complaint

Mr C believes that Society of Lloyd's (SOL), the commercial premises insurer of his property which comprised two let flats, a shop and a mechanic's garage, mis-handled his fire claim which resulted in him incurring substantial financial losses.

background

In May 2016 Mr C was forced to put his property up for sale by auction. In June an offer to buy it at £250,000 was accepted. But, in the early hours of 7 July, before the sale completed, a fire occurred. The purchaser had the property revalued at £190,000.

Mr C was unhappy with how the fire brigade handled the fire and initially thought it had been caused by a fire in his neighbour's garden earlier that evening. The fire brigade though disputed that and, following it telling the neighbour its views on the cause of the damage to Mr C's property, the neighbour withdrew an offer they'd made to repair the garage. Mr C also explored settlement with his former tenant. This was also unsuccessful. Mr C made a claim to SOL.

The claim was notified to SOL on 30 August 2016 and a loss adjuster's appointment was arranged for 5 September. The loss adjuster issued his report on 15 September. SOL asked for some further clarification on some issues that related to the risk it believed it had agreed to in respect of the property. For example, if the flats were self-contained and when the property had become unoccupied. The loss adjuster answered most questions but also returned to Mr C for further detail, which Mr C duly provided.

In February 2017, having reviewed the details provided to date, including a priced scope of works submitted by Mr C in around November 2016, SOL asked its contractor to price the works. It did this and its costs were around £30,000 less than that estimated by Mr C's contractor.

Mr C had asked SOL about how he would be paid for the cost of work he'd done to make the property safe. SOL didn't answer this question. Mr C chased SOL in March. He said he apologised for chasing but said he was at risk of losing his buyers, had used up all his funds and was struggling. In April Mr C told SOL that his claim had changed he said: "*The claim is now……£60K being the shortfall of sold price and valuation after the loss of the garage*". SOL pointed to the policy condition about how claims can be settled.

On 12 April 2017 SOL said it would pay Mr C £13,924.21 to settle the claim. It said this was the cost of repairs, excluding VAT and after an amount was deducted to account for the property being underinsured. It had only told Mr C about the underinsurance within the two weeks prior to this date, even though it had been identified by the loss adjuster in September 2016.

Mr C raised queries with SOL in respect of how the rebuild cost had been calculated and disputed the cost of repairs as set out by its contractors. Around this time Mr C began dealing with SOL rather than continuing discussions with its loss adjuster. SOL said it would settle based on Mr C's cost to repair, including VAT, but minus an allowance for underinsurance and the policy excess. It said it would also pay £4,050 for lost rent based on monthly rent being £400. The total offered was £45,222.53.

Mr C challenged SOL further and it said it would review things. SOL returned, explaining it was satisfied that its cost for the work was correct but said it would stand by the settlement it had offered. SOL said though that whilst the settlement was still based on Mr C's cost to repair and the lost rent it was now a global offer to take into account all sums Mr C had claimed for. Mr C asked SOL to pay the sum and start the complaints process.

Mr C wasn't satisfied by the responses he received to his complaint and so made a complaint to this service. He also complained because he'd discovered his policy hadn't renewed. He only became aware of this a few months after the intended renewal date, meaning he'd been uninsured since the point the previous policy had expired. SOL reviewed its decision not to offer cover and said it would, but at a much greater premium. Mr C sought cover elsewhere.

Our investigator considered the matter and when Mr C was unhappy with his findings the complaint was passed to me for a decision. I issued some initial findings but Mr C wasn't happy with what I said. He thought there were some inaccuracies or at least misleading statements in the background of events I'd presented. He asked where I'd found some of things I'd presented as facts. He also said the focus of my findings was wrong. He asked that I review matters.

