

The complaint

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

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

What happened

On 14 November 2025 I issued a provisional decision explaining why I was intending to uphold this complaint. This is what I said in the provisional decision:

What happened

Mr P owns a flat in a building comprised of 34 flats that was completed on or around 2010. SoL underwrites the warranties for 13 of those flats. Another insurer, A, underwrites the warranties for the other 20 flats. It seems that one of the flats does not benefit from any warranty. The warranty provides cover for Mr P's flat, and for his proportion of responsibility for the common parts of the building as set out in his lease.

As it is the leaseholders who are covered by their own warranties, in relation to their flat and their proportionate responsibility for the common parts as set out in their leases, this Service asked R to provide consent from specific policyholders to our consideration of their complaints. While other leaseholders have complained about this claim, Mr P was the only SoL policyholder who had his claim accepted. This decision therefore only addresses Mr P's complaint and his specific circumstances.

Complaints from another leaseholder, Mr C, have also been notified to SoL and to A. This Service has considered, under separate complaint references, Mr C's two complaints as lead complaints for all of the other leaseholders who had their claims declined on the basis that they were made outside of their period of cover. I will issue separate decisions, for Mr C, in relation to those complaints, and for the other leaseholders who have provided their consent. Mr P has also brought a further complaint to this Service in relation to ongoing costs arising from the delays in settling the claim. I will also consider that complaint in a separate decision.

As there are a number of other complaints arising from the way this claim has been handled by SoL and A, I have set out the background to the complaint in detail, and I will include, in this provisional decision, my reasons for deciding some of the issues that are common to all of the complaints. This will include what I consider to be the reasonable date of notification for all of the claims, and whether the repairs to the gas pipework should fairly have been included in the insurer's limited acceptance of the claims.

R, the Managing Agent for the building, submitted a claim under the warranty to A in

relation to concerns with the installation of the gas pipework on 31 May 2019. The following issues were mentioned in relation to the 2019 claim: the gas pipes to flats were deemed as unsafe for use/occupation; the gas pipes were incorrectly installed and not properly clipped; joints and pipework were built into concrete so not accessible; gas pipes had not been supported within the communal cupboard, the connections had not been correctly cut; the plastic insulation around the pipes had been removed leaving the stainless steel pipe exposed and the added silicon tape had not been added on to the connections.

A's claim handlers initially responded to the notification of the claim in 2019, and A communicated with leaseholders, including Mr P, as well as with R. So, throughout this decision I will be referring to reports commissioned by A and communications from A, where relevant, even though A is not the underwriter of Mr P's warranty.

R provided A with further evidence in support of the claim which included a quotation and brief report dated 26 March 2019, provided by a company I will refer to as 'S'. The report noted that the existing pipework ran through the riser which it said was very bad practice. It also confirmed that the ceiling in each of the floors needed to be opened and access provided to each of the flats. Among other things it said it was very important to address fire- proof guards on each floor and suitable riser ventilation.

On 13 June 2019, R sent further evidence to A in support of the claim. This included reports from plumbers who had attended the building and had advised that the gas pipes were currently unsafe and installed incorrectly. They also said that the remedial work would be extensive as all the flats and the common areas would be affected and they would essentially have to start again with the gas pipe installation. R asked A to confirm whether cover would engage under the warranty for those issues, at this stage.

A's claim handlers, who I will refer to as 'M' declined the claim on A's behalf on the basis that R hadn't evidenced that 'Major Damage' had occurred. On 6 May 2020, SoL's loss adjuster, asked R to provide a report identifying the defect causing the issue.

On 18 May 2020, SoL's loss adjuster explained that the claim was being assessed under Section 3.5 of cover. However, to confirm that the problem reported is the result of a present or imminent danger to the health and safety of the occupants, it requested that R engage the services of a suitably qualified registered gas installer or professional, to provide a report so SoL could be in an informed position regarding policy liability.

R arranged for a Building Engineering Services Condition Survey report to be provided by a company I will refer to as 'F' and provided that to SoL on 20 October 2020. F's report was issued following a non-intrusive inspection of the condition and installation of the gas pipes. That report referenced concerns about fire stopping in relation to sealing of pipes that ran through walls and floors in the service / riser cupboards. It confirmed that the gas pipework distribution services had not been installed in compliance with Statutory Regulations, Codes of Practice, and British Standards. The report highlighted a number of specific concerns including: no means of ventilation to internal gas meter enclosures; non-compliance of gas pipework running within each emergency escape corridor; lack of ventilation within riser cupboards; and lack of fire integrity and non-compliance for installation of gas stainless steel pliable corrugated tubing.

With regard to the gas meter enclosures, the report said that the gas meter rooms 1 and 2 were both internal and within a sealed room with no means of ventilation to atmosphere. It said that it was 'an extremely dangerous situation' which required 'immediate action in order to avoid the potential risk of accumulation of gas in a sealed area'. R was informed of these concerns and was advised that daily monitoring and immediate action was required.

In relation to the installation of gas pipes and fire stopping requirements, F said that the riser cupboards through which the pipes travelled through the building, were separated at each floor level. But, ventilation grills had been cut into the riser cupboard fire doors, breaching the fire compartmentation. With regard to the fire stopping of the pipework as it passed through compartment walls and floors, F said an expert opinion needed to be obtained to confirm if that had been done correctly in the building.

Thirdly, F identified that the fire stopping between the floors was very poor with large gaps showing, and the fire doors to the riser cupboards on each floor needed to be fixed. It said that each gas services riser was not ventilated to the atmosphere. F said that a building surveyor's opinion should be obtained on the integrity and compliance of the fire stopping.

F concluded that the entire gas distribution services needed to be overhauled, and the gas services system isolated at the incoming mains supply, shut down and made safe. It said that in the interim close monitoring of potential gas leakage needed to be implemented by R - in particular with the gas meter enclosures and communal escape corridors. F confirmed in the report that R was aware of the risk and had set up measures to safeguard against those risks.

On 26 February 2021, SoL wrote to R and advised that the claim under section 3.3 of the warranty had been rejected on the basis that the gas pipes were not part of the structure, and the definition of 'Major Damage' had not been met. With regard to R's claim under section 3.5 of the warranty in relation to non-compliance with Building Regulations, SoL briefly said that having reviewed all of the Building Regulations and approved documents, no cover would be provided. SoL explained that this was because there was no evidence to support that the property didn't comply with the specific Building Regulations that were applicable at the time of construction. SoL advised R that if it wished to submit further evidence regarding the claim, SoL would be happy to review that.

As SoL didn't receive any further communication from R, it closed the claim on 7 May 2021.

On 24 May 2021, a report was prepared for A, by a company I will refer to as SD, following its visual review of the condition and the extent of the protected service riser shaft and passive fire measures which conveyed the gas pipework and other services at the property. The purpose of the inspection was to review whether the fire safety measures were suitable and adequate.

In the executive summary of that report, it said: 'It has been clearly discovered that the materials and workmanship within the service riser and installation of the services using the service riser is considered in breach of Regulation 7. Furthermore, the findings clearly demonstrate the lack of care by the builder in this matter has put the building and its occupants in imminent danger'. The report noted that F's inspection of the gas installation had found that it did not meet statutory Gas Regulations nor its installation requirements.

In summary, the report said that the main fire safety concern was that the protected services shaft, which conveys gas pipework, doesn't meet fire safety requirements as it is inadequately ventilated through its entire length to outside air at the top and bottom. It also said that the services penetrating from the existing services shaft do not have adequate fire stopping measures.

The remediation works recommended by the report included, among other things: replacement of all fire door assemblies into the service shaft's openings; all service penetrations from the protected shaft to be adequately fire stopped; ventilation of the top of the shaft to the outside; additional fire rated ventilation ductwork to be installed at the bottom of the service shaft and room to allow for outside ventilation through and into the carpark with appropriate fire dampers at fire compartmentation boundaries; and fire stopping measures to be applied to all service penetrations in the car park and basement areas.

