

## **complaint**

Mr and Mrs H complain that Society of Lloyd's only paid part of the claim they made under their Tenanted Property insurance for damage caused by subsidence.

## **background**

A property that Mr and Mrs H rented out was damaged by subsidence. Lloyd's thought the sum insured was substantially inadequate in relation to the cost of rebuilding the property. So, it relied on a policy condition regarding underinsurance and settled the claim by paying a proportion of the cost of repairing the damage.

Mr and Mrs H thought the actual cost of rebuilding was less than Lloyd's had used to calculate its payment.

Our adjudicator thought Mr and Mrs H had been told the sum insured should cover the full cost of reconstructing the main building, outbuildings, garages, walls, drives and patios. As a result, she thought the sum Lloyd's had paid was fair. Mr and Mrs H disagreed.

I issued a provisional decision. I said the condition relied on by Lloyd's stated that, if the sum insured was less than the cost of rebuilding the premises, it would only pay the corresponding proportion of the claim. For example, if the sum insured was only half the cost of rebuilding, Lloyd's would only pay half the cost of repairing the damage. I thought Lloyd's had made the requirement clear to Mr and Mrs H. And, in all the circumstances, I thought it was fair for it to have relied on the condition.

But I said a building engineer consulted by Mr and Mrs H had calculated the cost of rebuilding. And he thought it was less than the sum used by Lloyd's when it decided how much it would pay to settle the claim. The sum used by Lloyd's had been calculated by its loss adjuster using publicly available guidance on rebuilding costs. Looking at all the evidence, I thought the engineer's opinion was the most persuasive, not least because his calculation related specifically to Mr and Mrs H's property.

I award interest where, as a result of the insurer's actions, the complainants have been without the use of money. So, my provisional decision was that Lloyd's should recalculate the sum payable for the claim by using the engineer's rebuilding cost. And it should pay the balance due, plus interest.

Lloyd's disagreed. It provided an opinion about the sum insured from a building surveyor employed by its loss adjusters. He said the engineer's opinion was inaccurate. And the guidance on which Lloyd's relied is the accepted standard for assessing rebuilding costs. He said he hadn't seen the property and this made *"it ... difficult to comment"*. But, in the light of the guidance, he thought the rebuilding cost could actually be slightly more than the sum used by Lloyd's.

The surveyor's opinion was put to Mr and Mrs H's engineer. He said he has long experience of dealing with properties in the relevant area suffering from subsidence damage. And this involves being familiar with the methods and costs of repair and rebuilding. He said his calculation had taken account of advice about building costs from a builder who lives nearby. He implied that Mr H instructed him not to take account of the sort of general guidance referred to by the surveyor. Instead, his assessment was to be specific to the insured property, based on his inspection of it.

## **my findings**

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

Lloyd's loss adjusters' surveyor seemed surprised the engineer's calculation was based on measurements in square feet. In fact, Lloyd's agent had told Mr H that form of measurement should be used.

The surveyor said the engineer didn't explain how he'd calculated the cost of rebuilding the garage and conservatory. The engineer's response was that his assessment in respect of the garage, conservatory and paths was the same as the loss adjusters' original assessment.

The surveyor said the allowance the engineer had made for professional fees was inadequate. The engineer's response was that professional fees in the relevant area are low and the allowance he'd made for these was correct.

The surveyor said that, in the provisional decision, I'd implied that rebuilding costs should only be assessed by chartered surveyors. I disagree. But I did make the point that the loss adjuster who made the assessment on which Lloyd's payment was based wasn't a qualified building surveyor or engineer. And that Mr and Mrs H's case was based on a building engineer's opinion.

The surveyor also said I'm not qualified to assess the rebuilding cost. And that this means I'm not entitled to have made the provisional decision that I did. Like my colleagues at the Financial Ombudsman Service, I'm not a surveyor or engineer. But I think I made it clear in the provisional decision that I wasn't making my own assessment of the cost of rebuilding Mr and Mrs H's property. Instead, I assessed the evidence that had been provided by them and Lloyd's. And, having done that, I said I thought the engineer's opinion was *"the most persuasive evidence of the actual rebuilding cost"*.

I've taken account of everything Lloyd's loss adjusters' surveyor said in response to the provisional decision. But I remain of the view that I set out there. Unlike the surveyor, the engineer had inspected the property. His opinion was specific to it and the conditions in the relevant area. I still think it's the most persuasive evidence of the cost of rebuilding the property.

## **my final decision**

I uphold this complaint. My decision is that Society of Lloyd's should:

- a) recalculate the sum payable for the claim by using a rebuilding cost of £116,660 plus VAT;
- b) pay the balance due, plus interest<sup>1</sup>. The interest should be calculated at 8% pa simple from when it received the engineer's report to the date of its payment.

It should do a) and b) within 28 days of the date on which we tell it that Mr and Mrs H have accepted my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 6 January 2017.

S Lilley  
**ombudsman**

<sup>1</sup> HM Revenue & Customs requires Society of Lloyd's to take off tax from this interest. Society of Lloyd's must give Mr and Mrs H a certificate showing how much tax it's taken off if they ask for one.