DRN-6021883

The complaint

Mr J and Ms C have complained about their building warranty provider Society of Lloyd's (SOL) because it declined their claim for major damage to two areas of first floor elevation glazing.

Mr J has been the main correspondent on the claim and complaint. For ease of reading I'll mainly refer only to him in the body of my decision.

What happened

Mr J bought his home in 2022, two years after it was built. It was subject to a ten-year defects and damage warranty. The property comprises two large (floor to ceiling) irregular-pentagons of glazing, at first floor level, one at the front and one at the rear. The area comprises four rectangular panels of glazing, the centre two of which open as French-doors, with a triangular area of glazing sitting across the top, spanning the four windows/doors.

In late 2023 Mr J noticed that both areas of glazing would move with the wind, or a touch. The glazing on the rear elevation was flexing more than that at the front and Mr J became concerned it was about to fall out. He obtained some quotes and made a claim to SOL (for both areas of glazing). SOL sent an inspector to the property who noted: "The upper and lower frames are not connected securely and therefore move independently. There is a lack of cross reinforcement in that the head of the door frame and the cill of the window above are unreinforced and due to the large size of the units flex and bend under wind loading."

The inspector though also noted the terms of the warranty. He considered, given the relevant terms, there was no cover for this situation. The claim was declined and SOL, upon review, maintained that position. In summary it said there was no evidence of physical damage, highlighting that there was no water penetration occurring.

Mr J complained to the Financial Ombudsman Service. He presented evidence, previosuly shared with SOL, which explained what his contractors (K) had found when they replaced the rear elevation glazing in around July 2024. He explained the front had since been replaced too. He asked that SOL cover the cost for both replacements, plus the cost of internal decoration, less the policy excess.

Our Investigator felt SOL should be settling for half the reinstatement costs. She explained this seemed like an extreme situation where there was clearly an issue with both areas of glazing, but where it wasn't entirely clear the front elevation was as badly affected as that at the rear (which she accepted had required immediate remedial action).

Mr J didn't object to the suggested outcome. SOL initially indicated it might agree with the outcome. But then it said it couldn't do so. It said that was because any issue that might be considered a defect was not with the "structure".

The complaint was referred for an Ombudsman's decision and came to me. I asked SOL for some further detail and comment as I felt the discussion around "structure" was not entirely

relevant – not given the warranty wording also looks at major damage of a waterproofing component of the Waterproof Envelope. SOL conceded that the glazing installation clearly had faults and is a waterproofing component of the Waterproof Envelope. But it maintained that there was no physical damage.

Once I had reviewed the complaint I felt SOL should be paying for replacement of both installation, front and rear – but not for redecoration. So I issued a provisional decision. My provisional findings were:

"I've set out my reasons below but both will likely note my findings are relatively brief and do not recount all of the arguments put forward and defended during the course of the claim and complaint. That is because we are an informal Service and its part of my role to get to the heart of the matter complained about.

On that note, whilst I'm aware that there was an element of poor service initially raised by Mr J in his complaint to SOL, that complaint point was not progressed to this Service. The complaint progressed was regarding SOL's decline of the claim. So that is where my focus will fall.

I'm going to then skip straight to the remaining issue in question – that of physical damage. I say 'remaining' because the policy in question, like many of its type, contain several requirements which have to be met in order for there the be cover under the warranty. So the cover is for Major Damage to the housing unit, and the warranty defines Major Damage as:
"Any defect, fault or failure in the design, workmanship, materials or components of the Structure or waterproofing component of the Waterproof Envelope… Causing destruction of or physical damage to, the Housing Unit…"

So SOL has now accepted that all the relevant parts of that wording have been met apart from "physical damage" (with no party arguing that there's been destruction). If then I thought SOL was reasonable in saying there's no physical damage, I'd likely be saying its decline of the claim was fair. But I don't think SOL's view in this respect is reasonable.