In October 2021, a Mechanical Building Services Condition report was produced by a company who I will refer to as Q, for the developer. It highlighted that some of the services were concealed within the fabric of the building, ducts, shafts, and ceiling voids which meant limited observations could be made on those parts of the installations. In the findings section of the report, it said that an inspection of the gas meter room, distribution routes, voids and risers indicate that the pipework installation and containment is below acceptable standards. It identified the key defects as: lack of ventilation to the gas meter rooms; inadequate fire stopping; inadequate ventilation of risers; gas pipework installation not fully in accordance with manufacturer's guidelines; lack of space and segregation in risers; and boiler flue outlets too close to vent outlets.

Following receipt of the report, the developer declined to instruct any remedial works and didn't engage any further with R in relation to the fire safety concerns.

Around this time, the insurer for the building threatened to withdraw cover if remedial works weren't carried out. So, in July 2022, R instructed a contractor, B, to carry out the following remedial works (among others) that were funded from the service charge:

- Undertake testing and commissioning and provide full gas safe certificates for gas risers;*
- Carry out repairs to the gas pipework as per manufacturer's instructions and wrap joints to ensure that any gas escapes will safely disperse;*
- Fit appropriate brackets and supports for the gas installation riser pipework within the shafts, ensuring that spacing between electrical and gas services is compliant with the appropriate regulation;*
- Install sleeves on pipework within the meter rooms passing through walls and into adjoining basement area;*
- Where the gas pipework enters each flat, seal the pipe in accordance with Gas Regulations;*
- Fit ventilation grills where necessary;*
- Complete all fire stopping work within the corridors up to regulation standards;*

- *Replace all existing doors and frames to shaft openings;*
- *Construct a permanent fire stopping seal to the ventilation shaft on all floors;*
- *Install correct venting through roof corresponding with structural shaft design;*
- *Incorporate corresponding ventilation with shaft design to basement car park; and*
- *Modify rooms in basement suitably to create fire stopping for all gas installation risers.*

On 8 August 2022, R appealed SoL's decision to decline the claim. A's loss adjuster advised SoL's loss adjuster that it had investigated further, and its expert had advised a scope of work that would address the imminent risk of safety to residents. That included altering the service cupboards on each floor into a protected and ventilated service shaft. It said that A was considering cover, and it was notifying SoL of that.

Two months later, on 10 October 2022, A's loss adjuster shared the report it had commissioned from SD in May 2021 with SoL's loss adjuster and again asked if SoL could confirm cover. SoL then instructed a report by its own experts, A2, who issued a report on 20 October 2022. SoL shared the findings of that report with A's loss adjuster on 29 November 2022. SoL didn't agree that all of the works quoted for were required. It asked for a copy of the full specification from R and said the required works amounted to (among other things):

- *Providing a suitably sized ventilation opening at roof level;*
- *Providing ventilation to the base of the shaft via fire rated ductwork which is vented to the outside air; and*
- *Removal and replacement of all existing fire doors set with 30 minutes fire resistance.*

A2 gave its opinion on the gas pipework in the October 2022 report and said that it was a stainless steel, semi-rigid gas piping system with a plastic outer sheath. It said that type of pipework and installation is acceptable once the protected shaft is ventilated. It agreed that the service shaft, as constructed, severely compromised the fire safety of the property. A2 explained that the presence of pipework conveying flammable gas presents a risk of gas build up in a confined space which could cause an explosion risk.

A2's report explained that the alterations to the fire doors had destroyed their integrity and could allow fire to spread from one compartment to another and comprise the common protected corridors, which are the primary escape route for individual apartment units. A2 confirmed that service penetrations in the walls of the shaft are inadequately fire stopped, and the shaft does not meet the requirements of a protected shaft and represented a serious risk to the safety of the building's occupants. The shaft compromised the compartmentation of the building, effectively negating the fire-resisting compartment elements over all as the shaft could allow fire to spread from one compartment to another via the compromised fire doors and/or inadequately fire stopped service penetrations which are present in the shaft. A2 concluded that the situation could result in rapid fire spread, which would represent a

significant risk to the occupants.

Following receipt of A2's report, A's loss adjuster commissioned a further report from SD which was provided on 13 March 2023. The report reviewed the information provided by R's contractor, B, and concluded that further fire stopping measures would be required to resolve the compartmentation issues identified on the second and third floors of the building. The report recommended further opening up and investigation work be carried out before an accurate scope of repairs could be drawn up. While some works had been carried out by B, there were still some defects that needed to be addressed in relation to the fire doors and fire stopping measures. B said that the main construction defect to overcome is to all levels of the building including the basement and car park where there is a lack of 60 minutes fire integrity between flats, communal corridors and service riser's shafts.

Six months after A2 had given its report to SoL, on 23 May 2023, SoL's loss adjuster asked A's loss adjuster for an update and was told that R had commissioned remedial works to the riser shaft without informing A. However, A accepted the works were broadly along the lines recommended by A's fire engineer. A explained that in carrying out the repairs, the contractor identified additional defects of internal compartmentation, mostly at the wall / roof interface. A's fire engineer inspected and agreed that there were defects to be addressed. A asked R to obtain quotes for remedial works.

Four months later, on 15 September 2023, A provided SoL with a further update on the cost information that R had provided with regard to the remedial works.

On 5 October 2023, SoL's loss adjuster said that they didn't have sufficient information to substantiate the sums involved in the remedial work to the second and third floors of the block and asked that it be raised with R.

On 24 October 2023, SoL's loss adjuster reported on the progress of the claim to date. They separated the claim into three separate heads of claim (HOC). HOC1 was for poorly installed gas services which had been declined. The report commented that some remedial work had been carried out to the existing installation. HOC2 was for lack of fire integrity / ventilation of service cupboards. The repairs had been carried out without the insurer's knowledge and SoL's instructions on those costs was awaited. HOC3 was for the additional remedial work required to the second and third floors of the building. SoL's loss adjuster said that further investigation was required to confirm the scope and cost of those additional repairs.

On 3 November 2023, Mr P complained to SoL about its failure to accept or deny liability, the lack of communication about the status of the claim, the length of time to process the claim and the lack of urgency regarding the seriousness of the situation faced by the occupants of the building. He said that all of SoL's efforts relating to the claim were spent on trying to avoid liability. Mr P explained that he had been trying to sell his flat since 2021 and following the arrival of his first child in April 2024, the need to move to a bigger property had increased. SoL considered Mr P's complaint and upheld it in part. It offered him £200 for the failure by the underwriters to keep Mr P updated. SoL explained that as of 10 January 2024, B had provided the breakdown of costs for works completed and the underwriters would shortly be in touch with Mr P with an update on his claim.

On 12 April 2024, SoL informed R that the underwriters had authorised a settlement offer for HOC2 in relation to the works that had been completed regarding lack of fire integrity and ventilation of service cupboards. With regard to HOC3, inadequate fire

compartmentation on the second and third floors of the block, SoL said that it needed B to break down the costs so they could be considered by the underwriters.

On 4 July 2024, after a number of requests for clarification of costs, SoL offered R a partial settlement for HOC3 for Mr P's proportion of the repair costs only, in the net amount of £14,697.27.

R then escalated complaints about the claim with this Service on 10 July 2024, on behalf of the leaseholders. In the complaint referral, R explained that in relation to HOC2, whilst the insurers assert this had been settled, it couldn't be signed off until HOC3 had been settled, and the fire stopping works completed, as they are intrinsically linked. R also explained that during the period between obtaining the 2019 reports and the 2020 reports it had asked for help from the insurers in recommending a company that was able to detail the specific defects in relation to the installation. But the insurers declined and said the burden of proof was on R to do that.

