

The complaint

Mr and Mrs R have complained that Society of Lloyd's ("SOL") unfairly declined a claim made under their building warranty.

What happened

Mr and Mrs R bought a property within a listed building in November 2021. Within weeks of moving in, they discovered damp and an ingress of water through the walls of their home. On further investigation, it became apparent that there was a trench under the flooring which ran underneath the bathroom and bedroom, which Mr and Mrs R then found was a result of poor workmanship.

In August 2022 Mr and Mrs R were provided with the warranty documents, and saw that endorsements had been added to the cover, due to the developer having breached building regulations and not following planning regulations.

When a claim was made however, SOL declined it, saying the endorsement added to the policy meant the insurer wouldn't cover any defective waterproofing. It also said that the developer hadn't installed the walls or flooring, so these were existing building elements which were not covered by the policy. It added that the endorsement relating to defective waterproofing had been added because the developer hadn't complied with the original design of installing a secondary tanking system to the walls and floor of the apartment.

Mr and Mrs R complained. They said the apartment had been sold to them with an inherent defect, which wasn't disclosed to them. They said that, as a result of this, they had to live in horrendous conditions due to the severe damp and mould, which had destroyed their furniture and caused serious health issues for both Mr and Mrs R, as well as for their dog.

SOL maintained its position to decline the claim. So Mr and Mrs R referred their complaint to The Financial Ombudsman Service. Our Investigator considered it, but didn't think SOL had applied the endorsement unfairly. Because Mr and Mrs R didn't agree with our Investigator's view, the complaint was referred to me and I issued my final decision on 9 January 2025, about SOL's initial decline of the claim.

Following our consideration of the complaint, Mr and Mrs R said that Section 5 of the policy should engage due to the developer's non-compliance with building regulations. I didn't comment on this in my previous final decision, because this hadn't been raised as part of the initial complaint which was put to SOL, and so SOL had not had an opportunity to consider this point and respond to it. I therefore suggested Mr and Mrs R gather any evidence in support of a claim under Section 5 and put this to SOL so it could consider the claim under that section further.

Mr and Mrs R referred the matter to SOL for its comments. SOL declined to cover the claim under Section 5 of the policy, because the claim was made during the Defects Insurance Period and not the Structural Insurance Period – as defined in the Certificate of Insurance. It also referred to the same exclusion for waterproofing which it had relied on to initially decline the claim under Section 2.

Mr and Mrs R made a further complaint, but SOL maintained its position that the claim couldn't be considered under Section 5, so Mr and Mrs R referred the matter to this service. Our Investigator considered the complaint, but didn't think it should be upheld as he didn't consider SOL had declined the claim under Section 5 unfairly. As Mr and Mrs R didn't accept our Investigator's conclusions, the complaint has now been referred to me for an Ombudsman's decision.

What I've decided – and why

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

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr and Mrs R or SOL have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

In this case, I'm not persuaded SOL has acted unreasonably in declining the claim under Section 5 of Mr and Mrs R's policy, which covers certain defects presenting an imminent danger to occupants due to a failure by the developer to comply with building regulations. Section 5 says:

"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 physical health and safety of the occupants of the Housing Unit because of the failure of the Developer to comply with Building Regulations that applied to the work at the time of construction, Conversion or refurbishment in relation to the following: ... site preparation and resistance to moisture..."

SOL declined the claim on the basis that it wasn't made in the Structural Insurance Period, but also because of the exclusion relating to waterproofing which applies to the whole policy. This exclusion says *"all defective waterproofing, including those areas below ground, is excluded from the policy..."*

As I explained in my earlier final decision, the loss adjuster's report, which comments on the damage and the likely cause of it, says:

"We believe that the newly constructed block paved walkway that serves the main entrance to the building has been built higher than the original ground level and any precipitation that falls on to the paving then soaks into the brickwork, penetrating the solid wall and into the property.

We understand from the insured that... no secondary waterproofing/tanking was installed to the external walls due to the quotes received during the build...

The ground-bearing concrete floor appears to pre-date the conversion of the property by many years, as such we do not believe there to be any form of Damp Proof Membrane (DPM)."

The report provided by Mr and Mrs R also recommended waterproofing works. It mentioned an inadequate seal between the wall and floor junction, as well as a lack of damp proof membrane and faulty lead flashing, among other things. And as I said in my previous final decision, seals and flashing are both waterproofing elements of a property, which should serve the purpose of preventing water entering a building and causing damage. So having considered all the expert evidence, I'm satisfied that the defect was in the waterproofing elements of the property – which aren't covered by the warranty due to the above-mentioned exclusion.

The exclusion applies to all parts of the policy, so I'm afraid that whilst I previously decided the exclusion meant SOL could fairly decline the claim under Section 2, I've decided it has also fairly applied the exclusion to decline the claim under Section 5 of the policy.

I'm sorry to disappoint Mr and Mrs R as I can see the issues they've experienced have caused them considerable stress and difficulty. It's not my intention to diminish that in any way. But my role is to determine whether SOL has applied the exclusion fairly to decline their claim. And insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy and isn't excluded.

I appreciate Mr and Mrs R strongly believe that the contract between SOL and the developer of their home was entered into at a time when SOL was aware the developer hadn't complied with building regulations. And that they never would've bought the apartment if they'd been aware of the fraud and corruption they feel has taken place here. They've indicated that a class action is being prepared, and in the circumstances I'd recommend they seek independent legal advice.

I have a great deal of empathy for Mr and Mrs R due to the situation they've found themselves in and the lengths to which they're having to go to rectify their living situation. I've no doubt this has had an immense impact on their mental and physical health as they've said. And whilst I've not upheld their complaint, I do hope they're soon able to get outcome they seek through other avenues.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 21 January 2026.

Ifrah Malik
Ombudsman