

The complaint

Mr S is complaining about the way Society of Lloyd's ('SOL') has handled a claim he made on his commercial property insurance policy.

SOL has used a number of agents to handle the claim on its behalf. But for ease of reference I shall refer to any of the agents' actions as being done by SOL.

What happened

In November 2023, after Mr S's tenants vacated the property, his agent discovered the property in a poor state with a lot of damage caused. Mr S had had a history of non-payment from the tenants, resulting in a court order requiring them to repay the missed rent through a payment plan.

In February 2024 Mr S contacted SOL to claim for the damage. SOL asked him to provide information to validate the claim. Following this it said it thought the majority of damage was malicious damage, but some of it was caused by an escape of water. However, it said it considered each piece of damage to have happened at a separate time, so it said it would charge separate excesses for each area of damage.

Mr S didn't think SOL was being fair. He said the tenant had deliberately caused all the damage and believes it all happened at around the same time. SOL later said it would only charge one excess and would consider all the damage under malicious damage. However, it said the terms of the policy capped its liability to £20,000. So it said it would pay this, less his excess.

Mr S also looked to claim for his lost rent. He said he'd lost a significant amount in rental income due to the tenants not paying rent for around a year and then because the property isn't rentable because of the damage the tenants caused.

SOL said the policy covered rental losses where the property became uninhabitable due to an insured event covered by the policy. So it said it covered lost rent arising from the malicious damage. But it said it didn't think all the damage was down to malicious damage. And it said it didn't cover lost rent incurred before the tenants left the policy. So it said it would pay Mr S £3,404.25 towards the lost rent. It calculated this as:

"£850 pcm less 11% management fee for 4.5 months – this is a 50% contribution as the rentability (or lack of) the property is due to some damage that is considered malicious and some damage that is not considered malicious."

Over the course of the claim Mr S raised several complaints saying the following:

- SOL had delayed the claim by asking for a series of unnecessary information.
- It wasn't fair he was being held liable for not being able to provide information when this was down to his agent with whom he'd had a breakdown in relations with.
- He'd left many telephone messages with the claim handler and other people asking for a call back, but the claim handler never called him back.

- He didn't accept SOL's settlement offer. He said it would cost him over £50,000 to fix the property and he expected SOL to pay this. He maintained that SOL should cover all his lost rent.

SOL maintained its settlement offer was what the policy covered. But it accepted that there were some small periods of inactivity and said it would pay Mr S £250 in compensation. Mr S didn't accept SOL's response and reiterated the settlement wasn't enough to fix the property.

I issued a provisional decision uphold this complaint and I said the following:

"I intend to partially uphold this complaint and I'll now explain why.

Claim settlement

Like all similar insurance policies, Mr S's insurance policy covers loss or damage to his property which arise from certain situations. And it also says he has to pay an excess on each claim.

Mr S initially complained that SOL wanted to treat each area of damage as a new event. I can see why SOL would have initially concluded that. It said the tenants couldn't have caused all the damage at the same time as the damage was spread throughout the house and also inflicted outside. And, in that case, it is arguably a new act of damage (insured event) each time it did so. But I don't find that would have been fair.

Mr S provided the inspection reports carried out in the two years preceding the tenants leaving the property. These show his agent inspected the property two months prior to the damage being discovered. And he said the property was in a satisfactory condition and there wasn't any evidence of the damage that was subsequently discovered. It seems the tenants have chosen to inflict damage to the property after this and I think it was a deliberate and intentional act. So I don't think it would have been fair to charge an excess per area of damage. I'm pleased to see SOL recognised this and has now only charged one excess. And I'm satisfied it rectified this in a reasonable timeframe.

Mr S has provided a repair estimate of around £53,000 to fix all the damage to the property. But Mr S's insurance policy, like most similar policies contain limits surrounding what can be claimed under each section of the policy. And in this case, it specifically sets out:

"We will not pay for any loss in excess of the amount specified below for Damage caused by malicious persons authorised to be in the Buildings at the time of the Damage.