In addition, R said that the restrictions in place regarding COVID19 made it difficult to obtain the information requested by the insurers. In 2024, the insurers agreed to settle the firestopping aspect of the claim which they had rejected in 2019 and 2021. So, the insurers delayed accepting any responsibility for the fire stopping from 2019 until 2024 when they accepted liability for that aspect of the claim.

Mr P's complaint to this Service initially included his dissatisfaction with the initial claim decision, and the time taken for the claim to be investigated and answered. Mr P has also complained that the other leaseholders in the building have not had claims accepted and settled. As a result, he considers that no remedial works can be carried out.

In addition, Mr P also sought to complain about SoL's actions in relation to the building control sign-off process on the basis that sign-off was given, despite serious issues with the installation of the gas pipework remaining unresolved.

SoL objected to this Service considering Mr P's complaint on the basis that he had referred his complaint too late, following receipt of its final response letter. One of our investigators considered whether we had the power to consider all of Mr P's complaint points. She concluded that the majority of Mr P's complaint was referred in time; however, his concerns about the sign-off of the building couldn't be considered as they did not amount to a regulated activity. Neither party accepted our investigator's view so it was passed to an ombudsman for the jurisdiction issues to be decided.

My Ombudsman colleague, Mr Golding, issued a jurisdiction decision on 26 February 2025, explaining why we had power to consider only some of Mr P's complaint points. In summary he concluded that:

- The carrying out of building control services does not form part of a regulated activity that this Service has the power to consider. So, Mr P's concerns about that cannot be addressed here; and
- Mr P's concerns about the handling of, and decision on his claim were referred on his behalf, in time.

Our investigator then looked into Mr P's concerns about the way SoL had handled his claim and issued a view, partially upholding the complaint on 21 March 2025. In that

view our investigator concluded that:

- *The issues with the gas pipe installation are not covered by the warranty as they do not form part of the structure that is covered by the warranty; and*
- *SoL should pay Mr P £1000 compensation for the impact its delays in settling the claim have had on him.*

Mr P didn't accept our investigator's view. In response he said:

£1,000 compensation wasn't going to do anything to resolve the situation he is in;

- *The investigator had missed a key part of his complaint about SoL's actions when it declined the claim in 2019 and did not explain that a report from a qualified contractor would be required for a successful claim. It simply said more evidence was required. It wasn't until a further year had passed that it admitted a successful claim could be achieved with the help of a report carried out by a qualified contractor. This caused huge delays; and*
- *The other thing the investigator didn't address was that SoL has claimed throughout the process that gas pipes are not covered by Building Regulations. Mr P says that is incorrect. If the pipes were not fire stopped adequately as they travelled through the building and into each apartment, then he considers they would not meet the requirements of the Building Regulations relating to fire safety.*

Mr P has also provided additional information to demonstrate that the installation of the gas pipe work should be covered under section 3.5 of the warranty. He believes the inadequate completion of those works amounts to a breach of Building Regulations that would support a successful claim under section 3.5 of the warranty terms.

SoL also didn't accept the investigator's view. It said that the decision to decline the claim for the gas pipe work installation that was issued in February 2021 wasn't made in error, so it shouldn't be responsible to pay the £1000 compensation recommended by the investigator, for delays. SoL also said that the HOC2 claim was paid promptly once all required documentation was received and verified and a settlement offer was made in July 2024 to Mr P's representative in relation to HOC3, which hasn't been accepted. SoL maintains that fire stopping had only been briefly mentioned in F's report and the report advised that a fire stopping expert be consulted. SoL's view of the timeline is as follows:

- *The original claim was declined in 2019;*
- *SoL was formally instructed in October 2020 and declined HOC1 in February 2021;*
- *The managing agent has since completed the work, and the insurers have contributed their share of the costs.*
- *HOC 2, which related to 'Lack of fire integrity / ventilation of service cupboards' was paid in full although limited detail on the works carried out was provided; and*
- *An offer has been made for 1/34th of costs of rectifying the compartmentation*

issues which affect the upper floors, that were only identified in 2023.

As the parties haven't accepted the investigator's view on this complaint, the matter has been passed to me for a decision to be made.

What I've provisionally 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'm intending to uphold this complaint. I will explain why, under the headings: 'Notification of claim'; 'SoL's decision to decline the claim under section 3.3'; 'SoL's actions in validating and accepting the claim under section 3.5'; 'Separation of the claim into three heads of claim'; and 'Award for distress and inconvenience'.

Notification of the claim

When a potential claim arises, the onus of proof rests with the policyholder to show that damage has been caused by an insured peril which has caused them a specified loss. Once the loss has been demonstrated, the responsibility then moves to the insurers to either meet the claim or prove that an exception applies. For a claim to be valid, cover needs to be in force at the time of the loss.

In this claim regarding fire safety issues in a multi-occupancy building, a number of complexities have had to be navigated by the policyholders in proving the claim. As a multi-occupancy building, the cost of, and inconvenience to the occupants of having to carry out intrusive investigations into walls and ceilings needed to be justified by evidence supporting the existence of significant fire safety concerns. So, I consider it was reasonable that intrusive investigations weren't instructed by R at an earlier stage of the process.

In addition, as the concerns began to be investigated, other issues became apparent, which also fell to be covered by the claim. The lengthy period of this claim (dating back to 2019), and the periods of restrictions that had to be adhered to, during the COVID19 pandemic, have provided further challenges for the policyholders in establishing the extent of the defects caused by the insured peril, and the scope of works required to rectify the defects.

I have taken this into account when assessing the parts of this complaint that relate to the effective date of notification of the claim; whether the claim was reasonably considered to be a single claim or multiple claims; and whether the claim has been fairly and reasonably handled by SoL.

The Financial Conduct Authority has set out rules that insurers must follow on receipt of a valid claim from a policyholder. These rules are included in the Insurance Conduct of Business Sourcebook ('ICOBs').

ICOBs 8.1.1R says 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.

In order to answer Mr P's complaint about how SoL has handled his claim, I've first considered the likely date of notification of the claim, and the likely point in time by which Mr P had provided sufficient information to prove the claim. Having done so, I have next gone on to consider whether SoL's actions have satisfied the FCA's requirements set out in ICOBs 8.1.1R.

SoL's decision to decline the claim under section 3.3

Our investigator explained in some detail, why she wasn't persuaded that Mr P had a valid claim under section 3.3 of the warranty terms. I have reached the same conclusion as our investigator on this point. I will explain why.

Mr P's warranty is divided into different sections of cover which apply to different circumstances and different periods of the term of the warranty. Part of Mr P's claim (relating to the fire stopping issues with the gas pipes rising through the building and lack of wall to roof compartmentation) has been accepted by SoL under section 3.5 which I will address next. However, the part of the claim relating to the gas pipework has been declined.

As Mr P's claim was made in years three to ten of the warranty period, the 'Structural Insurance' section of the warranty is relevant to his complaint. Section 3.3 says that SoL will indemnify Mr P, the Policyholder, against all claims discovered and notified to SoL during the Structural Insurance Period in respect of the Housing Unit which has been affected by Major Damage. However, Major Damage refers to damage caused by a defect in the design, workmanship, materials or components of: the Structure (amongst other components).

This is where the gas pipework does not meet the requirements of section 3.3. The 'Structure' includes a number of elements of the building (including, for example, the foundations, load bearing walls, roof covering and so on) but does not include the gas pipework installed in the building.

So, SoL's decision to decline the gas pipework part of the claim under this section of cover was in line with the warranty terms and was fair in the circumstances.

