

## **complaint**

Mr K complains about Society of Lloyd's' (SOL) proposed settlement of his subsidence claim. He also complains about the increased premium and excess for subsidence claims that SOL applied to the policy as well as SOL's handling of the claim.

## **background**

Mr K took out buildings insurance with SOL when he bought his house. Nine years later Mr K made a claim for damage caused by subsidence. SOL had insured the property for the previous owner and two years before Mr K bought the house, the previous owner had also made a subsidence claim.

SOL accepted the claim concluding that *"the most likely cause of the damage is subsidence, which in turn is caused by clay shrinkage aggravated by the shallow foundations and effects of nearby trees"*. Engineers appointed by SOL undertook investigations and recommended removal of nearby trees to stabilise the property along with structural repairs. They did not think that underpinning was necessary.

Mr K removed some of the trees in 2010 but remained concerned that the property would continue to move and that it hadn't been monitored for a long enough period. He was concerned about previous subsidence which he said was evidence of on-going movement. He went on to instruct independent engineers who concluded that *"it is inevitable that the proposed remedial works will fail to stabilise the property long term...your property cannot be adequately stabilised without effective remedial works to the foundation elements (i.e. underpinning)"*.

SOL's final position was that further vegetation management was required as trees remained to both the front and rear of the property. Any further movement was probably due to other causes but the property remained relatively stable and issues could be resolved by superstructure repairs.

Mr K complained to this service. As well as maintaining that the property should be underpinned he complains about the high excess and premium applied by SOL as well as the handling of the claim in general.

Our adjudicator has recommended that this complaint should be partially upheld. He does not think that SOL should underpin the property but he does think that the excess is unreasonable and should be reduced to £1,000 from the beginning of the policy. He also felt that the premiums had been increased unfairly and found that SOL was responsible for minor delays in its handling of the claim.

SOL has asked for this complaint to be reviewed by an ombudsman because it believes that it should be free to set premiums and excess levels as it sees fit. Mr K has indicated that he is happy to accept our adjudicator's recommendations.

## **my findings**

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

## **repairs**

Our adjudicator does not think that SOL should underpin the property and I agree with that conclusion.

On accepting the claim, SOL engaged engineers who recommended vegetation management and proceeded to monitor the property to assess stability. It was concluded that the property was stable and that Mr K had probably gone far enough in reducing the extent of vegetation surrounding the house.

Mr K remained concerned that the property was unstable and instructed his own engineers who conducted further monitoring which demonstrated that there had been further movement during the following year. They argued that the property could not be stabilised purely by vegetation management and concluded that the only reliable way of stabilising the property would be through underpinning.

SOL's engineers disagreed that underpinning was necessary saying that their calculations showed that the soil had rehydrated following the vegetation work. They accepted that during 2011 there had been some further movement following a dry summer but this was because further vegetation management was required. SOL recommended further investigations however this did not resolve the differences between the two parties and the dispute remained unresolved.

Mr K complained to SOL who maintained its position that underpinning was not required. SOL said it would pay for the reasonable costs of one off vegetation management and noted that some further investigation was needed concerning maintenance related damage. SOL accepted that it took too long to respond to the complaint but maintained that underpinning was not the most appropriate course of action. The original complaint had included numerous issues however SOL chose not to address all of them.

Since Mr K complained to this service SOL has confirmed that further vegetation removal was carried out and that it proved sufficient to stabilise the property.

I have carefully considered everything that took place prior to Mr K's complaint to this service and I find that whilst there remained outstanding tree management to be done, SOL would not have been liable to undertake underpinning to the property. Mr K's engineers demonstrated that there had been movement since SOL declared the building stable in 2010. However, in a situation where all alternative methods of stabilisation had not been exhausted, I cannot find that underpinning is required. I accept that the property wasn't underpinned following the previous subsidence claim and that the repeat of the problem is concerning for Mr K. However, insurers are not required to underpin properties where there are alternative options available (provided they are effective) or where underpinning is simply an effort to prevent future problems which may or may not occur. I haven't seen any evidence to satisfy me that underpinning is required and the most recent readings from February 2014 demonstrate that the property was stable. I therefore find, on the balance of probabilities, that underpinning was and is not currently required and that further vegetation management was appropriate.

#### *excess and premiums*

The previous owners were charged an excess of £1,000 for subsidence claims however when Mr K first took out the policy SOL applied an excess on subsidence claims of '2.5% of the sum insured'. This figure was later increased to £10,000 following the current subsidence

claim. SOL has argued that Mr K entered into the contract of insurance knowing the terms, including the excess applicable for subsidence, which he accepted. It is right that Mr K knew about the terms. The question for me to consider is, was there a set of guidelines which were applied equally to all customers in the same position, or was Mr K treated differently?

I haven't seen any evidence to persuade me that SOL increased Mr K's subsidence excess in line with guidelines which they applied to all customers in the same way i.e. subsidence excesses were increased on renewal for other policyholders in the area whose houses experienced subsidence. I understand SOL's argument concerning its procedures and that all subsidence cases are different however our approach is well established therefore I agree with our adjudicator that the increases to the subsidence excess were unfair. I agree with our adjudicator that the subsidence excess should be reduced to £1,000 (the excess applied to the previous owners' policy) and that this should be backdated to the beginning of the policy. This means that the excess on the current claim will only be £1,000.

I have also considered whether SOL acted fairly when it increased Mr K's premiums and I agree with our adjudicator that because SOL has not demonstrated that similar increases were imposed on all customers with similar risk in the area, the premium increases were not fair. SOL should now review the premiums from the date of the first increase. This should be in line with any procedures or guidelines that were in place at the relevant time and if the recalculation results in a reduction to the premiums then any overpayments should be refunded to Mr K.

Overall I am satisfied that in general SOL handled the claim for the damage to Mr K's property properly and that it treated Mr K fairly and reasonably throughout. The life of the claim was extended by Mr K's own investigations but by its own admission SOL was slow to deal with Mr K's complaint. Also, Mr K might not have been so reluctant to accept the settlement had the excess and premiums been applied fairly. I therefore agree with our adjudicator that SOL should pay £200 compensation to Mr K.

### **my final decision**

I partially uphold this complaint and direct Society of Lloyd's:

- to reduce the excess on subsidence claims to £1,000 from the start of the policy.
- to review the premiums from the date of the first increase and, should this result in a refund to Mr K, pay this refund, plus interest at a rate of 8% simple per annum from the date the premium was paid until settlement.
- to pay £200 compensation.

I make no other order

Carolyn Bonnell  
**ombudsman**