I considered Mr C's comments and reviewed his complaint but I wasn't convinced that SOL should make any further claim or compensation payment to Mr C. To provide a fuller explanation of my reasoning though I issued another decision which I explained would supersede that previously issued. My provisional findings were:

"the complaint

Mr C has complained that SOL mishandled his claim and, as a result, he's had financial losses. SOL's response in respect of those losses is they're consequential, so not something it is liable for under the policy. Whilst that may be that doesn't answer the question of whether these losses were caused by its delays. If they were then SOL may have to bear their cost outside of its policy obligations. So that is what I have to assess. I can't just say 'SOL is wrong to say they're not payable as consequential, therefore pay them'. Rather I have to establish if the losses arose as a consequence of SOL's delays and/or mishandling of the claim.

forensic report

One of SOL's biggest failures in Mr C's view was its failure to appoint a forensic expert. The appointment was recommended by the loss adjuster in his report of 15 September 2016. But SOL never did follow through with this. Mr C thinks that if it had done this straight away any concerns it had over liability and the like would have been resolved quickly. And Mr C also thinks this would have done away with the need for a police report (something SOL was waiting for even into April 2017 just prior to making the offer to Mr C).

SOL didn't move things on as quickly as I think it should have done in the early months of the claim. But I accept that it did initially have legitimate concerns over liability. And those issues were to do with the risk the property presented. Not the fire incident or claim. Whilst the initial loss adjuster had recommended a forensic inspection SOL would never have moved ahead with this until it had clarified and dismissed the risk issues. That's reasonable and those issues weren't something the forensic report would have assisted with.

It is also the case that insurers don't always follow the recommendations of their loss adjusters. And I think it's important here that even in that first assessment it was reported that the tenant had been back to the garage and cleared out some things. Mr C has recently said that isn't true, the tenant has never been back and the property had been under 24-hours surveillance by the police as they were desperate to find the tenant. But in a letter to the loss adjuster in November 2016 Mr C said:

"The [tenant] has also returned to remove his tools and any evidence that may have existed." And
"[the tenant] after some time returned to the Garage and in our talks offered to pay towards repairs…..After a couple of weeks of activity and discussion he came to the conclusion that the Garage under the circumstances was no longer viable….He also arranged to have the garage cleaned, his tools removed and some builders to remove his [illegal installation]..."

He also stated that the garage has already been cleaned ready for repair and any rubbish had been removed. He said that the neighbours had had their repairs carried out and tidied the garden (that he believed to be the source of the fire).

There were clearly still items in the garage in September 2016 and the electrical installation was still in place (by February this had been removed). So it isn't entirely clear when, or on how many occasions, the scene had been accessed and the evidence within potentially compromised. But I think a reasonable implication of everything Mr C says in his letter of 28 November 2016 is that there was no evidence left for a forensic expert to assess.

So whilst I think things could have moved on more quickly between September and November, I'm not convinced that SOL did anything wrong by not appointing a forensic expert. And I'm not convinced that even if it had this would have caused the claim to move on more quickly. I think any forensic expert would most likely have wanted access to details from the point of the fire and the specialists who attended. And gathering evidence like this does take time.

police report

I know Mr C has, at times criticised SOL for insisting during part of the claim on waiting for sight of the police report. But I don't agree with his view that this was never going to contain anything worthwhile waiting for. I think a police report is something that most insurers would want to see in this type of situation. And I think that is particularly the case here where, in his letter of 28 November 2016 Mr C said twice that the police report likely holds relevant information. He says the police (as well as the fire brigade); took lots of photos as well as notes, and could provide further information about the criminal activities of the tenant.

It isn't exactly clear from what SOL has provided when it first applied for the police report or how and when it chased for this to be provided. But it does commonly take at least eight weeks for the police to respond. So even if Mr C had been asked to sign the necessary paperwork to enable the loss adjuster to apply to the police during his first visit, and even if the loss adjuster had actioned this straightaway on a without prejudice basis – it would still likely have been into November before any response was returned.

settlement based on lost value

In his November letter Mr C did acknowledge that he would keep his options open in this respect. But at the start of April 2017, as set out in my background above, he said his claim had changed; he now wanted the shortfall sum instead of repair costs.

The problem for Mr C in this respect though is that SOL was always entitled to choose how to settle the claim. And an insurer will almost always choose the method that costs them the least. And whilst it didn't get its repair costs in until 2017, Mr C had already shown it his scope for just short of £50,000.