SoL's actions in validating and accepting the claim under section 3.5

I've next considered Mr P's claim for cover under section 3.5 of the warranty which provides additional cover for approved inspector building control function. Mr P's certificate of insurance confirms that cover is applicable under section 3.5, which states that:

'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 list that follows includes 'Fire Safety' which is the relevant category applicable to Mr P's complaint.

The two key criteria the claim needs to meet for cover to engage under this section include:

- The Housing Unit does not comply with Building Regulations that applied to the work at the time of construction; and*
- The 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.*

As explained in the 'What happened' section above, SoL has considered Mr P's claim under three separate heads of claim. The first relates to the installation of the gas pipework ('HOC1'), the second relates to lack of fire integrity and ventilation issues in the riser cupboards and protected services shaft ('HOC2'), and the third relates to inadequate fire compartmentation on the second and third floors of the block ('HOC3').

The first head of claim has been declined, the second has been settled, and a settlement offer has been made to Mr P with regard to his share of costs for the third head of claim. I will address the insurer's decision to treat the three parts of the claim separately, later in this decision. However, for the purpose of explaining whether each part of the claim meets the requirements for cover to engage under section 3.5 of the warranty, I will consider each head of claim separately.

SoL did not initially accept that the claim arose from a failure to comply with Building Regulations. In the decline letter dated 26 February 2021, SoL briefly explained that having reviewed all of the Building Regulations and approved documents, no cover would be provided as there was no evidence to support that the property didn't comply with the specific Building Regulations that were applicable at the time of construction. No specific reference was made to any of the Regulations and no reasons were provided as to why there was no breach of Building Regulations.

SD's report (instructed by A) dated 24 May 2021, explained that the purpose of the inspection it had carried out was to review that the passive fire safety measures provided comply under Schedule 1 of the Building Regulations 2010 and verify if suitable and adequate fire safety measures have been provided in accordance with Regulation 7 (requiring that building work must be carried out in a workmanlike manner using adequate and proper materials). It also referenced Guidance on Regulation 7(1) which is given in Approved Document 7 and guidance on Regulation 7(2) which is provided in Approved Document B.

Regulation 7 provides that building work shall be carried out –

(a) with adequate and proper materials which

i. are appropriate for the circumstances in which they are used,

ii. are adequately mixed or prepared, and

iii. are applied, used or fixed so as adequately to perform the functions for which they are designed; and

(b) in a workmanlike manner

Any work on gas pipework in a building must adhere to the standards required by Building Regulations.

The guidance contained in Approved Document B addresses a number of matters relevant to Mr P's claim including the provision of appropriate means of escape in case of fire from the building, provision of compartmentation, ventilation of protected shafts, and protection of openings for pipes and fire stopping.

F's report highlighted issues with the installation of the gas pipework throughout the building, including in relation to sealing of pipes that ran through walls and floors in the service / riser cupboards, lack of ventilation within riser cupboards, non-compliance of gas pipework running within each emergency escape corridor, and breaches of fire compartmentation.

So, while F recommended further investigations be carried out by an expert, to establish whether adequate fire stopping of the pipework as it passed through compartment walls and floors had been carried out, I think that the issues F highlighted ought reasonably to have put SoL on notice of potential breaches of Building Regulations in relation to fire safety requirements, back in 2020.

With regard to the second requirement for there to be a present or imminent danger to the physical health and safety of the occupants of the Housing Unit, F described the lack of ventilation of gas to the atmosphere as: 'an extremely dangerous situation', and one which required daily monitoring.

SD's report that was commissioned, by A, in May 2021 said, in the executive summary of the report, that: 'It has been clearly discovered that the materials and workmanship within the service riser and installation of the services using the service riser is considered in breach of Regulation 7. Furthermore, the findings clearly demonstrate the lack of care by the builder in this matter and has put the building and its occupants in imminent danger'.

On 8 August 2022, A's loss adjuster advised SoL's loss adjuster that it had investigated further, and its expert had advised a scope of work that would address the imminent risk of safety to residents.

Taking account of the comments included in these reports and A's reference to the imminent risk of safety to residents, I'm satisfied that this second criteria for cover to engage, for HOC2 and HOC3 was also satisfied.

However, with regard to HOC1, relating to the pipework itself, I am not currently satisfied that the first criteria, requiring there to be a breach of Building Regulations, has been met.

Mr P has argued that Regulation 7 generally applies to gas pipe installation as it constitutes 'building work' which must comply with the Building Regulations. However, 'building work' has the definition given to it in Regulation 3(1) which includes a specific list of activities. The one which is the closest in application to the installation of gas pipework is included in paragraph (b) the provision or extension of a controlled service or fitting as mentioned in paragraph 2. A controlled service or fitting is further described in Schedule 1 to the Building Regulations, and includes cold and hot water supply, and combustion appliances and fuel storage systems but there is no specific reference to gas pipework.

Mr P has also provided an excerpt from Approved Document J, which gives further guidance on the provisions relating to combustion appliances and fuel storage systems. In particular he has highlighted Section 3 which provides that if work solely comprises the installation of a gas appliance and is undertaken by an approved person, then that work does not need to be notified to building control bodies. Mr P says that, as there is zero evidence to show that the person who installed the gas appliances and installation pipework was an approved person, that exemption wouldn't apply, and the entire gas installation and all of the appliances would have failed to meet that basic requirement that would allow them to not be notified to the building control bodies. That would then amount to a failure of Building Regulations and a present or imminent threat to the health and safety of the occupants.

I understand the point that Mr P is making here. However, while I have seen a letter dated 2011 from Gas Safe asking the developer for details of the approved person who did the gas installation work, that doesn't persuade me that the works weren't carried out by an approved person. The 2021 report issued by Q specifically refers to seeing the gas safe certificates. On balance, I consider they were likely obtained at the relevant time. And in any event, the gas pipework installation is comprised of many more elements than just the installation of a gas appliance. So, I'm not currently persuaded by Mr P's arguments here, to conclude that the gas pipework itself should be covered by the warranty. It is the Gas Safety (Installation and Use) Regulations 1998 that set out the legal requirements for installing gas pipework during construction, not Building Regulations. So, I'm currently of the view that SoL has fairly declined to cover the part of the claim that relates to the gas pipework.

Having provisionally concluded that the claim satisfied the requirements of section 3.5 of the warranty, I've next considered the point at which the claim likely ought to have been considered to be notified to SoL. In doing so, I've also considered whether SoL's treatment of the claim as three separate claims, notified at different times, is in line with the warranty terms and is fair and reasonable in the circumstances.

When the claim was first notified to A in 2019, I think it was fairly declined on the basis that the defects included in the claim were specific to the gas pipework and the requirements for a successful claim under sections 3.3 or 3.5 of the warranty likely hadn't been met.

However, in May 2020, SoL asked R to provide a report which identified the defect causing the issue. SoL said that to confirm that the problem reported is the result of a present or imminent danger to the health and safety of the occupants, R needed to engage the services of a suitably qualified registered gas installer or professional; to provide a report so SoL could be in an informed position regarding policy liability.

So, R arranged for a Building Engineering Services Condition Survey report to be provided by F and provided that to SoL on 20 October 2020. As I've already explained, I consider that the content of F's report ought reasonably to have put SoL on notice of breaches of the Building Regulations in relation to the fire safety requirements that resulted in a present or imminent danger to the health and safety of the occupants. SoL disagrees and says that F recommended an expert be instructed to comment more specifically on fire safety issues. While F did highlight that it wasn't an expert, for example, in relation to the fire stopping of the pipework as it passed through compartment walls and floors, I am currently of the view that the fire safety issues referred to in F's report demonstrated that the requirements of clause 3.5 of the warranty were most likely satisfied, giving rise to a valid claim.