Professionals £20,000 in respect of any one claim."

So the policy specifically sets out that SOL is not liable to pay more than £20,000 for malicious damage caused by professional tenants – which is what Mr S's tenants would be classified as. While all parties recognise it will cost a lot more than that to fix the property, the terms of the policy do not cover the full repair cost. I appreciate Mr S has said he can't fix the property for the amount SOL has said it would pay. But this doesn't mean SOL has to do more than what's covered by the insurance policy. And, as I said, it doesn't require SOL to pay more than £20,000 for malicious damage in an individual claim.

Mr S has also complained that part of the damage to the property was caused by a water leak. And he believes damage arising from that should be covered under escape of water – i.e. not be subject to the £20,000 limit. But I'm also conscious that he first said "No apparent water leak identified in the kitchen or bathroom - cause identified as intentional water damage - awaiting further details from the contractor."

It was later established that there was water coming from a radiator in the lounge. But I note Mr S specifically set out that he believes the tenant had intentionally damaged the radiator. Furthermore, I also note a contractor report that Mr S instructed set out the following:

"Radiators: Blunt force applied to the main body of the radiators and pipes affected. Water escape from the boiler and radiator resulting in a water leak. Initial inspection shows many areas of damage. This is also similar for the first-floor radiators."

So Mr S's own appointed contractor has set out that this was damaged deliberately. While I recognise that water has come out of the radiator – i.e. a form of escape of water – I have to think what's the proximate (primary) cause of the damage. And that's the deliberate act of damaging the radiator. It follows that I think it was fair for SOL to consider this damage to fall within malicious damage and, therefore, subject to the £20,000 limit.

Given this, I'm satisfied it was fair for SOL to say it's liability under the policy for the damage to the property was £20,000.

Lost rent

Mr S is unhappy SOL won't pay his full rental claim as he says this has put him in severe financial difficulty. The terms of the insurance policy say SOL will cover lost rent where the property is uninhabitable due to an insured event.

There are two core points here for SOL to be liable for lost rent; firstly the property must be uninhabitable and secondly this is down to an insured event. I recognise Mr S lost rent from the tenants not paying it. But the policy doesn't cover this. So Lloyds was entitled to say it wasn't liable for any lost rent from before the damage was discovered.

However, the policy does cover lost rent arising from the malicious damage. And I'm satisfied Mr S wasn't able to rent the property out because of this. SOL has said the malicious damage was only part of the damage the property suffered. It said some of the damage wasn't caused by an insured peril – it believes it was down to poor maintenance and wear and tear. And for this reason it said it would only pay 50% of the loss of rent claim. While I accept that some of the damage was down to wear and tear or not covered by the policy (in respect to the external damage), I think it's the internal malicious damage that primarily rendered the property uninhabitable.

I'm also conscious that the inspection report said the property was in a satisfactory state two months prior to the damage being discovered. The inference from this is that the property was still habitable prior to the tenants vacating it. So I think the malicious damage was the primary reason Mr S can't rent out the property. It follows, therefore, that I don't think it was fair for SOL to say it was only liable for 50% of the rent.

However, it doesn't automatically follow that SOL is liable for all of Mr S's lost rent. It's a common principle of law that there is a duty upon an individual to mitigate their losses. In respect to an insurance claim they must take reasonable steps to prevent further damage or increase their loss. I don't think Mr S has done this.

Firstly, I can't ignore that it took Mr S around three months to refer his claim to SOL. He was incurring a loss of rent during this time and clearly the delay in referring his claim to SOL increased these losses and he would have known this. So I don't think he took reasonable steps in the delay in reporting the claim.

SOL then clearly set out the claim settlement in August 2024, but Mr S didn't act upon this. I recognise Mr S says he couldn't afford to fix the property for the amount SOL said it would

pay. But, for the reasons I set out above, I don't consider SOL to have acted unreasonable.

