

complaint

Mr K is unhappy with the outcome of a claim he made under a policy to cover possessions while in the care of removers. The policy was provided by certain underwriters at Society of Lloyd's.

background

I issued my provisional decision on this matter in August 2015, an extract from which is copied below:

"Mr K employed a removal firm to move the contents of a property for him. During the move an 18th century statue (one of a pair) was broken. The removers said it had been in poor condition, and broken before they collected it. The inventory records that the base was broken and the statue was 'weather worn'.

Lloyd's however had the statue repaired. Mr K had wanted to approve any repair before it was carried out but says he was excluded from this process.

Mr K doesn't accept that the insurer has properly indemnified him. He says the statue wasn't damaged previously – just slightly weathered and covered in lichen – and has provided evidence that the base wasn't damaged. In any event, the removers broke it into three pieces. Mr K has also provided information about the historic and artistic merit of the statue and says that its value has fallen considerably since the repair. Although Mr K says the repair was structurally good, the face of the statue was 'scarred' affecting its value. Given that it is their intrinsic value has been affected, he effectively suggests that a repair was inappropriate and he hasn't been properly indemnified.

Lloyd's says it has done all it needs to do under the terms of the policy but agreed to pay the sum of £100 compensation for the inconvenience caused by its handling of the claim.

My findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The policy gives the insurer the option to replace or repair any damaged item; it specifically excludes any liability for depreciation in value following repair.

However, even though it excludes depreciation as a result of a repair having been done, the insurer is obliged (as far as possible) to indemnify Mr K's loss – i.e. put him back in the position he would have been in had the damage not happened.

In this case repair didn't rectify the statue to its pre-damaged condition. Mr K has provided photographs, which show the break in the stone and the repair is clearly visible. So, although the statue is 'useable' as it is structurally sound again, it hasn't been restored to its pre-damaged condition and therefore there is still a loss to Mr K that hasn't been indemnified.

I might agree with Lloyd's that this effect on its value would be excluded, if it were purely because of the fact a repair had been made. Some antiques values are so affected; but in this case the statue doesn't look as it did before.

Mr K says that the value decreased by £5,000: he sold the pair of statues for £5,500 but says he would have got around £10-12,000 if one hadn't been damaged. I haven't seen any convincing expert evidence of the value, unrepaid. Mr K has made reference to one statue recently being sold for £25,000 but the auctioneers suggested this was a much larger example and had an "excellent provenance". However, I also note that elsewhere he put the undamaged value of the pair at £9-10,000.

I also note that the auctioneers that sold the statues put an estimate on them of £5,000 to £8,000, so they thought they could still fetch up to £8,000, in the repaired state.

Lloyd's has also pointed out that the policy says: "Where any items are part of a pair or set Underwriters will only pay for the actual parts which are lost or damaged. No Payment will be made for articles that are not damaged."

Therefore, it's only responsible for the loss of value of the one, damaged statue and so I have to consider their individual value. I intend to simply use half the values and estimates that have been suggested for the pair, as being the value of each single item (although I appreciate that they may have fetched more as a pair than if they had been sold individually; and that the damaged one might in fact be worth less). So, the damaged statue sold for £2,750 (i.e. half £5,500) but the auctioneers thought it might have achieved between £2,500 and £4,000.

The auctioneers had also apparently said it might have achieved £5,000 to £6,000 if it hadn't been damaged.

In my opinion therefore, Lloyd's should pay Mr K the sum of £2,250 (being the difference between the lowest estimate of £5,000 and the actual sale price of £2,275). Interest should also be added at our usual rate.

This is 'rough and ready' estimate of the loss of value but it is the best I can do on the evidence currently available and given the vagaries of the valuation process of items such as these. It is open to both parties to provide further evidence about the values, before I issue my final decision on the matter, if they wish.

Lloyd's should also pay the sum of £100 compensation for the additional stress and inconvenience caused to Mr K by its handling of the claim, as previously agreed.

my provisional decision

I intend to make Society of Lloyd's pay Mr K the sum of £2,250 in respect of his insurance claim together with interest at 8% simple per annum, from the date of the claim to the date of payment.

It should also pay the sum of £100 compensation for its handling of the claim."

developments

I invited both parties to respond to my provisional decision with any further information or evidence they wanted considered.

Mr K has confirmed he accepts my provisional decision.

Lloyd's has also responded and made the following comments:

- the policy clearly excludes any consequential loss and the loss of value of the statues would therefore be excluded
- it is concerned that I've suggested it is liable for consequential loss of value given the policy terms
- Mr K had confirmed he was happy with the repair carried out
- the claim for loss of value was only made around a year after Mr K accepted the repairs, when he was trying to sell the statues
- this was outside the seven day claim notification period set out in the policy.
- it hasn't had the chance to inspect the statues again as they've been sold
- it is only responsible for the damaged statue – not the undamaged one.
- it hasn't received evidence to support the valuations put on the statues
- the auction price is just the highest bid on the day and is not therefore an accurate valuation

Lloyd's therefore doesn't accept my provisional 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.

I didn't uphold the complaint on the basis that Mr K had suffered consequential loss but because I didn't consider that Lloyd's had provided the indemnity that he was entitled to under the policy. Although the statues were repaired, so they were structurally sound, they were not repaired so as to restore them to their pre-damaged state.

The policy covers replacement or repair of a damaged item and it is implicit in that that any repair should restore the item sufficiently to its pre-damaged state. These statues had aesthetic value as well as structural value and so it seems to me that given the breaks were still so obvious, full indemnity had not been provided.

Lloyd's did have photographs that show clearly the damage that remained and therefore I don't think it needed to inspect them again. But, in any event, this matter was ongoing for some time and it could have asked to inspect them at any time between Mr K notifying it that he felt there was still a loss that hadn't been met by the policy in 2013 and when they were sold in October 2014. Although he had said he was happy with the repair – because presumably no better repair could have been done – Mr K made it clear at the time (mid 2013) that he felt that the repair hadn't completely fulfilled his claim. I don't therefore accept that his claim was made late.

With regard to the valuations put on the statues, I did explain that I was making a rough and ready assessment as it is extremely difficult to value an unusual item such as this. I used the lowest figure that the auctioneers estimated they would sell for. I still consider that this is the best that can be done in the circumstances and the evidence available. Lloyd's has been provided with these estimates.

Given the above, I see no good reason to depart from the findings in my provisional decision.

my final decision

I uphold this complaint against Society of Lloyd's and require it to pay Mr K the sum of £2,250 in respect of his insurance claim together with interest at 8% simple per annum, from the date of the claim to the date of payment.

It should also pay the sum of £100 compensation for the trouble caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 November 2015.

Harriet McCarthy
ombudsman