Section 8.5 of the warranty terms: 'Notification of an Approved Inspector Building

Control Function claim under Section 3.5 of the Policy' says:

'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.'*

R, on behalf of the policyholders gave written notice to the Scheme Administrator as soon as was reasonably possible, in the circumstances. It instructed B to carry out works to prevent further loss or damage, and when asked for additional information by SoL, sought to provide that information. So, I think, in the circumstances, the notification requirements were likely satisfied when F's report was provided to SoL.

Separation of the claim into three heads of claim

I've next considered SoL's approach in dealing with the claim as three separate claims.

In its final response letter addressed to Mr P dated 29 August 2024, SoL said:

'In summary, you raised your original claim in July 2019 in relation to the gas pipe installation which was subsequently declined. A second claim was raised in relation to fire integrity / ventilation issues in the riser cupboards, then a final claim was raised in May 2023 for fire compartmentation issues between the apartments and corridors.'

In response to the investigator's view on the merits of the complaint SoL said that F's report did not evidence an occurrence or circumstances that would give rise to a claim. In reaching this conclusion, SoL has relied on F's statement that they were not an expert.

In a letter of claim sent by A to the developer, sometime later, in April 2023, it was explained that during the remedial works, additional defective conditions were identified which related to defective compartmentation at walls and roof. While that claim against the developer did not proceed, the contents of the letter accepts that the compartmentation issues became apparent when the remedial works were being carried out to address the part of the claim that related to the HOC2.

Also, in an email from A to Mr P 20 January 2023, A said: 'To be clear, we are not looking at these new defects as a new claim, we are just trying to understand what they include.'

Later, in July 2024, A explained the differences between the fire compartmentation issues relevant to HOC2 and HOC3. It said that the fire compartmentation issue identified in HOC2 related to the service cupboards on each floor which needed to be linked vertically to create a ventilated riser. In that context, A said that compartmentation refers to fire stopping of the services as they pass through the riser walls. But the second compartmentation issue identified and included in HOC3 was in a different context and related to the walls being too short, resulting in a gap

where they should form a compartment with the ceiling/roof.

Mr P has said that the policy wording doesn't require the defect to be evidenced, rather it requires notification of an occurrence or circumstance that would give rise to a claim. He also says that F's report specifically detailed two areas where fire stopping was inadequate as well as recommending that other areas such as the walls and floors be checked. When that was done, the breach of Regulations in relation to inadequate compartmentation on the upper floors was identified.

Having considered the arguments of all of the parties, I'm more persuaded by Mr P's submissions on this point which support the claim being treated as one claim. I don't think it's reasonable to require that a notification of a claim must contain all of the relevant information about the claim. And that is not what section 3.5 or section 8.5 (both quoted above) of the warranty requires. Section 8.5(iii) requires the policyholder to submit such information and provide such assistance as the insurer may require – which evidences the possibility that as a claim is investigated and validated, more issues may come to light that insurer requires information about.

The separation of the claim into three heads of claim also does not reflect the cover provided by the warranty. Section 3.5 covers damage caused by the failure to meet Building Regulations in relation to fire safety giving rise to an imminent danger to the occupants. In my view, that is one claim. The fact that different consequences of that failure came to light at different points in time, following the opening up of the building, doesn't mean they comprise a new claim. If the insurers had engaged with the claim when it was made and instructed their own report to be completed earlier, then I think it likely the extent of the damage would have become apparent at an earlier stage.

As set out in the background to this decision, the first reports prepared by S and F identified the fire safety issues. The full extent of the problem didn't become apparent until the insurers, A, then SoL, engaged with the claim and instructed their own experts to attend the property and carry out their own investigations, which confirmed the findings of the earlier reports. However, I consider that by providing the reports by S and F, the leaseholders did enough to evidence that they had a valid claim, and it was then up to the insurers to assess and validate or decline the claim.

Instead, the insurers continued to unfairly pass the burden of proof back to the leaseholders to provide more information and more detail about the claim. During that time the property management company, given the imminent danger to the occupiers referred to in the reports, and the building insurer's threat to withdraw cover for the building, had no option but to carry out some essential safety remediation works.

As previously explained in other final decisions, to SoL, I consider it fair and reasonable to conclude that where there are multiple defects contributing to damage, in this case, failure to comply with Building Regulations, leading to an imminent danger, that reasonably comprises the separately identifiable cause of damage (i.e. one head of loss). As works were carried out and further damage identified, the sum required to settle the claim, and the scope of works needed to resolve the issue claimed for expanded. However, I don't currently agree that this enlargement of the scope of works should reasonably have been considered a new claim with a later notification date.

That said, my view that claims should not have been split out doesn't change the fact that they were. I've explained above that HOC1 was fairly declined, and that HOC2

has now been fairly settled – albeit after a lengthy period of delay which I'll cover further in the next subsection.

With regard to HOC3, Mr P has said that the offer made a year ago is no longer adequate to meet his share of the cost of repairs, due to increasing costs of materials and labour. As the claim has not yet been finally settled, nor the settlement offer paid to Mr P, I am intending to require SoL to recalculate the offer so that it meets the current costs of repairs required to settle this part of Mr P's claim.

Award for distress and inconvenience

Mr P has also explained to the insurers, and this Service, the impact on him of the way this claim has been handled. He has said that, to date, he has lived with six years of worry caused by living in a building that still has not yet been made fire safe. During that time his family has outgrown the flat he lives in, but he has not been able to sell the flat and move his family into more appropriate accommodation, as a result of the ongoing unresolved claim. In addition, he has explained that he bought the property in good faith that should something like this happen, he would be covered under the 10-year guarantee. Instead, he considers the insurers have used the warranty terms to seek to exclude their responsibility for the issue.

I have considered SoL's handling of this claim, from the time that F's report notified the insurers of the circumstances giving rise to the claim under section 3.5, and I don't think that SoL met the requirements of ICOBS 8.1.1R in its handling of the claim. There were significant periods of delay, as detailed in the 'What happened' section of this decision, which led to months of delay at a time when no actions were taken to progress the claim (particularly between October 2022 and October 2023), which evidences non-compliance with ICOBs 8.1.1R(1).

Mr P has explained that R requested assistance from SoL in identifying experts who could assist it to meet the insurer's information requirements, during a period of time when significant restrictions were in place, arising from the COVID19 pandemic. However, that assistance was not given and, on occasion, 30 day deadlines were set for information to be submitted, which I consider evidences likely failures to provide reasonable guidance to help a policyholder make a claim, in breach of ICOBS 8.1.1R(2).

In applying a 2023 date of notification of the third element of the fire safety issues regarding lack of compartmentation of the upper floors, for the reasons I have already given, I'm currently of the view that the insurers were acting in such a way as to unreasonably reject a claim, which directly affected the majority of the other leaseholders in the building, and indirectly impacted Mr P, evidencing non-compliance with ICOBs 8.1.1R(3).

With regard to settlement of HOC2 and HOC3 of the claim, I also think that SoL failed to promptly settle the claim. While I understand the need for evidence to be provided to support the amount claimed, the costs associated with HOC2 were incurred by R to carry out urgent works to make the building safe, and insurable. From the correspondence between A and SoL it is clear that they were unhappy that R had gone ahead with remedial works, without consulting them. Then followed eighteen months of SoL going backwards and forwards asking for clarifications and further details regarding those costs, before it finally agreed to settle that part of the claim, admittedly on the basis of limited information. As detailed in the 'What happened' section of this decision, A informed SoL in October 2023, that the remedial works R had carried out, had largely reflected those recommended in the report provided by

A's experts. It took a further six months from that point, for SoL to settle this part of the claim. I'm therefore currently of the view that SoL hasn't settled this claim promptly. And this is further supported by the fact that five years have passed since the claim was first notified, and it still has not been finally settled.

