



complaint

Mr F and Ms K have complained about Society of Lloyd's (The Society) handling of a claim they made for a leak at their property; they say there were delays and poor work.

background

A leak occurred in January 2011 at a property next door to Mr F and Ms K's; damage was caused to their property as the leak was significant and a claim was made to The Society.

The damage at the property was assessed, under insurance identified and, initially, a cash settlement was offered to Mr F and Ms K. This offer was refused and, albeit some while later, The Society agreed to undertake work at the property, with a proportional payment to be made by Mr F and Ms K. However, before any work at the property could be done the leak next door had to be fixed and this proved difficult to achieve. There were also various problems with the loss adjusters appointed by The Society (who had appointed contractors from their own business group to do the insured repairs) and they were eventually removed from the job.

In order to finally reinstate Mr F and Ms K's property The Society eventually undertook damp proofing work to prevent any further damage being caused by the still unrepaired leak in the neighbouring property. In January 2013 Mr F and Ms K sold the property which they told The Society they had intended to do in summer 2011. They complained about the poor standard of the work which they believed had increased the overall cost of reinstatement and, therefore, the amount they were expected to pay due to underinsurance. They said they had never agreed to the contractors appointed by the first loss adjuster and an allowance should be made for the cost associated with that contractor's profits. They also felt that The Society should have taken action to claim costs back from the loss adjusters.

The Society accepted that the first part of the claim had not been handled well by its loss adjusters and that some work had been done poorly. New loss adjusters were appointed, an assessment of the work to date undertaken and a program for completion of the work (including damp proofing) organised. The Society told Mr F and Ms K that it calculated that the claim repairs would always have cost it £15,000 and it would pay them a total of £5,000 compensation (comprised of some monies it was writing off and some it had previously withheld to offset the underinsurance). Mr F and Ms K remained dissatisfied; they did not think that the things that had previously been offset should be considered as compensation and, in any event, £5,000 was nowhere near enough for everything they had been through.

I then issued a provisional decision on this complaint. I have reproduced my findings from that decision below in italics.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am not currently minded to make The Society pay anything more than what it has already offered but I think both parties need to hear my reasoning for this provisional conclusion before I move to issue a final decision. If either party has any comment to make following consideration of my provisional findings I will take these into account when making my final decision.

under insurance

The Society has explained that its original loss adjuster calculated the rebuild cost of the property by applying the floor area (116.3 square-metres) to standardised, published rates and adding an allowance (£10,000) for an attic room. I have seen no argument from Mr F and Ms K stating that they believe (and why they believe) the property was correctly insured but I appreciate that, until now, they may not have known how the rebuild cost for the property had been calculated by the loss adjuster.

The Society has shown that when taking out this cover a figure of £20,000 was initially given (during some information gathering on an aggregator website) as the rebuild cost and that this was amended to £120,000 during the final sales call with the broker. It seems to me that Mr F and Ms K were asked a clear question by the aggregator site regarding the rebuild cost of the property and, based on the loss adjusters' calculations, that an incorrect answer in this respect was given by Mr F. Therefore, I am currently satisfied that it was fair and reasonable for The Society to deal with this claim subject to the under insurance it had identified.

cash settlement and repair by The Society's contractors

I can understand why Mr F and Ms K were concerned about The Society's initial offer to cash settle this claim but rarely is an insurer obligated to undertake repairs at a policyholder's property. Often insurers will reserve the right to choose either to settle a claim in cash or do repairs. However, some policies, as does the one in place here, only require the insurer to pay for reinstating the property. Therefore, regardless of Mr F and Ms K's wishes or concerns about the offer they were made, this was all The Society was obliged to do under the policy in place.

Even where an insurer chooses to repair a property it will often do this by using its own contractors. It would rarely be the case that an insurer would give a policyholder a choice in the contractors it chooses to use or even a chance to vet them. The responsibility for the work undertaken by the contractor falls to the insurer; there is no contract between the contractor and the policyholder or the policyholder and the loss adjuster. Liability for all work completed at a policyholders home, by contractors appointed by the insurer, falls to the insurer. Only in certain circumstances would I expect a mutually agreed contractor to be appointed and none of those have occurred here.

cost of reinstatement

The Society has accepted that the claim was not handled well and that some works were done poorly. Mr F and Ms K should not have to face extra costs on their claim history because of poor repairs. In this case, an increased claim cost will also affect the contribution they would be expected to pay towards the under insurance.

Other than stating that they do not believe the figures quoted by The Society are correct, I have not seen any substantive argument or evidence from Mr F and Ms K in this respect. That being said, liability falls to The Society to show that it has calculated this correctly because it was its poor work that caused the situation in the first place.

The Society has explained that when the loss adjusters were changed the state of the property was reviewed and an estimation done by the new loss adjuster of what the overall cost of work at the property should have been, if it had been done correctly from the start. The figure determined was £15,000. There is no detail behind this figure and no assessment of what work had already been done and was ok or not ok and, therefore, needed redoing. This makes it somewhat difficult for me to determine whether £15,000 is a fair and reasonable value for the reinstatement works. I would usually expect to see comparisons of schedules, an assessment of the work actually under taken and/or completed and costings provided of anything remaining or in need of rectification. In other words a fully quantifiable rationale for the bottom line figure reached. Having a global estimate, such as has been provided here, with absolutely no reasoning behind it, let alone costings, is not helpful.

