

complaint

Mr D has complained about Lloyds Bank General Insurance Limited's actions and failure to make an amended settlement following a previous complaint to this service.

background

Mr D had a fire at his home and made a claim to Lloyds. It offered a settlement for that claim of £64,803.16, including alternative accommodation (AA) costs and any interim payments already made. It confirmed this did not include rental costs from 7 March to 27 July 2011. It said it would consider any evidence submitted in this respect. It offered £300 compensation. Mr D was unhappy with this and complained to this service.

Mr D at that time, had a number of concerns. In brief, he felt;

- he had not been paid enough for alternative accommodation (AA);
- that the values set by Lloyds for his contents were too low and some were missing;
- that Lloyds had not given values for like-for-like replacements;
- overall it had offered about £150,000 less than he was due.

When Lloyds was told about the complaint Mr D had made to this service it offered to reconsider its settlement amount. It said it would;

"...ask the claims department to reconsider the claim, without applying any restriction for items over £750.00 where substantiation has not been provided. We will also ask that no discounts are applied to cash settlement offers where our suppliers could, but have not been asked to, replace items. Interest will be paid on any cash settlement at 8% per annum from the date of loss to the date of settlement."

It also offered to pay an increased compensation amount of £300 making the total £600. Mr D agreed but several months later he made a new complaint because no increased settlement offer had been made. Also, no interest had been paid on the settlement amount Lloyds had paid before the first complaint and no compensation had been received. He said Lloyds was still unfairly discounting his settlement and he had all the same issues with it as before.

Lloyds told this service that it had reviewed the cash settlement it had made previously but had found nothing else was due to Mr D. It said its loss adjuster had been satisfied with the replacement values he had given which had mostly been researched on the internet. It said that interest was not due on the amount it had paid prior to the settlement offer being made. It also said it had issued one payment of £300 in December 2013 and could not understand why Mr D's bank could not trace it. It accepted the other was owed but failed to explain why this had not been paid before. Lloyds did not give a full account of its actions since its previous agreement and no evidence was given to support its claims. I then issued a provisional decision, the findings of which I have reproduced 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 need to explain what I

can and am going to look at here. Having done that I will explain what I feel Lloyds must now do to resolve this complaint.

our complaints process

Once a settlement agreement is reached on a complaint, the subject matter of that complaint is closed and it cannot be re-visited or re-considered. This means I cannot look at anything Mr D complained about or had concerns about before. For example, I cannot now comment on whether the right values were given to items or not or order Lloyds to review these figures. While the settlement agreed did not really answer Mr D's concerns in this and other respects it was offered, and accepted, against that complaint.

Now if Lloyds had amended some values I could comment on whether I felt the amended values were fair or not. But it has not. And for me, given how specific its voluntary offer of settlement was, that is somewhat surprising. I can fully understand Mr D's frustration.

However, I can look at what Lloyds has done in respect of that settlement offer. Essentially, I can consider whether it has fairly and reasonably followed the terms of the settlement it voluntarily made. Therefore, I will be considering whether Lloyds fairly and reasonably;

- reviewed its settlement offer in light of the terms it set regarding items worth over £750 and deductions for cash payments;*
- made no interest payment to Mr D (because no new settlement was paid);*
- paid the correct amount of compensation.*

Lloyds' settlement review

When an insurer makes an offer of settlement via this service it is reasonable to expect that this is made with a genuine intent to resolve its customer's complaint. With that in mind, when Lloyds made the offer to review Mr D's settlement on these very specific terms it must have had an idea that it had restricted some of the values it had set against Mr D's claim in these ways. Otherwise this does not seem like it was a genuine offer that was ever likely to make any difference to Mr D's position.

Of course when an offer to "reconsider" a claim settlement is made, or when I make an insurer do this as I sometimes do, there is no guarantee of more money being paid. But this was not a general review that Lloyds offered. Lloyds itself set some very strict things to look at. In that respect I think Mr D was reasonably entitled to think this review would likely achieve some change in the amount he had been paid for the claim.

My problem is that I have no way of knowing whether Lloyds did this fairly and reasonably. Mr D's home was severely damaged in the fire and 95% of his possessions were destroyed (or later disposed of). I can't assess each of these items and the evidence supplied against them. I do not know which might have been restricted to £750 while being worth more. I also do not know which values were deducted because cash was being paid.

