

complaint

The complaint is against The Society of Lloyd's and relates to the rejection of a claim for theft and loss that was made under a Home & Holiday Home insurance.

background

I issued a provisional decision on 21 January 2014. An extract is attached and forms part of this final decision.

In response, Lloyd's said it agreed with the provisional decision.

Mr J's response included:

- it will probably be impossible to determine the whereabouts of the furniture, assuming it still exists;
- that means a claim for it could never succeed;
- the premium he paid included (or should have included) cover for loss as a result of disputes about ownership;
- the apartment was forcibly entered and this should be covered;
- it is clear the developer caused this, and he then absconded.

He enclosed an email from his managing keyholder. It included:

- the developer had resold Mr J's apartment and given full ownership paperwork to the second owner;
- the second owner had entered the apartment forcibly, changed the door and the locks, and disposed of all Mr J's furniture;
- Mr J is unwell and these events had caused him additional stress.

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 have carefully considered Mr J's response. If it proves impossible to recover the furniture, and/or Mr J provides evidence that it has been destroyed or disposed of, he should put that to Lloyd's for consideration. If, having done that and having completed the complaint procedure on this point, he remains dissatisfied with Lloyd's response, he could submit another complaint to us.

I do not agree that the cover for which the premium was paid included (or should have included) loss as a result of disputes about ownership. Such loss is rarely itself an event that is insured by policies of this type and Mr J's policy contained the general exclusion on this point.

Mr J said the apartment was forcibly entered. The policy included cover for loss of or damage to buildings and contents caused by malicious persons or vandals and theft or attempted theft, but I remain of the view that loss of the apartment in the circumstances at issue here would have arisen as a direct result of the dispute over ownership and would be within the scope of the exclusion.

I am sorry to learn of Mr J's illness and appreciate that he will have suffered additional stress, but, having carefully considered his response, I remain of the view set out in the provisional decision.,

my final decision

I make no award against The Society of Lloyd's.

S Lilley
ombudsman

COPY OF PROVISIONAL DECISION

background

Mr J reported that the insured apartment had been broken into and all his furniture disposed of by someone claiming to be the true owner. He claimed for the loss of the apartment and contents.

Loss adjusters said it seemed the developer had sold the apartment a second time and legal proceedings taken by Mr J against the developer had failed because the judge considered there was a lack of evidence. However, they appeared to say Mr J's solicitor had produced a copy of the deeds naming the developer and the second owner, although subsequently they said legal documents proving the transfer of ownership to that person had not been obtained.

They said Mr J had not completed registration of his deeds and it was this that provided the opportunity for a second sale. However, Mr J had supplied documents that he said were his proof of ownership/court stamped documents.

The claim was rejected on the basis that the loss had resulted from a dispute over ownership and the policy contained an exclusion on this point.

Our adjudicator said Lloyd's had agreed the claim for the contents could proceed further upon receipt of evidence that items had been stolen other than as a consequence of the ownership dispute, and he thought this was reasonable. He considered the claim for the apartment could not fairly be settled until the courts had ruled on whether it should be returned to him.

Mr J disagreed and said the exclusion was not noted on his schedule as applying to his policy. The adjudicator said the exclusion appeared in the policy booklet, but Mr J thought this irregular as it also contained an endorsement with a similar effect (which was not operative according to the schedule). He supplied a copy of his policy booklet – the exclusion relied on appeared in it as General Exclusion 6.

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.

The policy booklet included cover for loss of or damage to buildings and contents *"caused by ... malicious persons or vandals ... theft or attempted theft"*. It also included *"General Exclusions ... The policy excludes loss and/or damage caused to the property and any contents as a direct result of any dispute over any ownership of the property"*.

Mr J has supplied a document from his lawyer stating that the developer had absconded and implying that he had not confirmed he had sold the apartment again (whereas the loss adjusters said *"the developer confirmed having sold the property to [the second owner]"*). He also said there is no documentation showing the person claiming ownership of Mr J's property is actually its owner. However, I note that this seems to conflict with Mr J's statement on the claim form: *"new' owner has paperwork claiming she is owner"*.

In my opinion, the evidence before me suggests there is a dispute as to the true owner of the apartment. If proceedings to enable Mr J to recover it are ongoing or contemplated or would have reasonable prospects of success I do not think it can reasonably be treated as lost. If no such proceedings are possible, or they fail, and the other person retains ownership and/or possession, it may well be that the apartment could then be treated as lost as far as Mr J is concerned. However, I consider that loss would arise as a direct result of the dispute over ownership and would be within the scope of the exclusion. I acknowledge that the exclusion refers to loss caused to the property, rather than loss of it, but I think the intention is clear enough. I am satisfied it applies to Mr J's contract of insurance.

If Mr J recovers the apartment but in a damaged condition, he should provide evidence to this effect to Lloyd's. If, having done so and having completed the complaint procedure on this point, he is dissatisfied with Lloyd's response, he could submit another complaint to us.

With regard to the contents, Mr J said he believed they had been removed or destroyed. That is imprecise. If they have simply been removed from the apartment but not destroyed or otherwise disposed of, they may not be lost as Mr J may be able to recover them.

However, if they have been destroyed or otherwise disposed of irretrievably, I am not persuaded it would be reasonable to treat that as loss or damage caused as a direct result of the dispute over ownership of the apartment. In my view the destruction or disposal of the contents would not follow naturally or reasonably from someone claiming the apartment but instead would arise from a decision to act contrary to that person's (and Mr J's) rights.

If Mr J provides Lloyd's with evidence in support of the contents having been destroyed (or disposed of), and completes the complaint procedure on this point, and despite this remains dissatisfied, he could submit another complaint to us.

my provisional decision

As things stand, I make no award against Lloyd's.