DRN-6136357

The complaint

A company, which I'll refer to as N, complains that Society of Lloyd's declined a claim on its business protection insurance and said the policy was void.

What happened

This matter goes back to 2023. The detailed history is well known to the parties and I will only summarise some of the key events here:

- N carries out design and building work. It took out a business protection policy, underwritten by the Society of Lloyd's. The policy started in 2021 and renewed in April 2022.
- N carried out a renovation project on someone's property. The clients raised concerns about damp in the basement. They said N was responsible for the problem and they would be seeking to claim for the costs of putting things right.
- N notified a claim in March 2023 following receipt of a detailed letter of complaint from the clients. It subsequently received a pre-action letter in August 2023. This set out detailed allegations and said the clients' claim was valued at around £50,000 in total.
- Society of Lloyd's accepted the claim and appointed solicitors to act. They advised the clients of this in October 2023 and then sent a detailed reply to the pre-action letter. By this time, the value of the claim had been estimated at over £200,000, though this was subject to expert evidence.
- Society of Lloyd's said that, although solicitors were instructed to deal with the matter for N, it reserved its rights in relation to providing cover for the claim. It declined to renew the policy again on the basis N had confirmed it had worked on basement or subterranean projects.
- Correspondence continued up to August 2024, when Society of Lloyd's said the claim was being declined and the policy voided, because N had provided information that wasn't accurate. N complained but Society of Lloyd's didn't change its decision.
- When the complaint was referred to this Service, our investigator said it was fair to decline the claim and void the policy. N disagrees and has requested 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.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

We have received extensive comments and documents from the parties. N has been represented by solicitors and I have seen legal arguments from them and from solicitors instructed by Society of Lloyd's. I won't comment in detail on every single point that has been raised. Instead, I'll focus on the key points that are relevant to the outcome I've reached. This is in line with our role, which is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) N had a legal duty to make a fair presentation of the risk. This means N – or the directors on its behalf – had to disclose either:

- everything they knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstances.

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there's anything they ought to disclose.

Society of Lloyd's says N breached the duty of fair presentation because it provided information that wasn't accurate.

If the insured fails to give a fair presentation, the insurer has certain remedies, provided the breach of the duty is a qualifying breach, as set out in the Act. If the insurer shows it would not have offered the policy at all, or would only have offered it on different terms, then it's a qualifying breach.

So the starting point is that there was a duty on N to disclose anything that was relevant to Society of Lloyd's' decision whether to offer the policy – and take reasonable steps to check any available information and consider what should be disclosed.

Havin considered this carefully I'm satisfied there was a qualifying breach of the duty and Society of Lloyd's' decision was fair, for the following reasons:

- The proposal form included some details that N was asked to confirm. The relevant one said:

  "You have not undertaken any Basement or Swimming Pool Design work or been responsible for the design, specification, selection or inspection of cladding/curtain wall, or intend to do any of these in the next 12 months."

- N confirmed this was correct.
- N says it was being asked to confirm that it does not undertake basement design works and the answer given was accurate as it doesn't do this.
- The statement refers to "*Basement"* or *"Swimming Pool Design"* work. So it think N was being asked whether it carries out basement work or swimming pool design work.
- Even if that's not the case, and it was only being asked about basement design work, the evidence nevertheless shows N has carried out such work.
- The first point is whether this was a basement. Basement isn't defined in the policy, so I need to give the word its ordinary meaning. Typical definitions refer to a part of

the building that is wholly or partly below ground level – and they typically also refer to a lower ground floor.

- This was an extensive renovation, which included works to the basement level. This was sometimes referred to as the lower ground floor, but was also referred to as a basement by the various parties involved in the works and the claim. The contractors and experts referred to it in this way, as did N itself on occasions. The two descriptions were used interchangeably.
- Having considered all the evidence I think it's reasonable to conclude this was a basement.
- The question was asking about any basement works, and N had carried out basement works.
- Even if the question was limited to basement design work, N had also done that – before carrying out the renovation, N prepared a scope of works and design plans. And the plans themselves describe this floor as the basement.
- N has said it doesn't design basements or convert uninhabitable basement areas into habitable ones, but the question wasn't limited to works involving the design and construction of new basement areas. It was asking about any basement work. N has confirmed it has been involved previously in more than 20 projects involving a "subterranean element".
- The statement of fact that N was asked to complete set out the relevant duty under the Insurance Act 2015 and warned N about the need to provide a fair presentation of the risk. Taking into account the nature of the work N carried out, I think there was a breach of the duty of fair presentation.
- Society of Lloyd's has provided information showing that if the correct information had been provided it would not have offered insurance. So this is a qualifying breach. As it wouldn't have offered the insurance, it was entitled to void the policy.
- Society of Lloyd's treated this as a careless breach and said it would refund the premium. In the circumstances I think that was fair.
- N says even if there was a breach, Society of Lloyd's allowed the claim to continue and in doing so, it affirmed the contract and should not be allowed to go back on its promise to cover the claim – it left N in a position where it couldn't sort the claim out itself and the claim increased in value, along with the costs of dealing with it.
- Although Society of Lloyd's provided cover, the correspondence made it clear it had reserved its rights; this was subject to review. So N was aware cover might be withdrawn.
- Looking at how the claim was dealt with, the evidence doesn't support the allegation that the way the claim was handled increased the costs.
- Solicitors were dealing with it and responding to the allegations made by the clients. I appreciate the claim value increased but that was said to be provisional and was subject to expert evidence. On balance, I think it was always likely to increase.
- N's initial view was that this was merely some minor damp problems, but the correspondence shows the clients always thought it was much more than that. They didn't accept N's position and urged N to resolve things through its professional indemnity insurance. And they sought expert evidence to confirm the value of the claim.
- Society of Lloyd's could have reviewed cover more quickly and made its decision sooner. But that would have left N without cover at an earlier date. It covered the

costs up to the point where it decided to withdraw cover and N had the benefit of those costs (around £30,000) being paid. The solicitors offered to continue acting for N at lower rates. That was reasonable. I don't think N has suffered a loss as a result of the way the claim was handled.

My final decision

My decision is that I don't uphold the complaint.

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

Peter Whiteley
Ombudsman