

## **complaint**

Mr E complains Lloyds Bank General Insurance Ltd refused certain aspects of a claim he made, cancelled his policy and registered his details on an insurance fraud database.

## **background**

Mr E had a home insurance policy with Lloyds. He returned to his home address after a period working away to find his house had been broken into. Taps in a downstairs bathroom had been left running, flooding the downstairs area. Separately, furniture and walls had been damaged. Various electrical items and jewellery had also either been damaged or stolen.

Mr E phoned Lloyds to register a theft and malicious damage claim and they sent a claims assessor to check the damage. Lloyds raised various concerns about the claim but, after discussions with Mr E, settled the claim paying Mr E £15,000 nine months later. Mr E was unhappy Lloyds hadn't included all amounts he'd spent refurbishing his property, or that his claim for alternative accommodation (AA) had been refused. Lloyds continued to refuse this claim, and so Mr E complained to them. During complaint communications, Lloyds again explained why Mr E wasn't entitled to AA payments, prompting Mr E to provide more information which he said proved he was entitled to these. Lloyds reconsidered their decision but reached the same conclusion and declined the AA claim again.

Lloyds concluded, when Mr E made this subsequent AA claim, it was made with a fraudulent intent – Mr E was trying to claim a benefit he knew he wasn't entitled to. And having reached that conclusion, Lloyds cancelled the policy back to inception, and registered Mr E's details on the CIFAS fraud database. Lloyds also, given the policy was now cancelled, confirmed their right to seek recovery of the £15,000-odd already paid. Mr E was unhappy with this, saying Lloyds' decision was based on suspicion and not facts. He asked for his CIFAS marker to be removed, for his AA claim to be accepted, and for compensation for the time spent trying to deal with this issue.

Lloyds didn't uphold Mr E's complaint, so he brought his complaint to us. Our investigator upheld Mr E's complaint in part. Whilst accepting Lloyds were right to decline Mr E's claim for AA, in summary she said there wasn't enough information to say Mr E had acted fraudulently when submitting his claim, either with the main parts of his claim or the extra claim for AA.

For this reason, our investigator said Lloyds should remove the CIFAS fraud marker, reinstate the policy, and should not try to recover the £15,000 already paid to Mr E. Our investigator also said that, as the policy was to be re-instated, Lloyds should also consider another theft of jewellery claim connected to the incident.

After discussion Lloyds disagreed with our investigator, believing the key point supporting their decision to cancel the policy/invoke the fraud condition was that Mr E submitted his 'new AA' claim when (a) there was nothing to prove his property wasn't habitable, and (b) no evidence to show he was residing at the address before the damage occurred. Without this, Lloyds concluded Mr E had claimed for something he knew he wasn't entitled to, meaning he'd committed fraud. So, Lloyds felt they were entitled to cancel the policy and refuse his entire claim. As Lloyds didn't agree, the case has been passed to me to reach a decision.

## **my provisional findings**

I issued my provisional findings on this case on 9 September 2020. I said I was minded to uphold parts of Mr E's complaint. My provisional decision said as follows:

*The break-in took place in August 2017. I can see there were many exchanges between Lloyds and Mr E in the subsequent months. Lloyds had concerns regarding what they considered was an inconsistent testimony from Mr E – regarding the circumstances of the burglary, and particularly regarding his residential status. Mr E owned another property which Lloyds believed he was either staying at (before and after the burglary) or able to stay at (after the burglary). Lloyds concluded Mr E wasn't entitled to AA payments because of this. I think it's clear from reading Lloyds' case notes Mr E had been living elsewhere – partly for work reasons - before he discovered the burglary. Photos taken by the claim assessor, in the days after the burglary had been reported, strongly suggest the property may have been empty for a while. I also can't see Mr E ever confirmed where he was staying, both before or after the burglary. And nor can I see he's provided any receipts/evidence of accommodation costs he'd incurred after the burglary.*

*Lloyds also said Mr E wasn't entitled to AA payments because his property wasn't left in an uninhabitable state. Lloyds' claims assessor concluded, after the burglary, the property had a working kitchen and toilet facilities, and so was habitable. Yes, it was dirty, had a fly problem, and water-damaged carpets downstairs, but I've seen Mr E was told within days of the burglary these could be removed and the house tidied. Lloyds said the mess didn't make the home uninhabitable. Taken together, I think Lloyds were right to conclude from this information that Mr E wasn't entitled to AA payments after the burglary.*

*There were also disputes regarding the scope of the work needing to be completed as a result of the burglary-related damage, including concern Mr E had submitted a claim for replacement carpets that weren't damaged as a result of the break-in.*

