

complaint

A claim under a Home insurance was dealt with unfairly by Society of Lloyd's.

background

Mr C's home was extensively damaged in a fire. At an early stage of his claim, Lloyd's loss adjusters appointed surveyors to prepare details of the repairs that the building required. The loss adjusters identified the buildings sum insured under Mr C's policy as inadequate by a large margin. But they estimated that the repairs to the building would cost substantially less than the sum insured.

Later, the loss adjusters changed their view. More than four months after their first report, they indicated that the building repairs would cost more than the sum insured. By that time, some repair work had started.

Lloyd's then decided to settle the claim by paying Mr C the balance of the sum insured, after taking account of the cost of the work already done. And Mr C arranged for the rest of the necessary work to be completed.

Mr C said the loss adjusters had indicated that the sum insured wouldn't cause problems for his claim. He suggested the cost of the emergency and roof work that was done on behalf of Lloyd's was inflated. He thought that, but for this, all the repairs could have been completed within the sum insured. And he said some of the work was of poor quality.

Our adjudicator thought Lloyd's actions in the early stages of the claim amounted to it undertaking to repair the damage (or to arrange for it to be repaired). Because of this, she thought Lloyd's should pay the sum by which Mr C's expenditure on repairs exceeded the sum that Lloyd's had paid him.

Lloyd's disagreed. It accepted that it had decided to repair the damage. And, in regard to the emergency work that was required, it said it had acted to assist Mr C as much as possible. But it said the policy required him to ensure the sum insured was adequate. And, in the event of it proving inadequate, the policy said Lloyd's wouldn't have to pay the full cost of repairs.

Later, though, it said it had chosen to settle the claim by paying the cost of repairs, up to the sum insured. And it only participated in the repairs and hadn't agreed to reinstate the property. It said the policy stated that it wouldn't have to pay more than the sum insured. It thought that, by having acted as it did, Mr C had benefited from its (and its agents') expertise in responding to serious fire damage.

The adjudicator maintained her view about the consequences of how Lloyd's had dealt with the claim. She said it had become responsible for completing the work required to repair the insured damage, regardless of the cost. She thought Lloyd's should pay the amount by which the cost of the work required to repair the insured damage exceeded the sum that it had paid in this respect. She said it should also pay interest at 8% pa on the payment(s) that Mr C had made for repair work. This should be calculated from when he made the payment(s) to the date(s) on which Lloyd's indemnified him for the relevant costs.

Additionally, she thought Lloyd's should arrange an inspection of the roof to check for any defects in relation to the work that was carried out on its behalf. If there were defects, she

said it should deal with them. And she thought there was a mismatch where original roof tiles about the new ones that were provided in connection with the claim. As a result, she said Lloyd's should arrange for old tiles at the front of the property to be swapped with new tiles from the rear.

But she didn't think Lloyd's had spent an unreasonable amount on emergency work. Or that delays in carrying out that work had caused the cost of repairs to increase significantly.

Overall, though, she thought Lloyd's should pay £500 as compensation for Mr C's trouble and upset. And it should pay the sum it had offered in respect of the clearance of debris.

Mr C said he'd accept the adjudicator's assessment. But Lloyd's disagreed with 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.

First, I'll deal with the terms of the policy. According to the copy supplied to us by Lloyd's, the policy booklet included:

- *"General Conditions ... You must keep the sums insured at a level that represents the full value of the property. Full value should represent: for buildings – the full rebuilding cost including removal of debris and professional fees";*
- *"Conditions that apply to Section One – Buildings ... we will pay the full cost of repair as long as ... the sum insured is enough to pay for the full cost of rebuilding the buildings in their present form ... We will not pay more than the sum insured for each premises shown in the schedule".*

Turning now to Lloyd's position, I think it made contradictory statements in its responses to the adjudicator's opinion. Initially, it said that, in dealing with a claim, it could choose to repair or replace the damaged property or, alternatively, pay the cost of doing that. And it said it had *"decided ... to repair the property to discharge its obligation under the insurance contract"*.

