

## **complaint**

Mr and Mrs G have complained about the scope of repairs proposed by The Society of Lloyd's to an external wall of their former home and the subsequent loss of value when selling it.

## **background**

Mr and Mrs G submitted a claim under their buildings insurance policy in July 2008.

The cause of damage was identified as subsidence caused by an escape of water. Consequently, repairs were carried out to nearby drains.

Subsequently Mr and Mrs G appointed a firm of civil and structural engineers who inspected the property in 2009. It identified four possible causes of the distortion to the wall. These were escape of water from: a sewer, domestic drainage, rainwater pipe and a water main.

Two further experts inspected the property (in conjunction with a claims consultant appointed by Mr and Mrs G). The final conclusion reached by Lloyd's was that the distortion of the wall was mainly due to inadequate lateral restraint of the wall which is not an insured peril. It offered to pay the cost of securing the wall as part of the subsidence claim but not the cost of rebuilding it. Payment was sent to Mr and Mrs G.

The repair would prevent further movement but would not remedy the distortion of the wall which Mr and Mrs G were unhappy about.

Lloyd's said that as it had already issued payment for the repair of the wall, it did not consider that further payment was due. It also said that the re-build of the wall would have represented a benefit to Mr and Mrs G rather than re-instatement. It said that the damage caused by subsidence and inadequate lateral movement could have both been remedied by repair rather than re-build.

Our adjudicator concluded that Lloyd's has accepted that there has been some subsidence to the wall but the repairs suggested, did not remedy the damage caused by subsidence.

She said that the evidence suggested that the damage caused by subsidence could not be separated from the damage caused by inadequate lateral restraint and, it was not clear which of the two causes resulted in the distortion of the wall. Therefore, if the re-build of the wall was the only way to remove the distortion, Lloyd's should have re-built the wall. However, the property had been sold at this point. Mr and Mrs G say that it was sold for less than it would have achieved but for the distortion to the wall. They requested by way of compensation, the financial loss they suffered as a result of the condition of the wall.

Our adjudicator did not finally uphold the complaint however because Mr and Mrs G did not demonstrate that as a result of any actions by Lloyd's they suffered a loss.

## my findings

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

There is a disagreement regarding whether the distortion of the wall is a result of subsidence or inadequate lateral restraint of the wall.

Mr and Mrs G have established that an insured event had taken place in that there was some degree of subsidence damage to the wall. Lloyd's however states that the distortion complained of is due to inadequate lateral restraint.

As the experts disagreed Lloyd's commissioned a further inspection. This report in my view represents the final diagnosis for Lloyd's.

That report has not singled out one of the two possible causes as responsible for the distortion. It referred to distortion of the wall which it attributed to lateral movement and, outward rotation of foundations caused by a leak from previously defective drainage. With regard to the distortion, it said *'whilst the distortion will remain and be evident, provided foundations are stable the wall can be restrained in its current position. . . '* Without evidence that the cause of the distortion was not due to an insured peril, it is difficult to see how a failure to remove the distortion can represent satisfactory settlement of the claim. I am not persuaded that Lloyd's has established that the repairs to the wall would have addressed the subsidence, nor that the repairs would have re-instated the wall to its previous condition.

Since the property has now been sold, it is not possible for Mr and Mrs G to re-build the wall. Therefore, it would not be reasonable for me to ask Lloyd's to pay to Mr and Mrs G the cost of doing so. Furthermore, simply because the wall was not re-built does not show that Mr and Mrs G suffered a loss as a result of Lloyd's actions. Consequently, a reasonable award would be for Lloyd's to pay to Mr and Mrs G the loss that they can show they have suffered as a result of the wall not being re-built.

Mr and Mrs G have provided evidence that but for the distortion to the wall the property they could have achieved a sale value of between £50-55,000 on the open market. The property was in fact sold at auction for £32,000. Therefore, including the cash settlement of £17,420 paid by Lloyd's which was not used for repairs, Mr and Mrs G received £49,420. This is in the region of the lowest estimated amount that could have been achieved from an open market sale without distortion of the wall. I accept that these figures are estimates and, that many factors could have influenced the actual price that would have been achieved on the open market at any given time. Therefore, there is insufficient evidence that Mr and Mrs G have suffered a loss of value.

Before the evidence concerning the alleged loss on sale was provided our adjudicator upheld the complaints. She also recommended that Lloyd's should pay the costs of Mr and Mrs G's engineer. It would appear that it was the findings of the engineer that persuaded Lloyd's to inspect further and this formed the basis of the findings of subsidence. I consider therefore that it should pay his costs.

I further consider that Lloyd's should pay to Mr and Mrs G £300 compensation for the distress and inconvenience caused to them by its handling of the claim, particularly the delays caused in resolving it.

**my final decision**

My final decision is that I uphold this complaint in part.

I direct The Society of Lloyd's to:

- pay to Mr and Mrs G the costs incurred by them in employing an engineer to carry out an inspection and report.
- pay to Mr and Mrs G £300 compensation for the distress and inconvenience caused by its handling of the claim.

Ray Lawley  
**ombudsman**