*However, notwithstanding Lloyds' above concerns, they settled the claim in May 2018, making two payments to Mr E totalling just over £15,000. Having read Lloyds' case file, it's clear the decision to settle was made only after considerable internal discussions had taken place, involving underwriting and legal departments. All the above inconsistencies were clear at the time and presumably taken account of before the decision to settle was made. Furthermore, Lloyds confirmed to us that, at the time of the settlement "...there was no reason to invoke the fraud condition".*

*Accordingly, I'm satisfied Mr E's claim for break-in related damage wasn't fraudulent, and Lloyds were right to settle his claim – the £15,000 - in the way they did, and at the time they did.*

*So, essentially, I'm satisfied Mr E hadn't done anything up to this point to cause Lloyds to conclude he'd acted fraudulently, and accordingly nothing that would justify Lloyds voiding his policy or registering his details on the CIFAS database at the time of the settlement. I return to this conclusion later in this provisional decision.*

#### Mr E's subsequent further claim for AA

*But Mr E wasn't happy with the settlement and raised the issue of AA payments again. Lloyds again told Mr E he wasn't entitled to AA for the above reasons. Lloyds' advisor also explained what makes a property be classed as uninhabitable, mentioning a lack of toilet facilities or electricity in a property. Mr E responded introducing new information – the*

*property was left without toilet facilities or electricity after the break-in. He said this made his home uninhabitable, and asked Lloyds to look again to see if he qualified for AA payments.*

*This prompted Lloyds to reconsider the evidence, but their stance remained the same for the same reasons – Mr E still wasn't entitled to AA payments. Lloyds referred to reports compiled by their claim assessor, which made no mention of toilet damage in the upstairs bathroom. It did mention damage to the fascia of the electric shower unit only (with some exposed wires on show) - so it's clear the bathroom was inspected by the assessor. And the report said the downstairs water-damage was caused by a tap in the downstairs WC left running, and not because there was any damage to the toilet in the WC.*

*Lloyds listed all the opportunities Mr E had to tell them about the toilet problems, and said that no mention was made of these. I won't repeat each of these, but I agree with Lloyds here. There had been many telephone exchanges between Lloyds and Mr E in the months after the break-in. From what I can see, the 'upstairs toilet' issue had never been mentioned.*

*I've seen all of the photos taken by the claim assessor. These appear to confirm there was no toilet damage in the WC but are unclear regarding the upstairs bathroom - the only photo here relates to the damaged shower fascia. However, I think it's more likely than not, if the upstairs toilet was damaged/leaking, the claims assessor would have noticed and taken a photograph during his initial visit. I also think it's more likely than not, had there been an upstairs toilet leak, Mr E would have mentioned this before he'd received his settlement nine months after the burglary. So, based on all of the above, I haven't seen any evidence to conclude Mr E's property was left without functioning toilet facilities after the burglary.*

*And I don't think the property was left without electricity. Mr E says he switched the electric off because the wires were exposed in the electric shower unit on the wall in the bathroom and I've seen photos of this. Whilst I can see why he did this, it's my understanding this was the only instance within the property where electrics had been exposed. I don't think, this issue alone, is enough to say the property was left without functioning electricity. It was working everywhere else in the property. So, taken together, I agree Lloyds were right to continue to say Mr E wasn't entitled to AA payments.*

*But Lloyds went further than simply refusing the 're-submitted' AA claim. They said, by raising the 'new AA' information, Mr E had breached the fraud condition within his policy. They said he'd made a statement he knew to be false – the property was uninhabitable because of broken toilets/lack of electricity – in the hope of increasing his settlement.*

*And for this reason, applying relevant legislation and caselaw, Lloyds said it was entitled to cancel his policy, reserve their right to recover the settlement monies already paid, and register Mr E's details on CIFAS, an insurance industry fraud database.*

#### What Lloyds did next

*As I've already said, I don't think the evidence supports what Mr E told Lloyds after the initial settlement. And I think it's more likely than not he introduced this hoping to change Lloyds' mind regarding the declined AA element of his claim. It seems likely he raised it in the hope of increasing his settlement – there's no other reasonable explanation for him doing this otherwise. So, what options did Lloyds have available to it after Mr E raised this 'new AA' information? To answer this, I need to look at a number of factors:*

#### **The Insurance Act 2015 (“the Act”)**

Part 4, Section 12 of the Act deals with an insurance company's remedies when a fraudulent claim has been made. It says:

- (1) If the insured makes a fraudulent claim under a contract of insurance—
  - a. the insurer is not liable to pay the claim,
  - b. the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
  - c. in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.
- (2) If the insurer does treat the contract as having been terminated—
  - a. it may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and
  - b. it need not return any of the premiums paid under the contract.