There are two reasons why I do not know these things. On the one hand Lloyds has not shown what it has done since the first complaint. To merely say no further payment was due and submit a complicated spreadsheet which shows nothing in relation to the terms it set out for review, is not good enough. But on the other hand Mr D has not sat down and highlighted

what items he thinks Lloyds should have amended. Rather he is still focusing on all of the items he feels have been undervalued and all the other issues he has previously had with the settlement. Now Mr D does not know how our process works so he was not to know what was needed of him. Lloyds should have known.

Where an insurer does not show me that its settlement was fair I will often order it to pay what I feel is reasonably due. But I cannot do this here because I do not know what is reasonably due. Furthermore, I cannot just say to Lloyds "pay anything" that falls under the terms it set out previously because Lloyds will just say nothing does and pay nothing. This will not resolve Mr D's complaint (which is already severely narrowed because of the previous complaint and its settlement). The only way I see this getting sorted is for an independent claim expert to sit down with all of the claim information and assess it, item by item. The expert can then make a report that can be sent to both parties and if he finds that more money is due to Mr D then Lloyds will have to pay this, plus interest.

This service has an established approach to appointing experts; for claims such as this we will say the policyholder gets to provide a shortlist of three experts (in this case suitably qualified loss assessors or loss adjusting companies) to the insurer. The insurer then chooses one of these three experts to act for both of them. It makes arrangements with that expert and pays for it. The policyholder gets the peace of mind of putting forward experts they feel they can trust but the insurer gets to control the cost of the exercise. This makes the process fair for both parties and ensures the joint but independent nature of the expert. This is important because both will be bound by the expert's findings.

payment of interest

Regarding interest that Mr D feels he is due on a previous payment Lloyds made to him; I do not intend to make it pay this. This service will often make an insurer pay interest on amounts it has failed to pay which it otherwise should have done. This is because of the nature of the insurance contract. If an insurer has made a payment before a complaint has been made to us then we would not usually make it pay interest on that amount.

However, to some extent what we might usually do is not so important here because this complaint is quite specific. Lloyds set terms for a settlement and Mr D believes these included it paying interest on all cash payments. I have quoted above the settlement offer Lloyds made and it said "any cash settlement". Taking these words alone I can see why Mr D might reasonably have expected that he was going to get backdated interest on the £49,000 he had previously received.

Looking at those words alone though is not fair. They have to be looked at in light of the settlement offer set out in front of them. It is also only fair for Lloyds to expect the offer it makes to be taken in line with this service's usual approach to interest payments. Taking the offer in its whole form, I am satisfied that the interest that Lloyds offered to pay was in respect of any additional payment it found due following its review. Therefore, it has not acted unfairly or unreasonably by not making a payment for interest to Mr D because an additional claim settlement has not yet been paid.

Of course, as mentioned above, if the expert finds that any additional payment is now due to Mr D then Lloyds will still have to pay interest on that amount. That interest payment will run from the date of loss until the date the increased payment is made.

compensation

In making this latest complaint Mr D said he had not received the £600 offered by Lloyds. Lloyds said this had been two payments of £300 rather than one of £600. It said it had paid the first amount but needed Mr D to check if he had received the second. When Mr D checked he said he had received neither payment. Lloyds accepted it had not made the second payment but did not explain why it had failed to do this. It maintained the first payment had been paid in to Mr D's bank account and had not been returned to its payment department. Neither party provided evidence to support what they had said.

While Lloyds has not shown that the first £300 was paid it has given sufficient detail about the payment for me to think it most likely occurred. That was also enough evidence for Mr D to check his bank. It would then have been easy for Mr D to show some evidence of what his bank account showed but he did not. To make Lloyds pay this first £300 now I would need something to show that a payment for £300, from Lloyds, was not received around the time it said it was sent. If this is shown to me then I will likely make Lloyds pay this now, plus interest from the date it should have been paid.

Regarding the second £300, I am disappointed that this was never paid to Mr D. I can quite understand how this has annoyed him. While the review of the claim settlement was on-going this second compensation payment could have been paid. It should have been paid within a month of the settlement agreement being made.

When I award compensation it is separate to the insurance contract and so does not attract interest. It also does not attract interest because it is a payment that covers all the distress and inconvenience experienced during a set timeframe because of an insurer's failures. However, once a compensation payment has been awarded or agreed it becomes the same as any other claim money. In other words, it is money that the policyholder should reasonably have had access to. For me, if they have not had access to that money then they should fairly get interest on it. Therefore, I intend to make Lloyds pay the second £300 and add interest to that amount as well. The interest will be applied from a date one month after Mr D's acceptance of Lloyds offer was received by it and until the second £300 is paid.

further compensation

The fire occurred in 2011. Mr D's initial complaint was in 2013. He should not still have to be going through claim assessments in 2015. Compensation for the period up until Mr D's first complaint has been set and agreed at £600. As explained above, I cannot re-visit this. However, I can look at Lloyds actions since the last complaint was made to us and decide whether it failed Mr D again, causing him further distress, inconvenience and the like. Having done so, I think it probably did.