Furthermore, Mr C had also shown the loss adjuster a letter from the purchaser's representative which stated that repair of the property was a condition of the sale. It did give an alternative though – that the sale be allowed to complete with Mr C giving written assurances to the buyer's solicitor that he would remain liable for the repairs; that the purchaser wouldn't have to worry about them.

So I think the fact SOL didn't start out by looking to settle on the basis of lost value – even knowing Mr C's position and how important it was for him to sell the property, wasn't unreasonable. I also think that when Mr C put the request to it in April 2017 and SOL continued with making settlement based on repair costs, that was reasonable too. As I say an insurer will always choose to settle on the lowest price. That's not unreasonable. And whilst it agreed to a settlement based on Mr C's repair costs, it is clear it still had reservations about those. So I can understand why it wouldn't have wanted to settle based on the loss of value figure (which was more expensive again).

repair costs

Mr C has said this was never a big issue and never would have been. However, I don't think that is most likely the case. It didn't cause much of a problem when the costs were set out to Mr C and he challenged them because within days SOL reviewed its position and agreed to settle based on Mr C's costs. But SOL had said it felt Mr C's costs were excessive and the work over scoped. It also thought there was an element of betterment.

Repair costs are a big issue for insurers and insurers will rarely pay based on policyholder costs when they could do the work for less. They're also generally keen on keeping the work to that which is necessary as a result of the incident and that will put the property back into its pre-loss state.

I know Mr C disputes what SOL has said about his quote. And that he had raised questions of his own over its figures (as well as the competency of it claims handler to assess those). But at the time these questions were raised the claim had been going on for some while and Mr C had made his very difficult and worsening personal financial situation very clear to SOL. But for this I'm not convinced SOL would so readily have overlooked the cost issues and offered settlement on the basis of Mr C's cost to repair. And I think if SOL had dug its heels in, Mr C would have too. He couldn't have got work done for that price, and didn't believe it was a true price anyway. And he couldn't afford to take that £13,000 and sell the property in its damaged state as that wouldn't have given him enough funds (even assuming he could have persuaded the purchaser to complete on that basis). So I think if the point of moving to settlement had come earlier, the issue would have become much larger and settlement wouldn't have been quickly achieved.

underinsurance

Similarly Mr C says this was never a big issue and was resolved in a few emails.

During his first visit the loss adjuster said the property as a whole carried a re-build price of £364,000 whilst it was insured for £309,000. It was therefore, 85% insured. It wasn't though until SOL started to look at what settlement it would make for this claim that it raised the issue of underinsurance with Mr C.

Mr C said to the loss adjuster that he believed the sum insured (of £309,000) was a more realistic re-build sum. He asked to check the figures SOL used to come to the figure of £364,000. He noted it was done using a price guide available to surveyors. He asked it if it was reasonable to expect a policyholder to "over insure by £115K (£365k rebuild against a £250k selling price)". Mr C also said in other correspondence to SOL that he believed it wasn't fair to rely on the guide price for the re- build because it's usually based on certain specs and locations, which didn't seem to apply here.

So I'm not convinced that this was as small an issue for Mr C as he has said. And, again, I think it is something he would have argued more strenuously over if a settlement which included a reduction for underinsurance had been offered earlier before things became so critical with the prospective purchaser and the parties depending on the sale. I know there was always a pressure to complete the sale but, as I said above, I think that all started to come to a head in March and April 2017.

But Mr C is also unhappy that, even without attaching it to a settlement, SOL didn't mention the issue of underinsurance earlier. I accept it identified this at an earlier stage. And I accept that it could reasonably have mentioned this earlier. But I don't accept that this really compromised Mr C in anyway. He was still able to raise his objections to the underinsurance in April 2017.

SOL didn't agree with Mr C's points on this and the settlement it paid was subject to a deduction. I don't think it would ever have accepted Mr C's arguments that it had over-valued the re-build costs. So I'm not convinced that Mr C's knowing about this earlier would have resulted in any increase to the settlement it ultimately made.