SOL does not choose to define "physical damage" in the warranty. When I think about what it might mean for something to be physically damaged, I think of something not working as it should. In respect of the situation in question here both Mr J's contractor and SOL's inspector noted the installations would flex and bend under wind loading. Mr J has also shown a video of the rear doors, which has been shared with SOL, showing they move significantly under pressure.

I bear in mind that if I lean against any windows or doors in my home, or if the wind blows against them, the whole frame/installation does not move. And I would be rather surprised if I felt any movement at all – let alone to the degree the glazing units in question at Mr J's home moved. Simply put an installation like that is not expected to move at all (notwithstanding the parts which are designed to be opened). In my view an installation moving like this is not functioning as it should be, whether or not the glazed panels remain in place and or the doors can still be opened. And even if the installation is still keeping rain/moisture from entering the building.

I'm currently satisfied then that the fact the glazing installations are, or were, subject to flexing and bending under wind loading means they were physically damaged. Which means SOL is liable under the warranty for the claim Mr J made. In short the glazing installations – a waterproofing component of the Waterproof Envelope – had a fault or failure in their design, workmanship or materials – they weren't fitted securely using correct fixings – which

caused physical damage to the housing unit – the glazing installations were subject to movement under wind loading.

Which all gives me cause, as I said at the start, to think SOL should be settling this claim with Mr J for both the front and rear installations. To be clear, SOL found that both were suffering the same problem – insecure fitment causing them to move under wind loading. And I've found that the movement under wind loading fairly and reasonably equates to physical damage. So it stands to reason that SOL covers reinstatement of both installations.

On the note of settlement, Mr J submitted a quote for the rear installation (£6,648.81) – but that quote does not seem to reflect the work actually done. I say that because the quote includes a cost for removing and refitting the balcony, which the later report confirms was not actually done. And Mr J has had both installations reinstated. If Mr J can show our Investigator his actual invoices for work, she'll share them with SOL and if my final decision remains that I find it should cover the reinstatement costs, and unless SOL tells me of a good reason why I should not, I'll likely award a specific sum based on the invoice costs.

Any settlement I require SOL to pay will be subject to the policy excess. I will also be unlikely to require SOL to reimburse the redecoration costs. Such costs are not usually covered by a warranty like this. To be clear here, the decoration surrounding the installations was not suffering damage, redecoration is only required as a result of the work necessary to resolve the major damage the warranty covers.

Having paid to have the work done, Mr J will now have been out of pocket for the cost of work for some significant time – more than a year for the rear elevation costs. I accept that will have been a cause of worry for Mr J. In my final decision I'll likely require SOL to pay interest on top of the reinstatement costs to make up for Mr J not having had the funds since he paid the contractor. But I'll also likely require SOL to pay £150 compensation to make up for the upset caused by having been without the funds."

In reply to my provisional decision, Mr J provided his invoices. He said he accepted my provisional findings. Our Investigator shared the invoices with SOL.

On the day of the deadline for replies to my provisional decision SOL said it wasn't yet able to provide a full response. But it said it was looking into it and asked for my further comments on a couple of issues. It indicated it might be minded to agree to a settlement for the rear installation but, SOL said, Mr J hadn't made a claim for the glazing at the front. It said its loss adjuster (previously referred to by me as its inspector) had made a mistake by referring to both in the report. SOL also said K's report wasn't persuasive regarding the front installation because K used the words "appears to be". It said that meant there's no evidence the front installation had the same fault as the rear or needed replacing. And, SOL said, given the invoices presented, Mr J had taken several months to replace the front glazing.

Considering SOL's reply I was minded to grant it some further time to provide its full reply. I agreed to the week it had asked for. And I also felt it appropriate to provide some comment against the points it had raised. So I issued the following interim findings to both parties:

"I see SOL says it believes the claim Mr J made was just for the rear installation, that its loss adjuster 'made an error' on referring to both front and rear. But having referred again to the claim form – which I had reviewed when I made my provisional decision – under "description of damage" it does say "both need replacing". So I am not minded to agree with SOL that the claim was made for only the rear installation. And I am satisfied that there was no mistake by the loss adjuster in considering the claim for both installations.

