

The complaint

Mrs K complains Society of Lloyd's trading as Lloyd's of London ["SOL"] has unfairly declined a claim she's made on her buildings insurance policy following a fire at a property she owns. She's also unhappy SOL voided the policy following this.

What happened

Mrs K is represented by a third party in bringing this complaint. References I make to her actions include those of her representative.

SOL is the underwriter of the policy i.e. it is the insurer. Part of this complaint concerns the actions of its agents which SOL has accepted responsibility for. Any reference to SOL's actions includes those of its agents.

The background to this complaint is well known to the parties so I've summarised what's happened here.

- Mrs K owns a commercial premises which is let to tenants, insured under a buildings insurance policy underwritten by SOL.
- In October 2020, there was a fire at the premises and there was damage to a room on the second floor. SOL appointed agents to investigate, validate and manage the claim.
- Having undertaken an investigation, including attending the property and interviewing one of the tenants and a proprietor of another business close by, SOL declined the claim and avoided the policy. It said the investigations had revealed the property wasn't fully occupied as stated by Mrs K at the inception of the policy and so she had breached her duty of disclosure in relation to the occupancy of the building. It said the breach was deliberate or reckless as Mrs K knew or ought to have known the second-floor tenant had vacated the premises some time before. But it still returned the premium to Mrs K.
- Mrs K was unhappy with SOL's decision and complained but it maintained its position so Mrs K brought a complaint to this Service. She argued the premises in question were not vacant as SOL alleged. Our Investigator considered the evidence and decided not to uphold it. He said, on balance, he thought the second floor was unoccupied at the time the insurance was taken out and that Mrs K hadn't made a fair presentation of the risk.
- He said SOL had shown it wouldn't have provided cover if it had known the true facts and the relevant law allowed SOL to avoid the policy and retain the premiums but he noted, SOL had returned the premium as a gesture of goodwill.
- Mrs K disagreed with the Investigator's findings. She said the tenant's testimony that he didn't occupy the area in question shouldn't be relied on and she highlighted the financial dispute they were involved in. She said it served the tenant's purpose to say

this as it gave him justification for not paying the rent. She disagreed she had “deliberately or recklessly” misrepresented the facts.

- She also questioned why the Investigator believed the underwriter’s statement that cover wouldn’t have been offered if SOL had known the whole property wasn’t occupied. She believed SOL would have covered the risk and highlighted a term in the policy which she said supported this belief.
- But these comments didn’t change the Investigator’s mind so the complaint has come to me for an Ombudsman’s decision.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

- When making a claim on an insurance policy, the onus is on the policyholder to show the claim is covered under the policy terms. I’ll be keeping this principle in mind when considering this complaint together with what I consider to be fair and reasonable.
- My role at this Service requires me to focus on what I consider to be the crux of the complaint and that may mean I don’t comment on everything the parties have said but I can confirm I have considered everything even where I don’t reference it specifically. When there’s conflicting or inconclusive evidence, as there is on this complaint, I will make my decision on the balance of probability, that’s to say what I consider most likely.
- The relevant legislation in this case is the Insurance Act 2015. Under this act, as a commercial customer, Mrs K is required to make a fair presentation of the risk when buying the insurance policy. For SOL to take any action, it needs to show that Mrs K didn’t do that and that she made what is known as a qualifying breach.
- To show a qualifying breach has occurred, SOL needs to show that if Mrs K had made a fair presentation of the risk, it would either not have offered the policy or would only have done so on different terms. In order to make a fair presentation of the risk, Mrs K needed to disclose every material circumstance which she knew, or ought to know about or to give enough information to enable SOL to know it needed to undertake further enquiries.

There’s a number of things I need to consider in reaching my decision on this complaint. I’ll deal with them in turn.

Was there a misrepresentation and was there fair presentation of the risk?