I accept that some of the delays were likely due to the decision by A and SoL to share the risk of providing cover for the building. From a practical perspective, I accept that some delays may arise as a result of the insurers' need to provide a united and consistent response to claims for damage which affects the building as a whole. However, that is not the concern of the individuals who benefit from the cover provided by the warranty. As far as they are concerned, they have cover for the issues detailed in the warranty regardless of whether the warranty is underwritten by one insurer, or multiple insurers. Notwithstanding the way the policies are underwritten, it is a reasonable expectation of policyholders that responses to claim notifications, and communication about the progress of the claim should fairly be provided in good time.

The reports commissioned prior to 2022 explained that the current state of the building posed an imminent threat to the safety of the occupants. And Mr P has told us that in 2022, the insurers of the building were threatening to withdraw insurance for the building if works weren't carried out to remove the imminent and present danger to the occupants. I therefore think it was entirely reasonable, and in fact, legally essential, for R to go ahead and instruct the carrying out of repair works, to make the building safe. If the insurers had engaged with the findings of the reports with some sense of urgency, they could have had control of the costs by having the works undertaken by their own contractors, but they declined to take that approach to the claim. They then took a further 18 months to satisfy themselves as to the remediation costs that were incurred by R, meaning that the leaseholders, including Mr P, were left with carrying the burden of those costs for 18 months longer than they reasonably should have been.

I'm also currently of the view that the insurers' approach to the claim as a whole, in seeking to exclude cover for the majority of leaseholders, has also contributed to the distress and inconvenience Mr P has suffered as a result of the way the claim has been handled. I will be issuing decisions on the other complaints brought to this Service by the leaseholders who have been so excluded from cover, and I will address this point in more detail, in those decisions. But, in terms of the impact on Mr P, of the way the insurers have handled this claim, it is a factor I have taken into consideration.

I appreciate the complexities inherent in fire safety claims of this nature, and the need for costs to be verified and evidence to be provided in support of a claim for payment. I also understand that some of the delays in progressing the claim were due to waiting for information from R, and I have taken this into account in coming to what I consider is an appropriate award of compensation for the distress and inconvenience Mr P has suffered as a result of the way that SoL has handled the claim.

Finally, as I have mentioned in the 'What happened' section of this decision, in December 2024, Mr P explained that additional costs continued to be incurred by leaseholders as a result of the claim still not being settled. These include having to make up front payments to the gas engineer responsible for the building, for the monthly visits he is required to carry out in order to keep the gas on in the building. At SoL's request, I will consider Mr P's complaint about these costs in a separate decision under a separate complaint reference. I will also consider the impact of this

on Mr P, in that decision. The compensation award for distress and inconvenience I am intending to make, in relation to this complaint, will therefore exclude the impact of that on Mr P.

Our investigator recommended compensation of £1,000 be paid to Mr P for the inconvenience and upset he'd suffered. However, I don't think that goes far enough. I consider £2,000 to be a more appropriate level of compensation in view of the above factors.

In response to the view, SoL said that it didn't think £1,000 was reasonable compensation because they had fairly declined the claim in relation to the gas pipework. However, Mr P's complaint is not just about that head of claim. He has clearly expressed dissatisfaction with how the entire claim has been handled, and so that is the period of time I have considered, when making this award of compensation.

Taking everything into account, I'm currently of the view that the way SoL has handled this claim has caused Mr P significant distress and inconvenience as I have outlined in the paragraphs above, for which he should be compensated. I am therefore intending to uphold Mr P's complaint, and I intend to award £2,000 compensation for that distress and inconvenience.

I concluded by saying I was intending to uphold the complaint and require Society of Lloyd's to:

- Recalculate the cost of repairs for HOC3 of the claim as at the date of this decision and in line with the terms of the warranty, and pay Mr P his proportion of that amount; and
- Pay Mr P £2,000 compensation for the distress and inconvenience he has suffered because of the way it has handled the claim.

I gave the parties an opportunity to provide any final evidence or arguments that they wanted me to consider, before issuing the final decision on this complaint.

Mr P provided a detailed response to the provisional decision. In summary, he:

- Highlighted that the provisional decision did not address his concern about his flat being subject to an excess when none of the other flats were;
- Challenged the validity of the evidence I have relied on in support of the position that gas safety certificates were likely issued;
- Accepted that the claim fell outside of section 3.3 of the warranty;
- Maintained that SoL's assumptions and actions in relation to HOC1 contributed significantly to the delays, misdirection, and confusion that followed, making it one of the most important issues he has raised; and
- Remains of the view that the gas pipework installation did not comply with the Building Regulations in force at the time of construction and therefore meets the requirements of section 3.5 of the warranty for cover to engage. Therefore, SoL also unfairly declined HOC 1.

I will address the detail of Mr P's submissions in the '*What I've decided and why*' section of

this final decision.

SoL also provided detailed submissions in response to the provisional decision. In summary, SoL has agreed to the actions and payments detailed in the 'Putting things right' section of the provisional decision. So, it will recalculate the cost of repairs for HOC 3 of the claim as at the date of the final decision and in line with the terms of the warranty and pay Mr P his proportion of that amount. SoL also agrees to pay Mr P £2,000 compensation for the distress and inconvenience he has suffered.

However, SoL doesn't agree with provisional findings relating to when the section 3.5 claim in respect of the fire-stopping in the second and third floors of the building (HOC 3) was validly notified. I have taken the parties' further submissions into consideration when reaching my final decision on this 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.

I will first address Mr P's comments under the following headings: '*SoL's decision to decline HOC 1 in relation to the gas pipework*'; '*Evidence of gas safety certificates being issued*'; and '*Inclusion of excess in warranty terms*'.

SoL's decision to decline HOC 1 in relation to the gas pipework

Mr P has said that when the claim was first notified under HOC 1, the supporting evidence ought to have put the insurers on notice that the issues raised clearly indicated a serious and significant claim. SoL therefore ought to have provided a more detailed decision on the claim under section 3.5 of the warranty, rather than briefly stating that no evidence of a Building Regulations breach had been provided.

I understand Mr P's strength of feeling about the way this part of the claim was handled. However, as I explained in the provisional decision, the onus is first on the policyholder to evidence that a peril has arisen which ought to be covered by the policy. Having taken Mr P's comments into account, I am not persuaded to reach a different conclusion on this part of the complaint. I therefore remain of the view that SoL fairly declined the claim when it was first made in 2019 for the reasons detailed in the provisional decision.

Evidence of gas safety certificates being issued

Mr P has said that my conclusion that it is '*more likely than not*' that the original gas installation was carried out by a qualified engineer is not supported by the available evidence.

It might be helpful if I explain that the relevant standard of proof I apply when considering the available evidence is that of the '*balance of probabilities*'. That means I am not required to be completely satisfied of a set of circumstances, in order to reach a decision. If that was the case, then my ability to informally resolve complaints such as Mr P's complaint would be significantly constrained, given the time that has passed since the events occurred and given the limited powers I have with regard to interrogating evidence (for example, not having any power to call third party witnesses or cross examine witnesses or their evidence). So, for me to be persuaded of an uncertain matter, I need only to be satisfied that it is more likely (not equally likely) than an alternative circumstance, to be the case.

Mr P has submitted that no documentation has ever been produced to show that the gas

pipework installation was completed and commissioned in accordance with the relevant regulations. Mr P suggests that this is indicative of non-compliance. He also refers to the Gas Safe letter that I referenced in the provisional decision. Mr P also says that under Part J, an installation complies only if a registered engineer installs and self-certifies it, or if Building Control inspects it and approves it. He says that neither occurred here and compliance cannot be assumed. Finally, Mr P says that he doesn't believe Q's report says that it had sight of the gas safety certificates and even if they had, the report was commissioned by the landlord who was also the original developer, so he doesn't believe it should be accepted as unbiased evidence.

