

complaint

Mr D complains about the settlement he was offered by Society of Lloyd's ("Lloyd's") following a claim on his buildings insurance policy.

background

Mr D's original claim under his buildings insurance was for an escape of water in December 2010. That claim subsequently turned into a complaint that was ultimately brought to this service and one of our ombudsmen issued a final decision on it. Following its conclusion, Lloyd's offered Mr D £28,833 plus interest for the loss in value of his property. This figure didn't include any allowance for alternative accommodation ("AA") costs.

Mr D was unhappy with this offer and complained to Lloyd's. Lloyd's sent Mr D its final response to this complaint in July 2015. It explained how it'd calculated the settlement figure and that it hadn't included any allowance for AA because it didn't think Mr D was living at the property at the time of the incident.. Unhappy with Lloyd's position, Mr D complained to this service.

Mr D's complaint is twofold. Firstly, he's unhappy with the settlement amount offered by Lloyd's for the loss in value of the damaged property and secondly, with Lloyd's decision to decline his claim for AA costs for him and his children.

Our adjudicator investigated his complaint and concluded the loss in value offer was fair but disagreed with Lloyd's about the AA. He was satisfied that Mr D, but not his children, had been living at the property at the time of the incident so did qualify for AA. He also thought Lloyd's should pay Mr D compensation of £250 for some of its claims handling failures.

Neither Lloyd's nor Mr D agreed with our adjudicator's conclusions. Mr D disagreed with the way our adjudicator had categorised the loss of value complaint. He also said Lloyd's method of calculating the amount paid was flawed and that he was due a further £12,417 for the loss in value. Mr D said he disagreed that Lloyd's didn't have to pay AA costs for his children. Overall, he calculated that he should be paid £49,875. He said Lloyd's should pay him what it would have cost to house him and his children rather than merely reimburse him for the costs he actually incurred. Finally, he thought £250 was inadequate compensation for the upset caused.

Lloyd's said it disagreed that Mr D was resident at the property on the date of the incident. It said he was already housed elsewhere and so didn't need to be provided with AA. It said Mr D told the loss adjuster during the claim that his children didn't reside with him. So, it couldn't understand why Mr D was now trying to claim AA costs for them. Finally, it said that it wasn't fair that Mr D was being given the opportunity to now provide evidence of the AA costs he incurred when he'd had every opportunity to do so during the claim. It said Mr D had never provided any invoices.

Our adjudicator wrote to both parties once more. He said he wasn't persuaded by Lloyd's argument that Mr D wasn't residing at the property when the incident occurred. He was satisfied that Lloyd's should've considered Mr D's AA claim from the date of loss to the date the property was sold.

The complaint was passed to me for a 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.

The background section above is a very brief summary of the current issues that exist between the parties. I see no merit in setting out here a detailed account of what has happened since 2010. But it's worth mentioning that I appreciate that this has been a very long running and complicated claim and that there's been a breakdown in the relationship between the parties.

This complaint is confined to two issues. I'll look at each in turn.

loss in value claim

Mr D and his former wife had to sell the property in a state of disrepair as Lloyd's had declined the claim for water damage. I understand that there was a difference in the list price of the house and the ultimate sale price of £125,000. It isn't in dispute that Mr D's insurable interest in the property is 33.33%. The projected cost of repairing the water damaged house was subsequently assessed at £48,000.

The ombudsman that decided Mr D's previous complaint said that Lloyd's should consider making a settlement for the loss in value in accordance with his insurable/equitable interest in the property subject to the necessary evidence being provided. .

Lloyd's calculated that Mr D was due £28,333 for the loss in value. It did so by averaging the full loss of value of £125,000, and the projected repair costs of £48,000 at the property ($£125,000 + £48,000 = £173,000$ divided by 2 = £86,500). Lloyds then applied Mr D's insurable/equitable portion of 33.33% to this figure and reached £28,333.

Mr D thinks Lloyd's should've applied the 33.33% portion to the full loss in value of £125,000 meaning he should've received £41,666. As he's received £28,333 he says Lloyd's owes him a further £12,417 (although on my calculations I make this £13,333).

I can't agree. Arguably, the damage to the property reduced it in value by £48,000 only. Whilst there may have been some other costs in addition to the £48,000 (if the house had been able to have been repaired) I don't think such costs would've exceeded the £86,500 which Lloyd's has based its calculation on. In addition, it appears that the full loss of value isn't solely attributable to the water leak at the property. Further, I can see there is the likelihood that the property was underinsured at the time of the leak. The policy wording permits the insurer to apply a proportionate settlement to claims where underinsurance is established. Lloyd's hasn't exercised its right to do so. So, on balance, I don't think Lloyd's has unreasonably or unfairly calculated Mr D's proportion of the lost value of his property at £28,333.

alternative accommodation

It's Lloyd's view, following its enquiries, that Mr D wasn't living at the property when the leak occurred. It relied on the electoral roll which said he hadn't lived there since 2006. Mr D has disputed this and has provided evidence that he was residing at the address when the incident occurred.

Lloyd's did a credit check which showed Mr D had registered a credit card at another address. Mr D says this was because he'd redeemed some air miles for a holiday from that address. Whether this explanation is true or not is largely irrelevant. I say this because, if Mr D was resident at this other address at the time of the incident then I would've expected there to have been more than one credit match for him there.