It seems to me that the loss of rent Mr S has incurred after this is because Mr S wasn't in a position to fix the property as he wasn't fully insured for all the losses. I consider this to break the chain of causation and I think it's for this reason that Mr S continued to suffer a loss of rent. Other than allowing for a period of time to fix the property (which I shall address later in the decision) I don't think SOL is liable to cover any loss of rent Mr S has incurred after this point.

So I've now thought about what SOL should cover in lost rent. SOL has agreed it's liable for the time it would take Mr S to fix the property and I agree with that. But I think it's also liable for the time it took to deal with the claim.

I acknowledge SOL has highlighted Mr S and his agent caused delays in the handling of the claim as there were some long periods of time where he didn't provide the information it asked for. However, it should have been aware from the start that the policy was capped at £20,000 for malicious damage. And I think a reasonable inspection of the property would have highlighted the claim was clearly likely to exceed this.

I think SOL could have taken steps to work out the fair settlement figure sooner than it did. Instead it took around six months for it to set out the settlement figure. So I think SOL should pay six months loss of rent to cover this.

I also think it should cover loss of rent for the length of time it will take to fix the property. Neither party has given any material submissions around how long this will take to carry out. However Mr S has provided a quotation which says it would take around 45 days to carry out the work – i.e. nine weeks. However, some of these works are non-insured works, which SOL isn't liable for. But I also recognise that there will be a period of time to book the contractor in and also to wait for replacement goods to arrive. So I think SOL should pay a further three months of lost rent to account for the repair process.

So taking everything into consideration, I think SOL should pay Mr S nine months of lost rent. SOL calculated Mr S's rental income was around £756.50pm based on a number of assumptions. And I don't think Mr S has provided anything to show SOL's assumptions were unfair. He's set out that he could have obtained £1,250pm for the property and disagreed the estate agent fee was 11%. But he hasn't provided anything to support this. Given this, I think SOL should increase its loss of rent settlement to nine months of £756.50 – i.e. £6,808.50.

Customer service

SOL has acknowledged there were some minor periods of inactivity on the claim, which I agree with. Mr S has said SOL unnecessarily delayed it by asking for a lot of unnecessary information. But insurers are entitled to validate any claim and I don't think the information that SOL asked for was unreasonable.

That said, I do note that Mr S frequently asked for the claim handler to call him, but, other than an initial telephone call, I can't see that she ever did. I do think part of Mr S's upset with the claim stems from a lack of understanding. And I think this could have been addressed with a telephone call. I think it's likely he still would have been unhappy with the settlement given he's set out he can't carry out the works needed for the amount the policy covers. But he would have at least had a better understanding of why SOL was paying what it did.

So it is right that SOL pays Mr S compensation. However SOL has already said it would pay Mr S £250 in compensation. And I think that's fair compensation in the circumstances. So I don't think it needs to pay more than that."

SOL didn't agree with my provisional decision. It provided a detailed response, but in summary it said the following:

- It disagrees it should have known from the start it was only liable to pay for malicious damage. It said it had tried to support Mr S by looking at other avenues to settle the claim – such as whether any of the damage would be covered under escape of water coverage.
- It highlighted there were several discussions with Mr S surrounding the policy coverage. It said it initially looked to settle under multiple insured events, but Mr S said it was all malicious damage. But he later said he considered there to be two events – malicious damage and escape of water.
- It said the investigations in the claim were done in the best interest of Mr S who was looking to gain maximum coverage from the policy. So it thinks it's unfair I've required it to pay loss of rent as compensation for the time it took to settle the claim.
- It said it had already taken into consideration the time it would take Mr S to repair the property in its loss of rent settlement. And it said Mr S has already had plenty of time to fix the property.
- It said it believed my conclusion that the malicious damage was the primary cause of the property being uninhabitable was based on assumption rather than fact. It maintained the property was not rentable because of both claim related damage and non-claim related damage. It said it was very difficult to determine in a monetary way how much each area of damage costs in terms of rent not paid. Instead of estimating how much (how long it would take to repair that area) each area of damage impacted the rentability of the premises it thought it was seen as faster and fairer to offer a 50% contribution to the loss of rent claim.
- It believed the loss of rent I was proposing would place Mr S in a significantly better position but for any error made by SOL.