Mr P's submissions here are evidence that I have considered. However, it is not evidence that persuades me, more likely than not, that the actions he has described were never completed. While it is possible the necessary 'sign-offs' weren't completed, that is not the only plausible explanation for the lack of records. The time that has passed since the building was completed, and the lack of co-operation from the developer are also factors that could explain the limited availability of that evidence. To change my view on this point, I would need to be persuaded that Mr P's submissions, more likely than not, explain the gaps in the documentation. For the reasons given, they do not.

Mr P has also repeated his concerns about the issuing of the certificates of insurance. My colleague Mr Golding, explained in his jurisdiction decision, why we have no power to consider these concerns. The position set out in the jurisdiction decision applies to Mr P's repetition of these points.

In his response, Mr P has also provided a detailed explanation as to why he considers the gas pipe installation works to be regulated building work and why he considers the gas pipes to come within the definition of materials under Building Regulation 7. While I have given Mr P's further submissions on this point careful consideration, they haven't persuaded me to reach a different conclusion on this element of the complaint. I accept that Mr P may interpret the regulations differently to the way I have set them out in the provisional decision, but I do not agree with his interpretation, so for the reasons I have already given, I don't agree that SoL unfairly declined HOC 1.

Mr P has submitted that the fire safety failures later accepted by the insurer under HOC 2 and HOC 3 were direct consequences of the defective gas installation. He believes that treating those consequences as warranty issues, while excluding the defective installation that caused them is inconsistent.

However, it is not unusual with building warranty claims, that while damage caused by a defect may be covered, the defect itself may not be covered. That will depend on the specific wording of the particular policy. Where the defect isn't covered by the policy terms, we would expect an insurer to follow our long-established approach regarding the need to provide a lasting and effective repair. In doing so, the insurer may need to address the defect, to the extent required to provide that lasting and effective repair. The extent to which this may be required will depend on the circumstances of the particular case. So, while Mr P considers that it is inconsistent to conclude that only HOC 2 and HOC 3 were fairly accepted by SoL, I disagree and remain of the view that HOC 1 was fairly declined by SoL, and I don't consider that gives rise to an inconsistent approach to the heads of claim. In this case, SoL only needs to rectify the issues raised by HOC 1 to the extent required to ensure that it can deliver a lasting and effective repair for HOC 2 and HOC 3.

I have finally addressed Mr P's submissions about Q's report and the weight that I ought to give that evidence in reaching my conclusion on this part of his complaint. Mr P has said that he doesn't believe the report would have referred to gas safety certificates being sighted by Q. And he doubts the subjectivity of the findings of the report.

Q's report states that the surveyor who carried out the inspection was accompanied by a Gas Safe registered engineer when they attended the property on 17 August 2021 and a further survey was undertaken on 23 September 2021 by a Gas Safe registered engineer. The report also confirmed on page five, that at the time of installation the building was certified by Building Control and it also states that Landlord/Homeowners Gas Safety Records were provided. While Mr P has questioned whether Q's report is unbiased because it was instructed by the developer, I haven't seen anything to suggest that biased, or intentionally misleading or incorrect information was included in Q's report. I also note that engineers, like many other professionals, are subject to professional standards, and in the absence of any persuasive evidence to suggest otherwise, I remain of the view that gas safety certificates were likely issued on completion of the building.

Inclusion of excess in warranty terms

Mr P is unhappy that the warranty for his flat is subject to an excess, when the warranties for the other flats are not. While this concern relates to the terms agreed when the warranty was sold, which is outside of the scope of this decision, I have briefly addressed it to provide Mr P with an answer on this element of his complaint, which he feels has been overlooked.

The inclusion of an excess in relation to certain perils covered by a warranty or another insurance policy is agreed when the policy is sold. It evidences the proposer of the policy's agreement to cover the first part of the claim. It is also a factor that an insurer will take into account when setting the premium for the cover provided by the policy. This is a standard market practice in relation to the pricing of insurance policies. Where an excess is agreed between the contracting parties, as was the case here, it is fair for an insurer to reasonably apply that excess to a valid claim.

When was HOC 3 validly notified?

I will next address SoL's response to the provisional decision. The only issue that SoL has requested I reconsider is the question of when HOC 3 was validly notified (in respect of the fire-stopping in the second and third floors of the building).

SoL has submitted that on a natural reading of the warranty, in order for there to be a valid claim under section 3.5 there needs to be:

- An occurrence or circumstance likely to fall within the scope of section 3.5 (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 in relation to fire safety); and
- Written notice within the Structural Insurance Period of that occurrence or circumstance and that it is likely to be a present or imminent danger to the physical health and safety of the occupants of the Housing Unit by reason of a breach of the Building Regulations.

SoL has also referenced the case of *Marchant v Caswell* [1976] 2 EGLR 23 in its submissions.

The facts of the *Marchant v Caswell* case are different to the facts of Mr P's complaint; however, I accept that the Judge's comments in relation to the timing of notification of defects does have some application to Mr P's complaint. The Judge in that case said that if notice was given of the first stage or symptom of the defect within the period, then the defect has been reported in that period. SoL doesn't challenge the fact that HOC 2, the first accepted head of claim, was made within the term of the warranties that covered the building. Given HOC 2 and HOC 3 both arose from the defect of the Building Regulations

relating to fire safety not being complied with, I think the same reasoning can be applied to Mr P's case. In other words, the notification of HOC 2, as the first symptom of the defect, meant that the defect had been reported in time.

The Judge also commented that if the damage had been remedied when it had first manifested, as time passed, and it became apparent that the extent of the remedial work was significantly more than initially anticipated, then the necessary remedial work would have been seriously underestimated

In Mr P's case, while initially, the more readily apparent damage to the building caused by the defect was in the risers and ventilation of the gas pipework, as the failure to comply with Building Regulations (relating to fire safety) was further investigated by the insurers, the full extent of the remedial work required was revealed, which was significantly more than initially anticipated. Had the works been completed at the earlier time, then the remedial work necessary to address the failure to comply with the relevant Building Regulations would also have been seriously underestimated.

SoL has argued that this case provides authority for the position that the written notice must identify the defect or a manifestation of the defect. SoL has further elaborated on this to say that notice of one structural defect, for example, failing foundations, is not notification of another structural defect, say a defective lintel. SoL considers this to mean that notification of one fire safety defect is not notification of another fire safety defect.

I understand the point that SoL is making here. However, SoL's building warranty sets out distinct sections under which cover may be provided. Section 3.3, which provides cover for 'Major Damage' caused by specific defects in particular parts of the 'Housing Unit', potentially responds to whatever separate and distinct occurrences of 'Major Damage' occur during the warranty term. Also, the definition of 'Excess' detailed on page 4 of the warranty terms provides for an excess to be applied to '*each separately identifiable cause of loss or damage*'. Under Section 3.3, this would be relevant where there are separately identifiable causes of 'Major Damage' to the 'Housing Unit', such as those used in the examples SoL has given.

I agree that it would be nonsensical to suggest that once a claim for 'Major Damage' under section 3.3 had been made in relation to one part of the 'Housing Unit', that that would be sufficient to notify the insurer of all other separately identifiable causes of loss or damage that may arise during the warranty term. However, none of that is relevant to Mr P's complaint. I think SoL's submissions here are based on a conflated interpretation of sections 3.3 and 3.5 which I don't consider provides a reasonable application of the warranty terms to Mr P's complaint.

As SoL has agreed, the section of the warranty that the claim has been accepted under is section 3.5 which provides altogether different cover. For claims accepted under section 3.5 SoL will cover: '*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 the Building Regulations that applied to the work at the time of construction.....in relation to....Fire Safety.*'

The cause of the issue that gives rise to the need for repair or rectification to the Housing Unit (which includes the structure and the common parts) is the breach of Building Regulations in relation to fire safety.