What SOL's responses overlooked though was that Mr C isn't what this service would consider to be a sophisticated policyholder. He doesn't have an industry level knowledge of insurance and, particularly given his current circumstances, I think it's fair to say he's akin to a consumer. I realise now he does have a background in construction and have noted what he's said about having been responsible for building 600 homes a year. So he may well have an idea of building costs – although I'd argue that building on a large scale like this is very different and can present very different costs to re-building an individual property. But Mr C was only ever asked by SOL to set a sum insured – no explanation was given that this meant it wanted to know about re-build costs. So really it can't fairly make a deduction for underinsurance.

repair settlement figure

Whilst SOL did say its settlement (of £45,222.53) was a "global" one it also said it was based on Mr C's repair costs and lost rent. So I'm not prepared to think of this as being a truly "global" settlement, where a single sum is paid based against a whole list of unspecified or unquantified losses.

But I also think, as I've mentioned before, that SOL only settled in this way, at this sum, because of the situation Mr C was in. At the minute Mr C is better off because the unfair deduction SOL applied for underinsurance still left him with a better settlement than that he was strictly entitled to ie repair cost minus VAT (£41,422.53 against £40,753.00). That's because insurer's don't pay VAT until such is due (work has been done).

However, I accept that SOL had some legitimate concerns about the price Mr C had obtained. And it did offer to carry out the work. In that instance it is allowed to settle based on its costs – and these were markedly lower than Mr C's. It may be that the true cost for work was somewhere between the two. Whilst Mr C may end up with a perceived shortfall if he does get work done (around £7,500, as his repair costs including VAT were £48,903.60) I can't fairly make an award that says SOL will have to reimburse that because I think SOL's settlement amount fairly reflects and took into account the uncertainty in the costs stated by both parties.

I know Mr C says he had costs for work done to remove asbestos and make the building's structure safe. But I haven't seen any proof of payment in this respect. And I also note that the estimate on which SOL's settlement was based included amounts for these works. So it seems to me that Mr C has already had fair settlement for the work.

lost rent settlement

SOL paid £4,050. It said this was for rent lost from the point it was notified of the loss until the end of June 2017. This, it said, was the next point the tenant should have paid rent (which was £400 per month) as payment was meant to be made six months in advance.

Its explanation though doesn't quite make sense. The fire was June 2016 and rent was overdue by that point. And the tenancy agreement required six month's rent in advance to be paid on 1 May for the period 1 June to 30 November. With the next payment being due on 1 November for the period December through May. And whilst September (the claim having been notified on 30 August) through June is ten months, £4,050 is ten month's rent plus £50.

So I'm not really sure on what basis SOL has paid this sum or why it thinks it's correct. But I have to think about whether, in all the relevant circumstances, it is fair.

Strictly speaking I think SOL could reasonably have argued that it was only liable for six months rent. The rent was overdue at the point of the fire. So rent for June through November was lost because the tenant didn't pay it. Not because of the fire. But the next rent was due to be paid in November. At which point the fire damage meant rent could never have been achieved. So SOL should always have had to cover the cost of the rent lost for the period December through May. That would have equated to £2,400. Much less than the sum SOL settled for.

So, as SOL's settlement of £4,050 significantly exceeds this value, I'm not minded to make SOL pay anything further.

other financial losses

I know Mr C is in a difficult situation and has been for some time. I know he firmly believes that SOL is responsible for the sale of his property falling through and that if it had made sure to do things like carry out the forensic report the claim would have progressed to settlement

much more quickly and the buyer wouldn't have walked away. He thinks as little as two weeks would have made all the difference. I don't agree.

As Mr C points out there hadn't been an offer to buy at £190,000. And even if there had a settlement from SOL for the repair price of just under £50,000 wouldn't have helped. The buyer wanted the repairs done, so Mr C couldn't just keep this money. And anyway, for Mr C, £240,000 wasn't enough. Furthermore, I don't think the buyers were prepared to wait for repairs to be done either (such that a settlement in early April for repairs would have convinced it to allow the sale to continue on hold whilst these were done with later completion at £250,000 still being achieved).