Later, though, it altered its position and said it had chosen to *"discharge its obligation under the insurance contract by providing the cost of repair up to the policy limit"*.

Lloyd's said it accepted that, when it chooses to settle a claim by reinstating the insured property, a building or repair contract is created. And that (except in circumstances not relevant here) it's required to complete the work regardless of the cost; it doesn't matter if the reinstatement costs more than was originally estimated, or if it costs more than the sum insured.

But Lloyd's said its involvement in the repairs doesn't change the fact that the policy clearly stated that it wouldn't pay more than the sum insured. It said it wouldn't have benefited from choosing to reinstate the property, and it hadn't made a clear decision to settle the claim that way. It said it had authorised the loss adjusters to arrange the necessary work to repair the fire damage, with Mr C's involvement. And it said it wouldn't have been in Mr C's interests for it to have settled the claim by simply paying him the sum insured.

In a subsequent letter, Lloyd's agreed that its loss adjusters had taken "*the main active role in arranging emergency repair works and roof repair work*". But it said this work would have had to be carried out in any event. And when it was carried out, the cost of repairs wasn't expected to exceed the sum insured.

Mr C accepts that he was told he was underinsured. But he appears to have felt reassured about this by being told there was no "*averaging clause*" in his policy.

Lloyd's, though, has said it arranged work on the express basis that it wouldn't pay more than the sum insured. It said Mr C had been told this on a number of occasions.

I've taken account of everything that Lloyd's has said. I don't think it's enough that the policy said Lloyd's wasn't liable to pay more than the sum insured. Lloyd's has mentioned three communications as showing that Mr C was told about that limitation in the context of his claim. The first of these communications is an email from the loss adjusters, dated the day after their first visit to Mr C's property. This did say the sum insured was substantially inadequate. But it didn't say Lloyd's would pay no more than the sum insured.

The second communication (which I'll refer to as "email (a)") is an email that's dated a little more than two months after the first. This did say that Lloyd's wouldn't pay more than the sum insured.

The third communication mentioned by Lloyd's (which I'll refer to as "email (b)") is an email that's dated a little more than four months after the first (although the address to which it was sent isn't stated). This also said Lloyd's intended to limit its payments to the sum insured.

Additionally, I've seen another email to Mr C from the loss adjusters (I'll refer to this as "email (c)"). This was dated between emails (a) and (b). Although a little unclear, it suggested the sum insured would be the most that Lloyd's would pay.

I will now summarise the evidence that I've seen:

- Lloyd's loss adjusters appointed surveyors to prepare details of the repairs required to the building;
- the surveyors obtained the quotations for the roof repairs from contractors they'd chosen. I understand Mr C was invited to identify a contractor from whom a quotation would also be obtained, but he didn't do that;
- Mr C has said he asked about involving a builder of his choice, but the loss adjusters and/or the surveyors told him that if his builder's quote was the lowest, Lloyd's would then only pay that sum;
- when the contractors' quotations were received, the loss adjusters asked Lloyd's for authority to appoint one of them to carry out the roof work;
- in its final decision, Lloyd's said "*it is the choice of the underwriter concerned (or, where applicable, their loss adjuster) as to which contractor they elect to carry out any ... remedial works*".

In my view, the effect of all the evidence is that, until it was appreciated that the cost of repairs would exceed the sum insured, Lloyd's (or its agents):

- decided what repairs would be carried out;
- chose the contractors that would provide quotations for the roof repairs;
- chose and appointed a contractor to carry out repair work.

According to the evidence before me, Mr C:

- didn't have responsibility for deciding on the repairs that would be done;
- didn't select the contractors that provided quotations for the roof work; and
- didn't give the instructions for that work to proceed.

Additionally, I've seen a letter from a sub-contractor saying that it carried out work at Mr C's home on behalf of another contractor. It said the other contractor had carried out work on behalf of Lloyd's. This reinforces my view.

I agree that Mr C had an involvement. But in the circumstances I think it's reasonable to treat Lloyd's as having had (partly through its agents) the primary role in the work described above, and as having effectively directed it. As Lloyd's said to us: "[The] *loss adjusters arranged that repair* [of the fire damage] *with our authorisation*".