SoL has submitted that HOC 2 and HOC 3 are conceptually different, so must constitute different claims under the warranty. HOC 2 concerned lack of fire integrity / ventilation in the

service riser cupboards and protected services shaft. HOC 3 concerned deficiencies of the fire compartmentation at the internal compartment lines on the second and third floors.

I have taken SoL's submission on this into account. However, I consider that in terms of meeting the requirements of section 3.5, there are also a number of factors which link the two heads of claim. First, both defects were present in the building from the time it was constructed. Second, both defects result from non-compliance with the Building Regulations that relate to fire safety. Third, if not remediated, both defects give rise to a present or imminent danger to the physical health and safety of the occupants of the Housing Unit. If only one of HOCs is remediated, the present or imminent danger to the physical health and safety of the occupants remains.

In SoL's view, because the basis for HOC 3 was clarified and notified outside of the period of cover for the majority of the flats, the cost of rectifying those flats rests with the management company and/or the owners of those flats. In further support of this, SoL submits that the notification of HOC 2 couldn't be considered notification of HOC 3, because it didn't include details of the 'manifestation' of the defect covered by HOC 3, that is, the deficiencies in the fire compartmentation at the internal compartment lines on the second and third floors.

But I think SoL is misunderstanding the point I am making about HOC 3 being covered by the warranty. I am not suggesting that HOC 2 could somehow be interpreted to also include HOC 3 which wasn't yet discovered. However, there are a number of factors which led to the different breaches of Building Regulations regarding fire safety being notified to SoL at different times.

Some of those factors were due to the decisions made by the managing agent as to when intrusive investigations ought reasonably to be carried out to the building, taking account of the occupants' rights to the use and enjoyment of their flats as granted by their leases, and the uncertainty as to the extent of the investigations and works that would be covered by the warranty. However, the detailed background to the complaint set out in the '*what happened*' section of the provisional decision, and the reasons given for my proposed award of compensation to Mr P in the provisional decision, paint a picture of the lack of urgency with which SoL treated the claim, despite being on notice from when F's report was issued, that there was a present or imminent danger to the physical health and safety of the occupants.

In my view, the claim should have been treated as a priority because it involved a present or imminent danger to the occupants' health and safety. Although the fire safety breaches became apparent at different times, the defects existed from the completion of the development and did not arise later, they only became visible later. Since these defects posed a serious risk from the start, the notification of HOC 2 ought to have been enough to alert the underwriters to significant fire safety issues. This should have prompted immediate investigation, rather than allowing a further six months to elapse, by which time the terms of cover for most of the flats in the building had expired.

In its response to the provisional decision, SoL has referred to isolated clauses in F's report. I don't think that approach to considering the relevant evidence is helpful. One of the reasons that I went into the detail of the chain of reports that were issued, was because together, they give a much clearer picture of the likely impact of the breach of fire safety related Building Regulations and the imminent danger those breaches put the occupants in. And, given that SoL had all of these reports to hand, when considering the claim for HOC 3, I think it was in a position to make a fair and reasonable decision about when this head of claim had fairly been notified. However, I remain of the view it failed to do that.

SoL has explained its understanding of the facts in relation to F's report and in relation to when the fire compartmentation issue was notified. SoL says that the danger to physical

health and safety of occupants was only identified in relation to gas meter rooms 1 and 2 and in relation to the gas services system more generally. Further, SoL has pointed out that the only reference to fire stopping outside the gas service riser was limited to an acknowledgement that F could not advise on fire stopping. A quote from page seven of the report has been highlighted by SoL which says:

“Where gas installation pipework passes through compartment walls/floors it must be appropriately fire stopped. To assess if this has been done correctly on this site, I would recommend the opinion of a fire stopping expert is obtained as this falls outside of our scope as a gas pipe manufacturer”.

SoL says that it was SD’s report dated 13 March 2023, provided by A to SoL that first raised detailed concerns of fire compartmentation on the third floor.

I have considered SoL’s submissions on this point. F’s report, dated 5 October 2020, highlighted an issue that needed to be investigated further. Following receipt of that report, the insurers arranged for a number of further investigations to be carried out (and reports completed, as detailed in the ‘*What happened*’ section of the provisional decision). This culminated in one of the insurers, A commissioning a report from SD dated 13 March 2023, confirming that firestopping was an issue. The insurers were satisfied that a valid claim likely existed following F’s report. They showed this by instructing further investigations between 2021 and 2023. I remain of the view that SoL ought to have taken these steps much sooner after receiving F’s report.

One of the reports issued in May 2021, by SD, made a number of references to the present and imminent danger to the safety of the occupants, (summarised in the provisional decision). And SoL had received this report prior to receiving notification of the details of HOC 3. SoL’s attempt to minimise that imminent danger by stating that F’s report only identified the danger in relation to gas meter rooms 1 and 2 and the gas services more generally, is disappointing. SD’s report referred to a serious risk of explosion, which, regardless of whether it originated in the gas meter rooms, or otherwise, unequivocally demonstrated the significance of the issues.

The first reports commissioned by the Managing Agent, prepared by S and F, identified the fire safety issues that were due to non-compliance with Building Regulations and that put the occupants in imminent danger. The full extent of the problem didn’t become apparent until the insurers, A, then SoL, engaged with the claim and instructed their own experts to attend the property and carry out their own investigations, which confirmed the findings of the earlier reports. However, I consider that by providing the reports by S and F, the leaseholders did enough to evidence that they had a valid claim, and it was then up to the insurers to assess and validate or decline the claim. I remain of the view that the enlargement of the scope of works to remedy the failures to comply with Building Regulations in relation to fire safety requirements, that became apparent after the insurers finally constructively engaged with the claim should not reasonably have been considered a new claim with a later notification date.

In its response to the provisional decision SoL has asked that I rewrite a number of the paragraphs of the decision to take account of the comments it has provided. However, as I haven’t been persuaded by SoL to change the conclusions reached in the provisional decision, I don’t consider the amendments it has asked me to make accurately reflect my conclusions on this complaint.

Where there are words missing that SoL would like to be included, and where SoL would prefer a more precise summary of various pieces of evidence, I would remind SoL that this Service is an informal dispute resolution service, established under Part XVI of FSMA as “a

scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person". If I were to quote in detail, the content of the submissions of the parties, this decision would run to hundreds, rather than tens of pages. So, I would respectfully ask SoL to approach its review of the decision, in that light.

SoL has also asked that I delete a paragraph of the provisional decision, in which I had explained that I was of the view that the fire safety issues referred to in F's report *demonstrated that the requirements of clause 3.5 of the warranty were most likely satisfied, giving rise to a valid claim*'. However, for the reasons set out in this decision (including the provisional decision incorporated within this decision) as this remains my view, I see no reason to remove it from the decision.

With regard to SoL's concern that these comments may be taken as going beyond the specific facts of this case, I disagree. These points are relevant to my consideration of the distress and inconvenience that Mr P has suffered as a result of SoL's overall handling of the claim. SoL's decision to only accept HOC 3 in relation to Mr P's flat does not render my comments in relation to HOC 3 irrelevant to this decision.

Putting things right

For the reasons given in this decision (including in the provisional decision included above), I uphold this complaint in part and require Society of Lloyd's to:

- Recalculate the cost of repairs for HOC3 of the claim as at the date of this decision and in line with the terms of the warranty, and pay Mr P his proportion of that amount; and
- Pay Mr P £2,000 compensation for the distress and inconvenience he has suffered because of the way it has handled the claim.

My final decision

My final decision is that I uphold this complaint in part and require Society of Lloyd's to take the action and pay the amounts detailed in the '*Putting things right*' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 January 2026.

Carolyn Harwood
Ombudsman