It is somewhat difficult for me to say for sure because Lloyds has not provided evidence of what it did after the settlement was agreed and before Mr D complained again. From the details I do have though, I am satisfied that Lloyds has not done enough to justify not making any further payment to Mr D and I accept this has had a significant, negative impact on him.

Usually, I will award compensation up until the point the insurer gives its final written word on the complaint before it is considered by this service. However, Lloyds did not issue this here. Therefore, my compensation award will cover everything that happened from the point of Lloyds offer until this new complaint was assigned to one of our adjudicators. That gives a timeframe of May 2013 to the end of March 2014, almost a year of nothing being achieved. Almost a year that Mr D spent waiting and (reasonably) hoping for an increased claim

payment to be made and compensation to be paid. On top of everything he had been through I accept that anything that went on during this period, even just the waiting itself, would have caused him a lot of upset. I intend to award him £500.

Lloyds mostly agreed with my provisional decision but said it was normal practice for *it* to give a shortlist of three for its policyholder to choose one from. It said it would like this to be the case here.

Mr D felt that a partial award should be possible by assessing spreadsheets of replacement and alternative accommodation costs and making judgements on each item (as promised by a previous adjudicator). He said interest should always be paid - he should not just be awarded this on increased settlement amounts. Mr D confirmed that no compensation payment had been received and his bank would confirm this. He said strict deadlines and penalties for failure to comply with them should be set for any on-going assessment of his 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.

Lloyds might often provide the shortlist of three experts. However, with the general exception of subsidence claims/complaints, this service usually allows the complainant/policyholder to provide the shortlist for the insurer to pick one from. This speaks to the joint but independent nature of the expert and I do not think the situation here is so technically difficult that inappropriate experts are likely to be offered (as can be the case with subsidence). Mr D will get to provide the shortlist for Lloyds to select one expert from to appoint.

I am satisfied it must be done this way. If I had felt able to make a monetary award I would have done. When information is asked for it can never be known what it will show or what that will allow us to do. We have to be fair to both parties though. And, further, as an ombudsman, I do not have to agree with everything or anything that anyone previously assessing a complaint, that I am now making a decision on, has said. The values, details and sheer amount of items lost/being claimed for, make it impossible for me to determine what a fair settlement is. But it would not be fair for me to just say Lloyds has handled this badly and so should pay everything. That is why the appointment of a joint/independent expert is necessary and why I am not going to make a monetary award.

I have noted Mr D's comments regarding interest but find they do not change my view. As explained before, this service would not usually award interest on everything paid in relation to a claim and in this situation the settlement was in respect of a specific offer Lloyds made. I remain satisfied that the offer was not unclear and if Mr D misunderstood it that was not Lloyds fault.

Regarding the compensation payments; I provisionally said the first payment of £300 had most likely occurred and only if I received proof from Mr D that it had not would I make Lloyds pay it now. Mr D has not provided this proof, so I will not be making any award in this respect. My award regarding the second payment of £300 stands.

I cannot set deadlines or penalties because I do not know what will happen moving forwards. If Mr D accepts my final decision Lloyds will have to comply with it within a reasonable time. If it does not then a further complaint could be made.

my final decision

I uphold this complaint in part and I order Lloyds Bank General Insurance Limited to do a number of things:

- Choose, appoint and pay for an expert chosen from a shortlist of three provided by Mr D. The expert will need to review the claim settlement to ensure it meets the terms agreed in the previous offer.
- If the expert find that a further payment is due to Mr D this will have to be made and interest* will have to be added to that increased amount. Interest* will have to be applied from the date of loss until the date the increased payment is made.
- Pay the outstanding £300 compensation, plus interest*. The interest* must be applied from one month after Mr D's acceptance of Lloyd's offer was received by it and until this outstanding payment is made.
- Pay an additional £500 compensation for the upset it has caused Mr D from May 2013 to the end of March 2014.

I do not make any other award.

*Interest is at our normal rate of 8% simple, per year. It is less any tax properly deductible.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 1 July 2015.

Fiona Robinson
ombudsman