint a suitably qualified individual to provide an expert report on the damage to Mr and Mrs M's home and state specifically what part of the damage to it has most likely been caused by subsidence. Once the report has been provided Society of Lloyd's must reconsider Mr and Mrs M's claim in light of it. In doing so, I expect Society of Lloyd's to take into account the previous specifications provided to and agreed by G, excluding any repairs included that the report states are not needed as a result of subsidence damage.

- *Society of Lloyds must bear the full cost of this report being provided.*

- *Pay Mr and Mrs M a further £850 in compensation for distress and inconvenience.*

I gave both parties until 17 September 2025 to provide further comments and evidence in response to my provisional decision.

Mr and Mrs M have responded to say that in principle, if SOL accepts my provisional decision, they also wish to accept it. However, they would like the arrangements which I set out provisionally for the instruction of an expert to be set out in my final decision in more detail. They have said this is because after the insurer appointed B, B failed to properly instruct the expert they engaged. So it would be unreasonable to expect them to rely on the insurer drafting accurately and objectively the instructions for the expert. Mr and Mrs M have also said that the expert instructed should owe a legally enforceable duty to perform their role competently, objectively and fairly. In view of this, they would like the expert to be jointly engaged by them and the insurer. Mr and Mrs M have suggested what they consider to be a reasonable set of requirements for the instruction of the expert.

SOL has provided further comments. I will not set these out in detail, however I have fully considered them. In summary, it has said that it is concerned that I have accepted Mr and Mrs M's testimony on the sequence of events, rather than review the detailed timeline it provided with its file submission. It has now provided a detailed timeline from the loss adjuster (G) who acted for the insurer and highlighted several reasons why it doesn't think this and the other evidence it has provided supports my view that the insurer and its agents caused avoidable delays on Mr and Mrs M's claim. It has disputed my view that if everything had gone as it should have done, remedial works could have started around the end of 2021. In doing so, it has pointed out that Mr and Mrs M's surveyor did not confirm the property was stable after the removal of the neighbours' trees until October 2022. SOL has also pointed out that Mr and Mrs M disputed suggestions by G as to the cause of the damage and the remedial work necessary, including underpinning. And that this delayed matters unnecessarily.

In essence SOL thinks it was Mr and Mrs M that caused the avoidable delays on their claim up to the point B was appointed, as opposed to the insurer and its agents causing them. SOL has also said the reason why B was appointed was clear from the insurer's Stage 1 response to Mr and Mrs M's complaint, which stated it was because of a substantial increase in the amount being claimed. And it does not agree it was inappropriate for the insurer to appoint B. And it has disputed my view that – essentially – settlement of Mr and Mrs M's claim had been agreed at the point it did this. Although, it does accept there was an avoidable delay in the insurer appointing B, but it thinks the compensation it has paid for the distress and inconvenience this caused Mr and Mrs M is adequate.

In summary, SOL doesn't agree with the further amount of £850 I suggested in my provisional decision in compensation for the delays caused by the insurer and its agent prior to and because of its appointment of B.

SOL has also raised a concern that the insurer must allow Mr and Mrs M to put forward three expert firms, as its understanding from previous cases with us is that the insurer would normally provide details of three expert firms, as opposed to the insured. And by switching this round it feels I am placing a greater burden on Mr and Mrs M. Plus, it thinks it is likely to impact the timescales as it will be more difficult for Mr and Mrs M to find suitable experts. In any event, it sees no reason for a further independent expert to be appointed, as at the time of its final response B had arranged for a surveyor to attend Mr and Mrs M's property and provide a report. And, at the time Mr and Mrs M submitted their complaint to us discussions were still taking place in an effort to reach an agreement on the way forward.

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, it remains my view that the outcome I set out in my provisional decision is the fair and reasonable outcome to Mr and Mrs M's complaint.

I have noted SOL's comments. However, while I accept that some of Mr and Mrs M's actions did cause delays, I think they were largely as a result of their concerns with the approach adopted by G initially and his suggestion that the damage to their home could be due to a cause other than subsidence. And because of their frustration with the lack of communication and action by the insurer and its agents at times.

I have studied the timeline provided by G and it actually reinforces my view that it and the insurer could have progressed the claim more quickly. I say this because I think it should have carried out the investigation necessary to establish the cause of the subsidence to Mr and Mrs M's home sooner. Whereas, in my opinion, it took too long for it to confirm the next door neighbours' trees were the likely cause and arrange for them to be removed. I think it should have done this more quickly, irrespective of Mr and Mrs M's view on the likely cause of the subsidence. It is always hard with a subsidence claim where there are ongoing disagreements between the parties on the likely cause of the damage and the remedial work required, to work out what the timescale for dealing with it would have been if everything had gone as planned. But, I still think it is reasonable to say that if the insurer and its agents had handled the claim as it should have done the insurer should have been in a position to approve remedial works by the beginning of 2022.