That being said, it seems to me that there was some fairly major damage caused here and in my experience damage such as this often results in cost in the region of £15,000 to repair. I could order The Society to go back and do a full cost analysis of the work at the property but this would be difficult for it at this stage and I am not convinced it is going to achieve very much in the situation here or make any great impact on Mr F and Ms K's position. Therefore, I am prepared to accept that, on this occasion, £15,000 was a fair and reasonable assessment of the cost of the work that would always have needed to have been done at the property. I am not going to make The Society recalculate or change this.

claiming costs back

I would not expect an insurer to make deductions for any profit made by a contractor it chooses to use regardless of the connection of that contractor to any other business involved in the claim. In any event, here, The Society has recalculated what it would always have cost it, even if the work had been completed properly in the first place. Therefore, there is nothing else to amend or take off of this figure.

In a similar way there is nothing here, affecting Mr F and Ms K anyway, that The Society needs to claim back from the first loss adjusters/contractors. It has only recorded a reinstatement cost here of £15,000 (for the building repairs), therefore, no costs for poor repairs have been logged against Mr F and Mrs K's claims history. In any event, it is up to the insurer whether to pursue recovery of its claim outlay and such does not have to be justified to the policyholder. In situations of negligent work it is rarely straightforward to secure a successful outcome and so it is often the case that, when taking this along with likely costs for such an action, this is not pursued by an insurer. In this instance I would not look to order The Society to do anything differently to what it has done here.

delays and sale of property

This claim did take a long time to resolve and it is clear that things along the way could have been handled better. Determining the exact length of delays caused by an insurer's failures is not always an easy task and it is made more complicated here by the involvement of the next door neighbour. In my experience, having a claim that involves repairs of a property not under the control of the policyholder and/or the insurer, often has an impact on the time

period for reinstatement of the property. With the best will in the world, I do not think that this property would ever have been repaired in time for marketing for sale in summer 2011.

I appreciate that the situation for any policyholder where a claim rumbles on is frustrating and this even more so if there was a previous intention to sell or do something else with the property that has been fettered by the insured incident and necessary repairs. The Society has accepted that some delays occurred and I think that it did cause some substantial distress and inconvenience to Mr F and Ms K. The Society has offered £5,000 in compensation so I have to consider whether this is a fair and reasonable figure for what went on.

compensation

The figures involved in this complaint are somewhat complicated and Mr F and Ms K do not believe that the £5,000 offered by The Society is truly compensation. Therefore, before giving my view on the value of any compensation due to Mr F and Ms K, I have considered whether the £5,000 offered by The Society can truly be considered in that light.

Building repairs were set at £15,000. From this an excess of £500 was removed. The value of the under insurance was applied and this meant that Mr F and Ms K would have to pay The Society £3,980 for work to be done at their home. However, rather than charging Mr F and Ms K this amount, The Society agreed to off-set the amounts it owed under the claim for a meal allowance and utility usage. This totalled £2,320 and would have been paid to Mr F and Ms K if they had not been under insured. The Society calculated that this left an amount owing to it of £1,660 (which included the £500 policy excess). Adding these two figures together gives a total of £3,980. To this The Society added another £1,000 and rounded the figure up to the £5,000 it offered as compensation for the upset its handling of the claim had caused Mr F and Ms K.

So, it could be argued that, part of the compensation offered by The Society was owed to Mr F and Ms K anyway but it could equally be said that, part of it was owed by them to The Society because of their under insurance. I could work out what is owed by whom and then make an entirely separate assessment for compensation but that would only result in a payment having to be made by Mr F and Ms K to The Society only for it to have to make another payment to them (of possibly a similar amount).

In situations of underinsurance I would expect an insurer to deal fairly with its policyholder; I would not expect it to refuse to do work or to demand payments from its policyholder in order to allow work to go ahead. I might also expect it to negotiate with its policyholder to reach an amicable agreement as to how best to deal with any shortfall that exists. Here, The Society agreed to carry out work even though it was not obligated to under the policy and even though under insurance existed. It did not demand any payment upfront from Mr F and Ms K and, rather than insisting on being paid for the shortfall in cover, it agreed to off-set payments due under the policy. I think this was a fair and reasonable way of handling this.

In the circumstances here then I think it is also fair and reasonable to treat the total of the offer made by The Society as compensation. If I were to stick to the letter of the policy Mr F and Ms K would owe The Society just short of £4,000. Instead of them having to pay The Society this, it has offered to give this to them, (plus another £1,000). I do not really see how I could fairly and reasonably consider this to be anything other than compensation.

When I make awards of compensation, an award of £5,000 signifies that a lot of distress and inconvenience has occurred. I appreciate that Mr F and Ms K have been through a lot and it was far from ideal that the work at their property progressed in the way that it did. Having taken everything into account though, I am satisfied that the £5,000 already offered by The Society was fair and reasonable compensation for the distress and inconvenience it caused here. I do not intend to make it pay anything more.

If Mr F and Ms K want to receive this compensation from The Society they will have to contact it to organise this. Regardless of whether they choose to benefit from this payment or not, as far as I am concerned, the element of under insurance here has been resolved with nothing being owed by Mr F and Ms K to The Society.

Mr F and Ms K said they did not agree with my provisional decision but had no further argument to make. They said they were concerned, however, as to whether The Society would now pay the £5,000 previously offered. The Society said it believed the problem with the neighbouring property was that it had not been dried out; it acknowledged though that this made no difference to the conclusions stated in the provisional decision.

my findings

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

I note The Society's comment and find it has no impact on the conclusions I had reached. I also note that Mr F and Ms K have no further comment to make about my findings. As such, my provisional findings will now become those of this, my final decision.

For the sake of completeness though I would add that I am not able to make The Society pay the £5,000 it previously offered to Mr F and Ms K because it was offered before this complaint was made to this service. That is why I have made no order in this respect. That being said, I think that if this offer was now withdrawn I would find that to be unfair and unreasonable and I trust The Society will ensure it is paid without delay.

my final decision

My final decision is that I do not uphold this complaint. I make no award against Society of Lloyd's.

Fiona Robinson
ombudsman