But, the Act doesn't explain what makes a claim fraudulent. For this, you have to look at the Fraud Act 2006 and caselaw generally. And these suggest for an act to be fraudulent, the consumer will be doing/saying something they're aware is dishonest and is being said to make a personal gain.

### **Mr E's policy**

I also need to look at what Mr E's policy document, under the 'Fraud' section, says:

"If you...knowingly or recklessly...provide information or documentation to us that is false, misleading or dishonestly exaggerated in relation to a claim...then we:

- will cancel your policy from the date of the fraudulent act
- will not pay any part of a fraudulent claim or any claims arising after the date of the fraudulent act
- will retain any premium you have paid
- may recover any payments made to you...in respect of a fraudulent claim, whether these payments were made...before or after the fraudulent act
- may recover any payments made to you...for any claims arising after the fraudulent act"

Based on both of the above, I agree Lloyds were entitled to cancel the policy. This is because Mr E knowingly introduced 'new AA' information he most likely knew to be false in the hope of increasing his settlement. But I don't agree Lloyds are entitled to cancel the policy back to inception – they can only cancel the policy from the date of the fraudulent act.

So, the next thing to consider is when could Lloyds cancel it from. To answer this I need to consider what the date of the fraudulent act was. As I said above, Lloyds were content – after a very robust internal investigation – to pay the initial claim. They said there was no reason to invoke the fraud condition at that time. Essentially, they were satisfied there was no fraudulent act by that time.

Lloyds, referring to legal caselaw say where a claim has been fraudulently exaggerated, they'd be entitled to cancel the policy back to inception. This is because the law doesn't distinguish between genuine parts of a claim and the fraudulent part where a claim has been exaggerated. And because the subsequent AA claim is connected to the initial claim, the whole claim can be classed as fraudulent.

*I agree Mr E's 'new AA' claim is clearly connected to the initial claim – it's a request for AA costs stemming from the break-in that he'd already tried (unsuccessfully) to claim for. But I don't agree Mr E exaggerated this part of his claim when submitting his 'new AA' information. He wasn't trying to exaggerate a claim that had been accepted. Instead, he's simply tried to introduce new information to persuade Lloyds to reconsider a claim that had been declined – something Lloyds were able to rebut quickly by reference to information they already had on file.*

*Lloyds have said this caused them to review every aspect of his 'settled' claim as well. And having done this, they reassessed some of the conclusions they'd reached regarding claim inconsistencies I mentioned earlier. They said Mr E had made inconsistent statements throughout the claim process, including when the property was last occupied, and there were differing accounts of how the water damage was caused. The combination of these aspects, coupled with the 'new AA' claim, supported Lloyds' belief Mr E had intentionally provided false information to meet Lloyds' AA criteria. And accordingly, when coupled with what the Act, Mr E's policy and caselaw says, Lloyds think they were entitled to take the action they did.*

*However, I don't agree. I don't think it's fair or reasonable for Lloyds to cancel the policy back to inception. Essentially, all Mr E did was to introduce new information in a post-settlement phone call, which I think he likely knew was incorrect. Whilst this can, I think, be considered a 'fraudulent act', I don't think it's fair or reasonable for Lloyds to conclude it taints the whole of Mr E's claim. As I said above, Lloyds undertook a robust investigation before settling the claim and concluding there was no fraudulent activity at that time. I think it's unfair, and unreasonable, for Lloyds to then draw a different conclusion to essentially help support their subsequent decision to take the actions they did.*

*So, I think it's reasonable the date of the 'new AA' claim – the information raised in one phone call – is the point when the 'fraudulent act' took place. And so, as per the Act and the terms of Mr E's policy, I think policy should only be cancelled from this point. It follows that I think Mr E's initial settled claim should be allowed to stand, and that Lloyds aren't entitled to seek recovery of the settlement sums paid.*

*I think it also means Lloyds need to reconsider Mr E's claim for the loss of his 'royal beads', as this was submitted as part of the main claim - so before the 'new AA' date when the policy would be cancelled from.*

#### The Fraud database

*I now need to address the 'CIFAS' element of Mr E's complaint. Lloyds registered Mr E's details with CIFAS after deciding to void his policy.*