I have also noted what SOL has said about the reason the insurer appointed B. I did of course appreciate that it was due to the likely cost of the claim. But, I think the likely cost should have been obvious to it for some time before the loss adjuster sought approval on one of the tenders put forward by Mr and Mrs M's contractor. And it seems from comments in the notes and emails SOL has provided that the insurer had not picked up the likely cost of settlement was a lot higher than had originally been thought because its reserve for the claim in the system had not been updated. And, I appreciate the insurer had not actually agreed settlement of Mr and Mrs M's claim at the point it appointed B. But its loss adjuster was – at this point – seeking approval of the tender he had said he was happy with. So, essentially, the insurer seems to have lost confidence in its loss adjuster, despite the fact it had been handling the claim for several years. And this is why I consider the insurer's decision to appoint B was unusual. It was also unexpected so far as Mr and Mrs M were concerned. These are the reasons why I do not consider the insurer treated Mr and Mrs M fairly and complied with its obligations in doing so.

In the circumstances, it remains my view that the insurer and its loss adjuster did cause avoidable delays on Mr and Mrs M's claim prior to appointing B and that this warrants a further compensation payment of £600 to compensate Mr and Mrs M for the distress and

inconvenience this caused them. I also think the unusual and unexpected appointment of B caused them further distress and inconvenience and that this warrants a further compensation payment of £250.

Turning now to the appointment of an expert as the way forward. I still think this is fair bearing in mind G had essentially agreed to the extent of the work required to repair the damage to Mr and Mrs M's home. I appreciate SOL's point that normally the Financial Ombudsman Service suggests the insurer should put forward three experts for the insured to choose from. But I believe that due to the unusual nature of Mr and Mrs M's case, in particular, the insurer's late appointment of B, that it is appropriate for Mr and Mrs M to put forward the experts in this particular case. I am also mindful of the fact it does seem that the surveyor B appointed could have been better briefed and provided with more comprehensive instructions. So, with this in mind and the clear desire of Mr and Mrs M to suggest three experts, I think it is the right way forward in this case.

I've noted Mr and Mrs M's detailed suggestions on the requirements that should go with the appointment of the expert. However, while I found them helpful, I do not think they need to be exactly as they have suggested. And I think the insurer should be able to draft the instructions for the expert with Mr and Mrs M being given the opportunity to approve them. This is because the insurer is going to reconsider Mr and Mrs M's claim in light of them, so I think it is best it decides what needs to be included, subject of course to Mr and Mrs M's input.

Putting things right

For the reasons set out above and in my provisional decision, I uphold Mr and Mrs M's complaint and require Society of Lloyd's to do the following (my reference to Society of Lloyd's includes the insurer):

- Allow Mr and Mrs M the opportunity to put forward three expert surveyors/structural engineers with the qualifications that Society of Lloyd's sets out it requires. Society of Lloyd's must then choose one of these experts to provide a report on the damage to Mr and Mrs M's home and state specifically what part of the damage to it has most likely been caused by subsidence.

- Once the report has been provided Society of Lloyd's must reconsider Mr and Mrs M's claim in light of it. In doing so, it must take into account the previous specifications provided to and agreed by G, excluding any repairs included that the report states are not needed as a result of subsidence damage.

- Meet the full cost of the abovementioned report.

This is all subject to the following:

- The expert must be engaged jointly between the insurer and Mr and Mrs M.
- The insurer must send Mr and Mrs M a list of the qualifications which the expert must have within 14 days of us telling SOL they have accepted this decision.
- The insurer must select the expert to be appointed and tell Mr and Mrs M who it is within 14 days of them providing it with the details of three experts.
- The insurer must send the draft instructions for the expert to Mr and Mrs M for approval at the same time they let them know the expert it has chosen.
- If Mr and Mrs M refuse to approve the instructions, the insurer must enter into discussions with them and agree them within 28 days. This is subject to Mr and Mrs M and the insurer acting reasonably.

- Mr and Mrs M should engage the expert jointly on their and the insurer's behalf within 28 days of the instructions being agreed.

- Pay Mr and Mrs M a further £850 in compensation for distress and inconvenience.*

* Society of Lloyd's must pay the compensation within 28 days of the date we tell it Mr and Mrs M accept my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I uphold Mr and Mrs M's complaint about Society of Lloyd's and require it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 October 2025.

Robert Short
Ombudsman