An earlier offer of a repair settlement (say just a few months after the fire) might have prevented the buyer from losing faith and walking away. But as I've said before, I think that if the parties reached the table on the basis of a repair settlement earlier, there were potentially contentious issues that would have prevented a settlement from being quickly agreed. So I don't think Mr C's losses could reasonably have been avoided.

It was really unfortunate for Mr C that this fire happened when it did, just after the sale was agreed and before it completed but I think a major incident like this was always likely to place that sale under threat. Mr C wasn't able to make a claim to his insurer straight away. I understand that but I think it has naturally extended the situation. The insurer would always have needed time to investigate and, as I've explained, I think there were always things that would have prevented a quick settlement from being agreed. I don't accept that SOL's failures left Mr C in a worse positon than he would always have found himself, even if it had handled the claim in a reasonably efficient manner.

compensation

I previously said I didn't think SOL contributed to Mr C's upset. I now accept that, at times, it could have acted more pro-actively to move things along and that staff changes did likely cause delays. And I accept that caused Mr C some distress and inconvenience.

I also accept that Mr C had the best of intentions in mind when he delayed telling SOL about the loss. He, not unreasonably, thought he could resolve the situation in other ways. The policy though requires that SOL is told as soon as possible, which Mr C didn't do. Rather he chose not to tell it until other avenues had been exhausted. Whilst I know he was unwell during that time too, this didn't stop him pursuing those other avenues. So I think he could have told SOL as well. But I don't think it would be fair to say that because he didn't do that SOL's delays caused during a different period are effectively cancelled out.

However, I still don't think SOL should have to pay compensation. I award compensation for distress and inconvenience caused by an insurer's unreasonable and avoidable delays. In doing so I have to be satisfied that 'but for' the insurer's failings the distress and inconvenience suffered wouldn't have occurred. So any upset caused by the incident, having to make a claim or the insurer's fair handling of the claim (including where reasonable and unavoidable delays occur), isn't something I compensate for. Here, as explained above, whilst I'm satisfied that SOL did fail Mr C at times, causing both unreasonable and avoidable delays, if it hadn't, in my opinion, delays that were reasonable and unavoidable would have occurred. So I don't think it's fair to make SOL compensate Mr C for distress and inconvenience when this is something he would always have suffered. It simply couldn't be avoided and would have occurred as a natural part of SOL's fair handling of his claim.

It follows that I'm also still of the view that the huge amounts of stress Mr C experienced when the house sale finally fell through isn't something I can fairly blame SOL for. As explained above, I still think that loss would always have occurred. So it follows that the upset would have done too.

renewal

Mr C says this should always have just happened naturally. But that ignores the fact that insurers aren't bound to renew cover each year. Each policy is an annual contract and there is no binding requirement to offer another. Nor do insurers that choose not to continue offering cover have to justify why. Again this is because of the annual and individual nature of each insurance policy.

SOL should have done more to make sure Mr C knew the cover wasn't continuing. It says phone messages were left and Mr C says he didn't receive them. It is clear that Mr C didn't acknowledge the contact. And that being the case SOL should have noticed this and pursued the issue. But the fact Mr C didn't know about SOL not renewing meant that he wasn't worried over the following months about not being insured.

He did experience shock and worry when he found he hadn't been covered. But that kind of 'distress by virtue of hindsight' isn't something I find worthy of much compensation. Mr C did, of course, have to find alternate cover, but he'd have had to do that even if SOL had told him at the time of renewal that it wasn't going to offer further cover.

I know the markedly increased price, when SOL did review its cover decision, was a big factor in Mr C choosing to change provider. And I did ask SOL about the reason for this sudden change. SOL satisfied me though that it had set the price fairly in line with its underwriting policy that ensures all policyholders in similar circumstances are treated the same. I think even if it had told Mr C about its decision not to renew before the previous policy ended and he had persuaded it to review that positon, the price it would have chosen to ask for would still have been the same. Essentially for SOL the risk Mr C and his property presented had changed, and that caused the price it wanted to take to cover that risk to increase. It was entitled to review things in that way and to come to that conclusion.