Mr S didn't respond to my provisional decision.

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.

I've taken SOL's comments into consideration. But I've come to the same conclusion as I did in my provisional decision.

Firstly, I need to set out that I'm not requiring SOL to pay loss of rent for six months as compensation, but because I consider it's required to do so under the terms of the policy. For ease of reference I shall set out what the policy covers here:

"5. Loss of Rent and costs for alternative accommodation

Following an Insured Event which results in a valid claim under this Policy We will pay You:

- i) *loss of rent if the Buildings become uninhabitable or partly uninhabitable and cannot be let, or*
- ii) *if necessary the cost of alternative accommodation for Your tenant*

So, as I set out in my provisional decision, the terms of the policy cover Mr S where the property is uninhabitable because of an insured event. I consider the policy says SOL should cover Mr S's lost rent during the time the claim reasonably took; this will include the time taken to issue a claim settlement and then to allow a time to carry out the works.

I still maintain six months was longer than one would reasonably expect to finalise the settlement. I agree that SOL was looking to settle the claim on the best possible terms. And this required discussions with Mr S around what the policy did and didn't cover. But, as I said before, I think SOL could have been more pro-active in the way it progressed the claim. That said, regardless of this, this was the time taken to settle the claim. And, as I said, I think the policy covered loss of rent while the claim was ongoing. So I still think SOL should cover the lost rent during this time.

SOL has rightly set out that some of the damage to the property isn't covered under the policy. But I don't agree this means that it's only liable for 50% of the loss of rent. The policy wording, written by SOL, says SOL will cover any loss of rent arising from an insured event. Further to this, the policy doesn't specify that SOL is only liable for a percentage of the lost rent if there is other damage. As I said, it simply says that SOL will cover Mr S's lost rent if it's down to an insured event. And there isn't anything in the policy to show it can reduce this liability if there was another lesser cause.

The insured event in this case is malicious damage. I remain of the opinion that the majority of the damage in the property is internal malicious damage. SOL has said that I have come to this conclusion on the basis of assumption, rather than fact. But it is always this Service's role to decide what's most likely.

In thinking about this I've considered all the evidence provided by both parties – in particular the photographs of the damage and the repair invoices. As I said in my provisional decision, there is damage that's not covered by the policy. But I also don't think a lot of this damage would render the property *uninhabitable*. However, irrespective of this, SOL isn't liable for any loss of rent incurred during the time to fix that. But the photographs show extensive internal damage caused maliciously. This is, in my mind, the primary reason why the property is uninhabitable. So I remain of the opinion that the conclusion I reached in my provisional decision is fair.

SOL has rightly said that Mr S has had ample opportunity to fix the property. And I agreed with this in my provisional decision as I said SOL isn't liable for the time period where Mr S has chosen to not repair the property. I've only required it to pay loss of rent for the time SOL took to issue a claim settlement and allowing for a period of time for Mr S to carry out the insured related works. And, for all the reasons I set out in my provisional decision, I'm satisfied the nine month period I set out is fair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Society of Lloyd's to do the following to put things right:

1. Increase its loss of rent settlement to £6,808.50
2. Pay 8% simple interest on any rental payment still owed to Mr S as above from 16 August 2024 until it pays it; and
3. Pay Mr S £250 in compensation, if it hasn't already paid this.

I don't require Society of Lloyd's to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 December 2025.

Guy Mitchell
Ombudsman