Lloyd's made the point that the premium that Mr C paid was based on the sum insured. I accept that. It also said Mr C was responsible for ensuring the sum insured was adequate and he hadn't done that. I don't disagree with this.

But if, contrary to the normal position where the insurer carries out and/or directs repairs, Lloyd's didn't intend to pay any more than the sum insured, I think it would have been good insurance practice (and fair and reasonable) for it to make all of this clear to Mr C. This should have been done in good time before repair work started. That would have allowed Mr C to decide to take control of the repairs so that, from the start, he could make decisions aimed at ensuring the total cost didn't exceed the sum insured.

Lloyd's first response to our adjudicator's assessment seems to me to suggest it wasn't previously aware of the consequences of undertaking to repair (or arrange the repair of) insured damage. This may have affected the way it and its agents dealt with the claim.

The only evidence that I'm aware of that may show that, before the start of the repairs it had arranged, Lloyd's (or its agents) warned Mr C that it wouldn't pay the full cost of necessary repairs is email (a). Emails (b) and (c) are dated after the evidence indicates repairs commenced.

Having said this, it's not clear to me when repairs commenced. But I've seen a letter from the surveyors, just over two weeks after the fire, saying they were already designing the new roof. And I've seen a letter from insurance brokers that said it set out the views of Lloyd's and the loss adjusters. The brokers effectively stated that, before email (a), Lloyd's had already decided which contractor would carry out the roof repairs. And the surveyors had been instructed accordingly. Also, a report from the loss adjusters a little more than two weeks after email (a) said repair work had started.

So, the evidence indicates that Lloyd's repair arrangements were already in train before the loss adjusters told Mr C about a limit on its liability in relation to those arrangements (in email (a)).

In my view, email (a) didn't make the position clear. But I think it implied that Lloyd's would decide which contractor would carry out the roof repairs. And it stated that the loss adjusters would provide the surveyors with relevant instructions – presumably, that the chosen contractor should start the repair work. There was nothing in the email to suggest that Mr C had any choice in the matter.

The email did say that Lloyd's wouldn't pay more than the sum insured. But it also said the sum insured appeared adequate to settle the claim. The loss adjusters went on to say they would be able to judge this more accurately when they received quotations for the rest of the necessary repairs.

But I think the reassurance about the sum insured significantly diluted the impact that the warning may otherwise have had. In other words, Mr C was less likely to appreciate that Lloyd's was arranging repair work but wouldn't necessarily pay for all the work that was required. And he was less likely to conclude that, to try to ensure that the total cost didn't exceed the sum insured, he should take control of the repairs. His opportunity to influence the total cost of the work was, in my view, reduced.

Email (c) is also relevant here. It was dated between emails (a) and (b), and after the loss adjusters said repair work had started. And it repeated that the cost of the repairs should be less than the sum insured (although it, too, said this would be reviewed when more details were available). I think this email could have reinforced an impression that the limit to Lloyd's liability didn't require immediate action by Mr C to stop and take control of the repairs.

Lloyd's thinks it wouldn't have been in Mr C's interests for it to have settled the claim by paying him the sum insured. But Mr C disagrees. As I understand it, he thinks he could have had the work done for less than Lloyd's spent.

my final decision

Society of Lloyd's should:

- pay Mr C the amount by which the cost of the work required to repair the insured damage exceeds the sum that it paid in this respect;
- pay interest at 8% pa simple on the payment(s) that Mr C made for this work. This should be calculated from when he made the payment(s) to the date(s) on which Lloyd's indemnified him for the relevant costs;
- arrange an inspection of the roof. If this shows there were any defects in or omissions from the work required to repair the insured damage that was carried out on its behalf, it should deal with them;
- arrange for old tiles at the front of the property to be swapped with new tiles from the rear;
- pay the sum it offered in respect of the clearance of debris (if it hasn't been paid already);
- pay Mr C £500 as compensation for his trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 October 2015.

S Lilley
ombudsman