SOL, for its part, accepts it should have done more to communicate its decision not to renew to Mr C. It has offered to pay £100 compensation for the distress Mr C suffered when he found out he'd been without cover. I'm satisfied that's reasonable."

responses to my provisional decision

SOL said it had no further comments to make. Mr C responded in some detail. I've summarised his comments and my responses to each section (using the same headings and sub-headings as above) in my findings below and added a summary paragraph at the end.

my findings

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

background – Mr C set out some further detail about what had happened when and how this affected him and the claim. The background I set out is a summary of what happened but

I am aware of everything that went on. What the different aspects that occurred mean in terms of the claim/complaint are considered in my findings.

the complaint – Mr C made no comment.

forensic report – Mr C felt I'd missed the point that input of an expert was thought to be particularly needed. He maintained his view that if this had been organised sooner, other issues would have been overcome quicker. He said it wasn't fair for me to acknowledge delay but then justify this action. And the information requested was provided quickly and yet the forensic report still wasn't requested, despite how crucial it was for him that things moved on quickly. Mr C also said it wasn't true that the scene had ever been tampered with and he had only cleared it and carried out repair works when SOL had said he could. It was only after this that the tenant returned to the site. Which means the first report by SOL's loss adjuster was wrong and untrue.

The forensic report wouldn't have answered the liability questions. Nor would it have meant those concerns were dealt with quicker by the loss adjuster. In my view the liability enquiries whilst necessary and justified weren't handled in an efficient manner. But I'm still not convinced that, if they had been, the complaint would most likely have progressed to the appointment of a forensic expert. Whilst an expert's input would often be required in circumstances like this an insurer will always take a view as to whether going to this expense (and resultant delay) will achieve anything. I simply can't be certain when the garage was accessed and/or cleaned, repaired and items removed. I have seen email confirmation from the police that the tenant was released on bail on 20 October 2016 but that doesn't tell me when he was arrested or show that he didn't return to the garage at some point earlier. So there is still nothing independent to let me know which of the differing accounts provided by Mr C and the loss adjuster are most likely correct. But, importantly, SOL has never tried to say the policy wouldn't cover the claim for some reason which might have been an issue considered within a forensic report if one had been completed. And the lack of a forensic report hasn't impacted the claim settlement made either. I am also still of the view that any forensic investigator would have wanted to take into account any evidence available from the emergency services who attended the scene. As I said provisionally obtaining the police report would always likely have taken at least until November.

police report – Mr C said he disagreed with my view on this. He said the police report would only relate to the criminal activities of the tenant and so, without an expert report on the cause of the fire, the police report would add little value. He said it was unfair for me to use his comments about what the police report likely showed against him because he didn't know SOL's reasons behind insisting on obtaining the report. Mr C said my comment about not being sure when the police report was requested shows how poor SOL's file of papers is. This supports his view that the claim was mishandled.

Until a police report is seen it isn't possible to know what information it is likely to contain. I've seen some that say very little and in contrast others that contain information about details gathered from witnesses and/or property loss lists and/or photographs. In the circumstances that occurred here, and with or without any comment having been made from Mr C, I think it was reasonable for SOL to want to see the police report. I don't think it's reasonable to say it would most likely have had no or little value merely because there hadn't been a forensic assessment of the scene. The quality of SOL's submissions doesn't mean it mishandled the claim. And as I explained provisionally and Mr C accepted – mishandling alone isn't enough for me to say SOL is responsible for Mr C's losses. Rather I have to assess what would have happened if the mishandling hadn't occurred. So that is

why I've considered what would have happened if the police report had been requested immediately following the loss adjuster's visit in September. In that case the report is unlikely to have been received before November. And I also explained provisionally why, in my view, even if the claim had progressed in November Mr C's losses wouldn't have been avoided.

settlement based on lost value – Mr C said his claim didn't suddenly change in April 2017, rather that he had always been open to all available options of settlement and he'd kept SOL abreast of his on-going and worsening position. To justify a lower settlement SOL needed to have all the relevant information to hand, which it did not. But it did have evidence to justify settling on the basis of lost value but chose not to. This is further evidence of mishandling.