- In May 2020, SOL questioned Mrs K at inception about the tenancy of the property as it had noted the premises seemed to be bricked and boarded up and there was only one business in residence at that time. It asked Mrs K if the three stated businesses – a gym, a clothing supplier and a food supplier – were still occupying the building. The broker acting for Mrs K confirmed the businesses were in occupation and the building was fully tenanted.
- Whilst it’s not a requirement under the Act, I still consider SOL’s question about the occupancy of the building to have been clear and specific. I’m satisfied Mrs K ought

reasonably to have known that full occupancy of the building was material information she needed to disclose to SOL, given its questioning about this.

- While investigating the claim in 2021, SOL interviewed Mr R who was the tenant of one of the floors in the property. He said the tenant of the fire-damaged floor in question – a business I'll refer to as F - had moved out two to three years before, following ongoing disagreements with Mrs K about her failure to address the damaged roof.
- Mr R said he had initially shared the floor with F for some time, but had moved out at the same time and for the same reason, unhappy with the state of the roof and the lack of repairs to it. He said this was the cause of the disagreement between him and Mrs K.
- I know Mrs K has questioned Mr R's honesty, character and the reliability of his testimony. And she's said equipment left behind and Mr R's behaviour around access show he was still using the floor in question. While I acknowledge what she's said here, I don't consider this persuasive evidence which supports full occupation of the property.
- During the investigations into the claim, one of SOL's experts confirmed there was no electrical supply at the time of the fire and the evidence supported that this had been disconnected some time before. This was in line with what Mr R said about disconnecting the electricity supply when he left the floor. It seems unlikely to me that a tenant would have been able to occupy this floor without an active electricity supply.
- Mr R says the items left behind on the damaged floor belonged to F and had been left behind when it moved out. Given the nature of the business and the equipment left behind, I find this explanation plausible.
- In summary, I'm not persuaded that Mrs K has provided enough evidence to support her claim the property was fully occupied at inception or when the fire occurred. Taking everything into account, on balance, I think it's more likely than not the property wasn't fully occupied as stated by Mrs K when she took out the policy, so she failed in her duty to make a fair presentation of the risk.
- Having established that, I've then gone on to consider whether Mrs K has made a qualifying breach.

Did Mrs K make a qualifying breach?

- SOL has provided testimony from its underwriter which states, if the true position regarding occupancy had been known, SOL wouldn't have offered cover in Mrs K's particular circumstances.
- And that means the breach was a qualifying breach under the Act and that affords SOL certain remedies.
- I've gone on to consider whether it applied these correctly below.

Did SOL take appropriate action?

- Where there has been a qualifying breach and the insurer has shown it wouldn't have offered cover, as is the case here, it is allowed to avoid the policy and refuse all claims. SOL says the misrepresentation was deliberate or reckless and, under the Act, this would allow it additionally to retain the premium Mrs K had paid.
- But SOL decided to return the premium to Mrs K, and this was the remedy available to it if the misrepresentation *wasn't* deliberate or reckless.
- And because of this, any further deliberation on the subject wouldn't be material as it has already provided Mrs K with the remedy I would award if I disagreed with its findings. So, I'm not going to comment further on how SOL classified the misrepresentation.

The cancellation clause

- Mrs K says the policy terms include a cancellation clause the wording of which she thinks implies SOL would *consider* providing cover for a building that was unoccupied. She acknowledges this would likely have involved additional conditions and restrictions.
- But having considered this term, it's clear to me this cancellation term relates to properties that were declared as being unoccupied at inception and that simply doesn't apply to Mrs K's property which was stated to be fully occupied.
- While, SOL *may* offer cover for properties declared as unoccupied in some circumstances, as I've explained above, SOL's underwriter has confirmed it wouldn't have offered Mrs K cover had it known the true facts about the building's occupancy so this doesn't change my mind.

In summary, based on the evidence I've seen, I think SOL has acted fairly and in line with the policy terms and the relevant legislation in voiding the policy and declining the claim. So I won't be asking it to do anymore.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 September 2023.

Paul Phillips
Ombudsman