

complaint

Mr S complains that Society of Lloyd's has not paid for all items under a contents insurance claim.

Mr S is represented by a third party in this case. But, for ease, I'll only refer to Mr S throughout.

background

Mr S took out a buildings and contents insurance policy through a broker in December 2016. When he took the policy he included £30,000 of cover for jewellery and watches (later increased to £35,500). He stated a specific high value item; an engagement ring valued at over £25,000.

Mr S was sadly the victim of a burglary in March 2017. Thieves gained access to his property and stole – among other things – a number of high value watches. Mr S also had some other watches which were fortunately not stolen.

Mr S made a claim on his policy. He told Lloyds what had been stolen and also about the items which were still in his possession. It became clear that Mr S was significantly underinsured. Lloyds hadn't been aware of all the items he owned or, importantly, their full value. In total, Mr S had actually required £72,500 worth of cover to meet his needs. The items requiring cover included:

Rolex watch - £10,000 (stolen)
Royal Oak watch - £15,000 (stolen)
Tag watch - £3,800 (stolen)
Tag watch - £3,200 (stolen)
Rolex watch - £11,000 (not stolen)
Omega watch - £4,000 (not stolen)
engagement ring - £25,500 (not stolen)

In view of this Lloyds said it would pay out on the claim but not in full. It said if it had been fully informed about the valuables Mr S had it would have:

- added endorsements to his policy requiring Mr S to keep any items over £7,500 in value inside a safe when not being worn; *and*
- charged him a higher premium.

Lloyds said it wouldn't cover the stolen Rolex or Royal Oak watch as it would be treating the policy as if the safe endorsements had been included from the outset.

Lloyds also said it would be reducing the amount it paid out on the remaining watches according to the percentage of premium actually paid compared to what should have been charged.

Mr S wasn't happy with Lloyd's settlement of his claim. He thought it was unfair that he hadn't been told about the endorsements when he took the policy out. He also felt Lloyd's couldn't rely on a term that hadn't been included in his policy.

Mr S didn't believe Lloyds could apply any reduction based on premium paid when he did have a policy limit of £35,500. He felt Lloyd's should pay out to that limit given that's what his policy allowed for, particularly as it had declined to cover the two most expensive watches.

Lloyd's didn't change its view and so the case was brought to us. One of our investigators looked into the case and didn't find the business had done anything wrong. She explained Lloyd's was entitled to make the changes it had to the policy.

Mr S didn't agree and so the case has been passed to me for a final decision.

my findings

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 not upholding it. I'll explain why.

I think it's important here to first set out the legislation relevant to this case. Lloyd's has essentially made post-sale changes to the insurance policy by reference to the provisions of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

Lloyd's has said that Mr S made a careless misrepresentation when he took out his policy. That came in the form of not properly declaring the full value of items he required cover for. Mr S doesn't appear to dispute that position and accepts he didn't have sufficient cover in place.

So what's left for me to decide is whether the actions of Lloyd's have been fair and reasonable, with regard to the provisions of CIDRA, once the misrepresentation was realised.

The Act sets out the remedies available to an insurer when there's been a qualifying misrepresentation, as there has here. The relevant sections of CIDRA in this regard are set out in Schedule 1 of the Act. It states:

Careless misrepresentations - claims.

3 If the qualifying misrepresentation was careless, paragraphs 4 to 8 apply in relation to any claim.

4 The insurer's remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly.

5 If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid.

6 If the insurer would have entered into the consumer insurance contract, but on different terms (excluding terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.

7 In addition, if the insurer would have entered into the consumer insurance contract (whether the terms relating to matters other than the premium would have been the same or

different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

8 “Reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 6), where—

$$X = \frac{\text{premium actually charged}}{\text{higher premium}} \times 100$$

Paragraph 5 doesn't apply here as Lloyd's has confirmed it would still have entered into an insurance contract with Mr S. If it wouldn't have done then Mr S would be entitled to no claim at all but would have his premiums refunded.

Lloyd's have confirmed cover would still have been offered, but under different terms. And so paragraph 6 applies. And Lloyd's is entitled to apply those terms in the consideration of any claim. The terms that would have been added here are the endorsements concerning keeping jewellery and watches valued at over £7,500 in a safe. As the watches were not in a safe when they were stolen there can't be a successful claim for them.

It's important to note here that this doesn't mean those watches are completely excluded from the contract. It means instead that the requirements for a successful claim haven't been met. There's a key difference here.

Mr S has said he was never informed about the possibility of such an endorsement. He also says the endorsement didn't form part of his contract. But I wouldn't expect Mr S to be told about an endorsement that didn't appear to apply to his policy. Lloyd's had no reason to explain the position as the triggering requirements hadn't been met. Had Lloyd's been informed of the full risk – that is the total value of the jewellery and watches – to be insured, Lloyd's would have been able to inform him of all the endorsements that applied. It would then have applied them to his policy.

I've seen the underwriting evidence from Lloyd's to confirm the point at which the safe endorsements would have been added. I can't share this evidence with Mr S as it's commercially sensitive. But I'm persuaded the endorsements would have been included on the policy had Lloyd's been aware of the full value of the items Mr S needed insurance for. I've also taken into account that Mr S has since increased the level of his cover and hasn't had further endorsements added to his policy. That is supported by the underwriting evidence I've seen too.

Paragraphs 7 and 8 also apply in Mr S' case. Lloyd's would still have offered insurance but would have done so at a higher premium. CIDRA then allows for a proportional reduction of any successful claim based on the calculation shown above which in real terms means a 51% decrease.

Paragraph 7 confirms that any such reduction is in addition to paragraph 6. And so Lloyd's is able to rely on the endorsement it should have had in place as well as applying the reduction. That's confirmed again in paragraph 8 where it states the reduction can be applied based on the policy terms that should have been in place.

This is essentially because the full risk Lloyd's was exposed to was for £72,500 and all of the watches and jewellery. Items can't now fairly be discounted now we know what the actual

terms and cost of the policy should have been from the outset. As I said above, the two watches that have been excluded from the claim do still form part of the policy overall. But because they weren't kept in a safe – as per the requirements of the endorsements that should have been in place – there isn't a successful claim on them.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to Mr S to accept or reject my decision before 25 October 2018.

Ben Murray
ombudsman