Mr C's claim was made as a result of damage caused by a fire. SOL didn't ever decline the claim or refuse settlement. Whilst Mr C in November was keeping his options open as to settlement it's clear to me that following the fire the buyer wasn't prepared to complete based on a lower value with the property in its damaged state. And I've not seen anything to make me think that the buyers in 2016 were ever prepared to agree to complete the purchase at the lower value with liability for the repairs passing to them. So there was never any 'true' option for settling based on lost value because the sale of the property was dependant on it being reinstated. Therefore any payment made based on lost value would have to have been used to carry out repairs. As such, I'm satisfied that SOL progressing the claim based on the repair cost was fair and reasonable. I don't think this issue was mishandled by SOL.

repair costs – Mr C said SOL didn't say the detail set out in the quote he had provided was excessive or over-scoped – that was its favoured contractor's view, the same contractor who had produced the low quote which SOL's in-expert claims handler had failed to verify. In his view, as it was never verified it isn't fair to say it was the cheapest. He feels I've ignored this key issue along with his reasons explaining why this quote was flawed. Mr C said he has no idea why I've supported SOL's figure without question.

The contractor was acting as SOL's agent when it gave its view about the quote Mr C had provided. I'd emphasize at this point that SOL's figure for repair wasn't ultimately used to determine the settlement it made. But I'd also emphasize that I didn't say I thought its low price was fair. I said I thought there were likely issues with both of the quotes/scopes provided by the respective parties' contractors and that the true cost for repairs was likely to be found somewhere between the two. I remain of the view that if the parties had reached the issue of settlement in November 2016 SOL wouldn't so readily have disregarded its expert's opinion as to scope and cost and increased its offer to the figure it did (which was based on Mr C's cost to repair).

underinsurance – Mr C said that he doesn't really dispute the issue of underinsurance and the matter that arose in this respect during his claim was very quickly resolved. But he also reiterated that he thought it was unfair of SOL to only tell him of the underinsurance when it did and that he can prove its figures in this respect are wrong.

My point in this respect remains – this issue didn't erupt into a big debate between the parties when settlement was made in 2017, but I'm satisfied it would have done if the issue of settlement had been reached earlier, before the buyers began thinking about withdrawing from the purchase.

repair settlement – Mr C said a fair settlement figure is dependent on the insurer having all relevant information having carried out a full and timely investigation which has left it with a

complete file, which in turn is true to the best of its knowledge. He asked what evidence I had that there were likely issues with both quotes and why I felt it was appropriate to let SOL get away with having carried out such a poor investigation. He said SOL has misled me again by saying its contractor had accounted for the emergency repairs in its scope.

Some of the things Mr C has listed might well go towards a consideration of whether an insurer has settled a claim fairly. But just because any or all of them are missing doesn't mean the settlement paid will automatically be seen as unfair. As an extreme example an insurer who totally ignores a claim for a year, and so has no claim file or investigation to speak of, but then settles based on costs presented by its policyholder, may well be felt to have settled the claim fairly – because it has paid out what it will cost the policyholder to fix the damage. Whether it then has to pay compensation to account for the distress caused by its delay and poor claim handling is another matter. But the claim settlement wouldn't be found to be unfair purely because it had mishandled the claim.

The arguments regarding the repair figures weren't fully progressed because SOL reviewed its position and opted to settle based on Mr C's costs. Having looked again at what was said by both sides about the repair details submitted I'm satisfied by what I said provisionally – that the true cost for repairs was likely somewhere between SOL's low figure and the much higher figure submitted by Mr C and that SOL ultimately based its settlement on.

I said provisionally that the "*estimate on which SOL's settlement was based included amounts*" for emergency works. I didn't say SOL's contractor's scope included this work – as Mr C has pointed out, it said it couldn't quantify costs in this respect.

lost rent – Mr C made no comment.

other financial losses – Mr C said his losses are a direct result of the claim not being settled in a reasonable and timely manner and because it was, instead, mishandled. He says his goal was always to sell the property and this would have happened in late 2016 or early 2017 if the claim had not been mishandled. Mr C said I can't use opinion to determine what would otherwise have happened, regardless of any past experience I may have.