*CIFAS is a fraud prevention agency. It operates a database which allows CIFAS members – generally financial businesses – to record information about their customers. This information is available for all CIFAS members to view. All CIFAS member businesses must operate within the terms of the national Fraud Database Handbook, which explains that members can only record information on the database if it's supported by evidence and meets four burden of proof elements. These are:*

- There are reasonable grounds to believe fraud has been committed or attempted*
- Evidence must be clear, relevant and rigorous such that the matter could confidently be reported to the Police*

- *The conduct of the person being reported against must meet certain case type criteria (for the purpose of this case, this means a false insurance claim)*
- *The member must have rejected, withdrawn or terminated a product on the basis of Fraud*

*A business can't apply a CIFAS marker based on suspicion. It needs evidence to back up what is being alleged and a criminal offence must be identifiable. Looking at each of these four elements, it's clear the circumstances here satisfy the third and fourth elements. And, on the basis Mr E raised the 'new AA' claim to increase his settlement, more likely than not knowing the information was incorrect, I agree the first element is also met.*

*That leaves the second element. I don't think the circumstances here allow this element to be met. I don't think Mr E's behaviour in the post-settlement/complaint phone call is such to satisfy what is effectively a criminal test. Whilst the evidence I've mentioned above points to fraudulent intent on a 'more likely than not' basis, I don't think it's 'clear, relevant or rigorous' enough to conclude on a 'beyond reasonable doubt' basis – which would need to be the case to be "confidently reported to the Police". I note that no Police referral has been made.*

*This being the case, I don't think all four elements are capable of being satisfied. And accordingly, I don't think Lloyds are entitled to register Mr E's details on the CIFAS database. So, I think their entry needs to be removed.*

#### *The effect of Lloyds' actions on Mr E*

*Having reached the above conclusion, I need to consider the effect Lloyds' actions may have had on Mr E. He's told us that he's experienced emotional and financial distress as a result – although no specific details have been provided to show any financial impact. However, whilst I agree this episode is likely to have caused Mr E distress, I'm also conscious it would likely have been avoided had Mr E not introduced the 'new AA' information when he did. Accordingly, I don't think it's reasonable to ask Lloyds to pay Mr E any compensation for the distress he may have experienced during and after the claim process.*

I concluded by summarising I thought Mr E introduced the 'new AA' information in the hope Lloyds would revisit their decision to refuse AA payments as part of his main claim. I thought it's more likely than not he knew this information was incorrect, and Lloyds was entitled to refuse the AA claim, both in the main settlement and as part of the 'new AA' claim. I thought Lloyds was entitled to cancel Mr E's policy because of this, but only from the point the 'new AA' information was raised. Mr E's initial claim didn't contain anything to suggest any fraudulent activity, and Lloyds shouldn't take steps to recover the settlement already paid. And because I didn't think Mr E's behaviour in advancing the 'new AA' information met the test laid out in the third 'burden of proof element' contained within the Fraud Database Handbook, Lloyds must remove Mr E's entry on that database relating to this claim.

#### **response to my provisional decision**

Mr E acknowledged receipt of the provisional decision, advising he was going to speak with his solicitor regarding its contents. I've received no further comments from Mr E, either accepting or rejecting my provisional findings. Lloyds responded asking me to consider some final points before issuing my decision, which I can summarise as follows:

#### Recovering the settlement monies

Lloyds advise they didn't terminate the policy from the date of the fraudulent act as Mr E had already cancelled his direct debit by this point, with the policy cancelled with effect from March 2018 due to non-payment of premiums. Lloyds say Mr E's decision to cancel the policy should have no bearing on their entitlement to recover their costs. And that the AA claim was part of the main claim, and not a separate one. They also comment that the Fraud Act provides a remedy whereby if a claim is tainted by fraud, a policyholder will forfeit the whole claim. Lloyds say a fraudulent act was committed against Mr E's policy, so they can say his claim was tainted by fraud. And according to Lloyds, they may then recover any payments made, irrespective of whether those payments were made before or after the fraudulent act.

#### CIFAS database entry removal

Lloyds believe the facts of this case meet the criteria for entry on the Fraud Database, saying they consider referring all CIFAS cases to the Fraud Dept of the City of London Police (COLP). However, they explain they only do this in certain circumstances, essentially because they are conscious of COLP's resource limitations. In this case, Lloyds recognised that Mr E had suffered a genuine loss which he tried to exaggerate, rather than submit a wholly invented claim. As such it was not considered a priority to refer the case to COLP.