Mr D has provided evidence from his local authority that he was on the electoral roll at the damaged property from 2006 to 2013. Lloyd's said this didn't prove he was resident. It maintains the property was un-occupied at the date of the incident. It also says:-

- that Mr D hadn't provided evidence to substantiate the AA costs he was claiming;
- that it had interviewed Mr D's neighbours who said he wasn't living at the house;
- that the loss adjuster noticed a large volume of post at the property;
- that the utility bills showed low usage.

Lloyd's says all of these points show Mr D wasn't resident at the time of the incident.

If Mr D was resident at the property at the date of the claim he's entitled to AA under the policy. I can see that the loss adjuster involved considered this issue and agreed it in principle. I understand the loss adjuster asked Mr D to substantiate the claim he was making but none was forthcoming. This aspect of Mr D's claim was never formally declined by Lloyd's.

So, given the loss adjuster agreed to it in principle, and given that Mr D has now shown he was on the electoral roll for the property at the date of the incident, I think the other points Lloyd's makes, fall away. It clearly agreed to it in principle but wanted the costs substantiated by Mr D before paying the claim. This seems entirely reasonable to me.

Mr D says that he resided at various properties after the incident. So, I don't know why, if he'd been residing somewhere else before it, he needed to move about so much after it. Similarly, Mr D has said he can provide evidence of the costs incurred in moving about so much after the incident, which he needs to do. If Mr D had been living somewhere else before the incident I'm unclear why he would've incurred these costs un-necessarily afterwards.

Lloyd's says it never received any evidence of the AA costs incurred by Mr D. Mr D says he gave the original receipts to the loss adjuster and no longer has them. I think it's still necessary that Mr D provide evidence to Lloyd's of the AA costs he incurred before it pays him anything. Receipts aren't the only proof that payment has been made in any event. Lloyd's should ask the loss adjuster to check its files (particularly as it's clear that the loss adjuster agreed to AA in principle). So, whilst I agree that Lloyd's should pay the AA costs I list below, it need only do so if Mr D proves that he actually incurred those costs (or the loss adjuster locates the original receipts). I note Lloyd's comment that it doesn't think it's fair for Mr D to be given another chance to provide that evidence but I disagree.

Mr D gave a witness statement to the loss adjuster sometime after the incident. In that statement he said his children didn't live with him. My understanding is that they were 18 and 19 at the time. There's no evidence to suggest they were on the electoral roll at the property and I understand that the eldest child was away at university. On balance, I don't think there's enough evidence for me to reasonably conclude that the children were resident at the property and that Mr D incurred AA costs for them. That's not to say I wouldn't expect an 18

and a 19 year old to still be living with their parents, just that I don't think it's been shown that they were living in the house at the time of the incident.

I've set out in detail below the costs Lloyd's should pay, subject to the necessary evidence being provided by Mr D. In summary, Lloyd's should consider any invoices already provided to the loss adjuster along with any other evidence Mr D provides in support of his AA claim. Lloyd's should reimburse this money and, where applicable, pay the £10 per day daily allowance. As Mr D has been out of pocket for these sums it should add interest at our usual rate of 8% simple per year from the date of loss to the date the property was sold.

wife's claims

Mr D has suggested that Lloyd's pay him the remaining 66.67% of the loss of value claim so that he can pass it on to his former wife. This complaint concerns Mr D's entitlement alone and I can't look at this issue as part of it. I understand Mr D's former wife is considering bringing her own complaint about this matter.

non-financial loss

My consideration of the compensation due to Mr D is limited to the period since the final decision in his first complaint. That decision was issued in June 2014. I think that compensation of £250 is fair for the upset and inconvenience caused to Mr D since then.

my final decision

My final decision is that I uphold this complaint in part. I require Society of Lloyd's to do the following:-

- following the escape of water Mr D stayed with a friend to whom he paid £10.00 per day for his stay for 100 days. If Mr D can provide a written statement from his friend confirming this point then Lloyd's should settle this in full.
- following this, Mr D moved into a bed & breakfast accommodation for a further 63 days at £50.00 per day. As this was a bed & breakfast, a further £10.00 per day living allowance should be added to the 63 days' cost of the accommodation. This is on the basis that Mr D can produce invoices/proof for his stay at the bed & breakfast for that period (or the loss adjuster can).
- on 16 May 2011 to 17 May 2011 (1 day) Mr D stayed at a hotel which cost him £150.00. Lloyd's should settle this amount once Mr D has produced a proof of payment/bill from the hotel for this date.
- Mr D then stayed at a bed & breakfast from 18 May 2011 to 25 May 2011 at £50.00 per day. As this was a bed & breakfast, a further £10.00 per day living allowance should be added to the costs for the 7 days. This is on the basis that Mr D can produce proof of payment/invoices for his stay at the bed & breakfast for that period.
- Mr D has confirmed that he commenced a rental agreement at his partner's property from 25 May 2011 until 25 November 2011 for six months at £1,200 per calendar month. Mr D said this arrangement didn't include a full tenancy agreement so, I don't think this payment can be included within the final settlement but, Mr D should be offered £10.00 per day living allowance in respect of these dates.

- Since leaving his partner's property Mr D has rented a caravan plot where he has been residing. If Mr D can provide proof of payment/invoices for the plot, Lloyds should also settle the invoices for this period until the property was sold on 13 May 2013, which is when Lloyds' liability ceases under this heading.

Interest should be added to any cash settlement paid to Mr D at our usual rates of 8% simple per year* from the date Mr D made each payment until the date of settlement.

- Pay Mr D compensation of £250 for the upset and inconvenience caused to him since the last complaint was closed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 May 2016.

Claire Woollerson
ombudsman