SOL says that it does not believe K inspected both installations because the report uses the word "appears". I'm not persuaded that "appears" means no inspection occurred. And, in response to a further point from SOL, the relevant policy wording in this case does not require that "immediate action" is needed. So, for me, it doesn't matter that it took Mr J several months to fix the second installation – and given the costs involved, along with SOL's decline of assistance, it doesn't wholly surprise me this was something they could not do straightaway."

On the day SOL had said it would send its full reply by, it contacted our Investigator and asked for further time. Just a day or two. Two days was agreed. SOL then asked for another day. At the end of that extra day, 11 December 2025, SOL provided some comments in reply to my provisional decision but it asked still for more time to provide additional comments from its loss adjuster. SOL was told that no further extension would be provided and my review would progress.

SOL's 11 December 2025 reply to my provisional decision is summarised as follows:

- It disagrees that flexing and bending equates to physical damage.
- There is no actual change or deterioration as a result of the flexing and bending.
- Without physical damage there must be a need for "immediate remedial action".
- There was no need for that here as its surveyor found the condition would not worsen.
- Regarding the front installation SOL said "While there is evidence… [they]… would have the same faults in the way they were fitted, there is insufficient evidence to show this had led to any physical damage".
- The claim form shows the same problem was not being experienced with the front installation.
- K's report shows the front installation was not physically damaged and did not require immediate remedial action.
- The front is not as exposed as the rear, it has protection from buildings and trees.
- The only mention of the front installation being "unstable" came in the complaint form to the Financial Ombudsman Service.
- The front installation was then replaced without SOL being given the chance to inspect.

SOL then, prior to me completing my review of the complaint, on 15 December 2025, provided some comment from the loss adjuster. SOL said though that it would still like more time to look into its assertion that damage would not have gotten worse.

The comments from SOL's loss adjuster are summarised as follows:

- The front installation was inspected in May 2024 and "there was no evidence of the bowing attributable to the rear".
- The complaint form to this Service mentions a named storm which had (at that time) recently occurred and "caused significant damage to the front [installation]".
- The damage to the front window is, therefore, considered to be storm damage and should be claimed for on the household insurance.

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 have considered SOL's further request for yet more time to be given to reply to my provisional findings. I bear in mind that SOL has now had more than the usual fortnight most often afforded by Ombudsman for replies to their provisional decisions. In any event I'm

satisfied, as can be seen from my findings set out below, that the information SOL is seeking – evidence to support its assertion that damage wouldn't have gotten worse – won't materially affect the outcome.

I note what SOL has said about "immediate remedial action" – that it believes the problem wouldn't have gotten worse. But those comments would only be relevant if I was persuaded by SOL's arguments regarding "physical damage", which I'm not. So I won't say any more about "immediate remedial action" here, rather my final comments will focus on "physical damage" and the front installation.

SOL says that there is a relevant test for physical damage. That there must be "a material change or a distinct, demonstrable, physical alteration of property". SOL goes on to explain why the installations, because they only flexed, weren't changed at all – they hadn't cracked or become distorted. From what SOL has said, it thinks the installations were "demonstrably" the same. SOL said the installations had not, therefore, met the physical damage test.

I note SOL's comments about this test. But I also note that since it was first put forward in an insurance text in the 1990s the 'test' has been largely discredited. But, more importantly, it is not a test used by this Service and nor did SOL in its warranty wording choose to apply such a restrictive definition to the phrase "physical damage".

I remain of the view that it's fair to say something is physically damaged if it does not function as expected. I also remain of the view that an installation like this, which flexes, is not functioning as expected. I'm satisfied that it's fair and reasonable to say that there was physical damage here.