I've explained my views on this at some length but to summarise, I'm satisfied by everything I've seen and reviewed in the course of reaching this final decision that if the parties had reached the point of discussing the settlement amount earlier, even say in November 2016, the debate over the likely cost of repairs and the impact of underinsurance wouldn't have been so easily overcome as they were in the spring of 2017 when Mr C's financial positon had become so much more pressured. I understand that it must be frustrating for Mr C to see me analyse the situation in this way but it is something I'm able to do and it is something that I have to do in order to assess the complaint he has made. I can't just say Mr C had intended to do this and so this is what would have happened. That would be an unsound and unfair basis for a decision. Instead, I have to determine, based on all the available evidence, what I think is most likely to have happened. And that is what I've done here. I remain of the view that even if SOL had handled the claim appropriately Mr C's losses would most likely always have occurred.

compensation – Mr C said it was a constantly frustrating process filled with misinformation and constantly changing staff. He said that because of SOL's failures he had to sit in front of a judge and explain the delay and beg for more time. He said the second lender on the property charged him for not having regular updates and pressurised him in other ways. After nine months of waiting for SOL to do something to relieve the pressure it made its low

offer of settlement which naturally caused a lot of distress as it wasn't anywhere near enough to resolve the financial situation. There were family and health issues in play too as well as pressure from the neighbours. He said he had to juggle all the interested parties to keep them happy and try to keep the buyers interested and happy. The lack of a sale caused the financial positon to deteriorate causing more stress and he ended up in hospital. His family had to vacate the property and debt collectors are still chasing payment. He is homeless. SOL did nothing but fob him off. He had no money and had to keep funding the property he'd already sold.

I said provisionally "*I accept that* [SOL not acting more pro-actively and its constant staff changes] *caused Mr C some distress and inconvenience*".

Having considered Mr C's response I can see that he had to attend court in relation his financial positon. But I also see that there was only one attendance during the course of the claim. That was December 2016 (there was another attendance in July 2016 but this was before SOL was notified of the loss). Mr C has referred to other dates but not provided sufficient evidence to show hearings took place or what the reason for them and the content of them was.

The detail I've seen of the December hearing shows Mr C had to attend as his mortgage payments were in arrears. The hearing was scheduled to last only ten minutes (although Mr C has said it lasted an hour). I can't see that much time could have been given to Mr C having to explain why payments hadn't been made. And I've said I don't think the claim could reasonably have been settled before then, that it would always likely have continued into 2017 even if SOL had handled it appropriately.

The charges made by the second lender weren't made because Mr C hadn't been able to update it. It did ask for updates and he did tell it what he could. The charge notifications from the second lender do say (my emphasis) *"certain fees and charges have been applied to your account due to your failure to make payments* ***or provide us with required documentation****"*, but then further detail is given below about the exact nature of the charge. I've seen some that relate to buildings insurance, one for professional fees and some charged each month and recorded as *"*[name] *3rd party"*. So I'm not convinced that any charges applied were related to Mr C not updating it because SOL hadn't progressed his claim. Whilst I can see that Mr C was contacted by the second lender and its representatives quite regularly and I know he felt harassed by it, I can't fairly hold SOL accountable for its actions. In any event, even if the claim had progressed appropriately, and as I've said before, I think it would always have taken time and stagnated at points because of the arguments I'm satisfied that parties would have become more deeply involved in.

The other points made by Mr C are things, I think, that wouldn't have been avoided, even if SOL had handled things as it arguably should have done.

renewal – Mr C made no comment.

In summary – I do appreciate the awful time Mr C has been going through and I understand why he feels SOL is to blame for so much of the dreadful situation he is currently in. I've carefully considered everything he's said and with regret for any further upset my findings cause him, I'm not persuaded it would be fair or reasonable to find SOL liable for the financial losses he has suffered or to make it pay him compensation for distress and inconvenience.

my final decision

I don't uphold this complaint. I don't make any award against Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 November 2018.

Fiona Robinson
ombudsman