#### The 'royal beads' claim

Lloyds say the decision to exclude the beads claim from settlement was due to lack of substantiation. However, as Lloyds maintain the claim was fraudulent, for the reasons set out above, they don't believe they need to reassess the claim.

#### **my findings**

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

As Mr E has not responded substantively to my provisional findings, I only need to address the comments made by Lloyds.

#### Recovering the settlement monies

I want to begin by clarifying that I agree with Lloyds when they say it wasn't a new AA claim that Mr E raised, which set in motion the subsequent CIFAS and policy voiding actions that followed. As I said in my provisional decision, he'd raised the issue of AA during the claim progression period, and it had been declined. After the settlement was paid, he was asking Lloyds to revisit that decline, and tried to introduce 'new' information to support that.

I also now note the policy had already been effectively cancelled – by virtue of premium non-payment, some months before the settlement was agreed. So my comments and rationale behind why I felt Lloyds could only cancel the policy back to the date of the fraudulent act are redundant. However, I don't think that affects what I think is the key issue here, namely whether I think it's fair or reasonable for Lloyds to try and recover the settlement monies they paid to Mr E. And having considered Lloyds' response, I still don't think it is.

I accept the points Lloyds make regarding what the Fraud Act permits them to do in these circumstances. It's also important to consider what Mr E's policy allows Lloyds to do, and further what is fair and reasonable here. The policy says Lloyds *will* cancel the policy from

the date of a fraudulent act – a moot point given the above. It also says Lloyds *will not* pay any part of a fraudulent claim or any claim *arising after* the date of the fraudulent act. But both the policy and the Act say Lloyds *may* (not *will*) recover any payments made in respect of a fraudulent claim, whether paid before or after the fraudulent act. There is a choice. So the question remains whether Lloyds exercised that choice in a fair and reasonable manner.

I return to the comments made in the provisional decision – Lloyds accepted the ‘main’ claim, and this was after a detailed internal investigation. The subject of AA had been raised and declined as part of that process. It wasn’t a new subject. Lloyds were satisfied the ‘main’ claim was genuine. The only thing that changed, essentially, was that Mr E appears to have responded to comments made in a post-settlement phone call by introducing new information – the lack of a toilet and electricity – in the hope of Lloyds revisiting the AA decline. Mr E didn’t introduce any new, or fraudulent, evidence as such. And as I’ve said previously, this ‘new’ information was easily capable of being rebutted, by reference to photos taken, and inspection reports from the time of the claim.

Taking all of the above into consideration, I don’t think it’s a fair or reasonable outcome for Mr E to have to repay the £15,000 settlement – made in relation to an accepted genuine claim – essentially because of what he said in a post-settlement phone call. So I remain of the view that Lloyds can’t pursue Mr E for the repayment of his claim settlement.

#### CIFAS database entry removal

In Lloyds’ response, they focus on my comment that the matter wasn’t reported to the COLP. I acknowledge the point Lloyds makes here – that COLP don’t have the resources to prosecute every insurance fraud case that makes its way onto CIFAS. And I accept it’s Lloyds’ decision regarding how they choose to prioritise their cases for COLP referral/reporting purposes. But I don’t think that’s the key issue here.

I think the key issue is whether the evidence here is such as to satisfy the second burden of proof element in the Fraud Database Handbook. And Lloyds hasn’t said anything specific in their response about this or questioned my conclusion that Mr E’s ‘post-settlement’ behaviour didn’t appear to satisfy a criminal test. As such, I’ve not seen anything further from Lloyds that makes me change my mind on this point and that being the case, I remain of the view Mr E’s entry on the CIFAS fraud database must be removed.

#### The ‘royal beads’ claim

Mr E had submitted this claim before the settlement was paid, and before the policy was voided by virtue of premium non-payment. I acknowledge that Lloyds refused the claim based on a lack of substantiation, as opposed to any reason connected with the ‘new AA’ dispute. I agree that Lloyds don’t need to reconsider this claim any further. The policy says Lloyds *will not* pay any part of a fraudulent claim after the date of a fraudulent act. And so whilst this claim was submitted before the fraudulent act occurred, it hadn’t been settled by that date. I think Lloyds is entitled to apply the terms of Mr E’s policy and refuse to reconsider this claim. So I won’t be asking Lloyds to do anything further in this regard.

#### **my final decision**

For the reasons given above, I uphold Mr E’s complaint, and require Lloyds Bank General Insurance Ltd to do the following:

- Remove Mr E's entry on the CIFAS fraud database, relating to this claim
- Not pursue Mr E to recover the settlement monies already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 2 January 2021.

Mark Evans  
**ombudsman**