I note SOL's concerns about the front installation, although it also seems to accept the installations, front and rear, were fitted in the same way. I concede there is no video evidence of the front installation actually moving and the detail on the claim form does focus on the extreme movement being experienced with the rear elevation. But K does refer to the front appearing the same as the rear and that seems to be the same conclusion reached in SOL's loss adjuster's 2024 report. The report confirmed attendance at the property to consider the claim for "large gable windows to the front and rear". With the loss adjuster finding: "There is a lack of cross reinforcement in that the head of the door frame and the cill on the window above are unreinforced and due to the large size of the units flex and bend under wind loading".

SOL has argued that the loss adjuster, in making the above quoted comment, was only reviewing the rear installation. But I'm not persuaded, reading the report as a whole, that is a reasonable conclusion to reach. The report sets out the nature of the claim as I've quoted above. It also shows that the loss adjuster and Mr J discussed the "bowing and vibration" of both installations. I'm satisfied that in May 2024 SOL had the opportunity to inspect and indeed did inspect the front glazing installation and that it, along with the rear installation, was found to be flexing and bending under wind loading.

I have noted the recent comments from the loss adjuster. I'm satisfied though that if, upon inspection in 2024, the loss adjuster had felt the installations were not suffering the same issue, the loss adjuster, having been very clear in their report that both installations were being considered, would most likely have highlighted any differentiation. I'm not persuaded, in the circumstances, that the recollection of the loss adjuster, some eighteen months later, can be said to be reliable.

Now I do also note that the front installation has some shielding from the elements, whereas the rear is quite exposed. So it is possible that the front installation was not suffering as badly from the defect as the rear one was. But that does not mean it was functioning as it

should. And, I bear in mind that SOL accepts that "there is evidence… [they]… would have the same faults in the way they were fitted…".

In the circumstances I find it highly unlikely that the front, suffering the same fault as the rear, could be functioning as expected ie not moving under wind loading, whilst the rear was capable of so much movement. That makes no logical sense. What does make sense is that the front was not felt to be so urgent to resolve because the conditions under which it would move occurred less frequently, due to its more sheltered position.

Now it may be that before the front installation was replaced, the benefits of that more sheltered position were lost due to a storm and excessive levels of flexing were caused. Similar to that seen with the rear installation. But that does not mean the storm caused damage. Nor that the installation was not capable of movement before the storm. In the circumstances, I'm satisfied it's most unlikely that the front installation was suffering damage only at a much later point than the rear one was and only as a result of the storm.

I remain of the view that SOL acted unfairly and unreasonably when it declined Mr J's claim for damaged front and rear elevation glazing installations. In line with what I said provisionally, it is my final decision that SOL should be covering the cost of replacement of both installations under the warranty.

Putting things right

I said provisionally that I would likely make an award, if my view remained the same which it has, that SOL would have to reimburse the costs Mr J incurred for replacing the installations, less the applicable policy excess.

Mr J's invoices were shared with SOL and it hasn't contested their content. Mr J has clarified that although the first shows a sum of £6,648.81, he paid a lesser sum of £6,573.81. I thank Mr J for that clarification.

I said provisionally that reimbursement would be subject to the applicable policy excess. I can see the certificate of cover shows an excess sum of £1,000. With the policy saying an excess will be applied for "each and every" "separate cause of loss or cause of damage". As the cause of loss/damage to both installations is the same improper fitment, I will apply a deduction of £1,000 to Mr J's replacement costs.

I also said provisionally that SOL should pay £150 compensation to Mr J. It has not contested that finding.

I therefore require SOL to pay Mr J:

- £5,573.81 as reimbursement of the cost to replace the rear glazing installation (£6,573.81 as paid by Mr J, less the £1,000 policy excess), plus interest* applied from 26 June 2024 until settlement is made.
- £6,371.41 as reimbursement of the cost to replace the front glazing installation, plus interest* applied from 2 April 2025 until settlement is made.
- £150 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require SOL to take off tax from this interest. If asked, it must give Mr J a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Society of Lloyd's to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr J to accept or reject my decision before 12 January 2026.

Fiona Robinson
Ombudsman