

## **The complaint**

Mr and Mrs C are unhappy a claim made under their Park Home insurance policy has been declined by Society of Lloyd's (SoL).

Where I've referred to SoL, this includes the underwriting syndicate which actually provides the cover under Mr and Mrs C's policy.

## **What happened**

Mr and Mrs C insured their park home with a SoL syndicate. They use the park home for holidays, and it isn't their main place of residence.

In December 2022 Mr and Mrs C were contacted by the estate management to inform them that there was a significant amount of water underneath the park home, and that the estate management had turned off the water.

Mr and Mrs C arranged for the park's usual plumber to let them know the extent of the damage to their park home. As they were told the damage was extensive, they made a claim to SoL.

Ultimately SoL declined the claim. Mr and Mrs C's policy has a term which requires them to do specific things in relation to their heating and water supply between November and March. However, based on information provided by Mr and Mrs C's plumber, SoL wasn't satisfied Mr and Mrs C had complied with the policy requirement.

Mr and Mrs C complained to SoL about the claim decision and maintained that they'd complied with the policy requirements. SoL's claim decision remained, but they said that if Mr and Mrs C could provide a plumber report and a report from the site management then they'd revisit matters. However, SoL recognised there were delays and communication issues, so they paid Mr and Mrs C £200 compensation.

Mr and Mrs C remained unhappy with the claim decision and approached this service.

One of our investigators looked into things but she didn't uphold the complaint. She said SoL's hadn't sufficiently shown that Mr and Mrs C hadn't complied with the policy requirements so she didn't think they could rely on this to decline the claim.

However, she said Mr and Mrs C hadn't shown an insured event had occurred. So, she said SoL's request for a report from the plumber and site management wasn't unreasonable, and in the absence of this she didn't think SoL had acted unreasonably by declining the claim.

Mr and Mrs C didn't agree and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

## What I provisionally decided – and why

In my provisional decision, I said:

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

*I’m issuing a provisional decision. I’m not minded to agree with either SoL’s position or the different position reached by our investigator. Therefore, I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.*

*SoL’s declined Mr and Mrs C’s claim as they say they didn’t comply with a policy requirement. Our investigator didn’t think this was fair, but she also said Mr and Mrs C hadn’t shown an insured event occurred, and the onus was on them to do so. I don’t agree with either position, so I’ll consider each separately.*

### *Was there an insured peril?*

*The site management contacted Mr and Mrs C to advise they’d noticed a significant leak of water under the park home. Mr and Mrs C arranged for the site’s plumber to check the extent of the damage as they were abroad at the time. The plumber found extensive water damage inside.*

*SoL’s loss adjuster also visited (two months later) and noted there was extensive water damage. Mr and Mrs C’s plumber also explained to SoL that there were burst pipes, and this had led to the water damage.*

*Mr and Mrs C’s policy covers escape of water from burst pipes (subject to conditions and exclusions which I’ll consider separately).*

*It doesn’t appear to be disputed by SoL that there was an escape of water from one or more burst pipes. So, in principle, unlike our investigator, I think Mr and Mrs C have done enough to show an insured peril has occurred.*

*I now need to consider whether Mr and Mrs C have a valid claim for that insured peril, or if as SoL says, a breach of policy requirements means the claim should be declined.*

Were the policy conditions complied with?

Mr and Mrs C's policy has the following requirement in relation to escape of water claims:

*"c) Between 1st November and 31st March both days inclusive, if the park home is left without an occupant for more than 48 hours you must drain down the entire water system as a precaution to prevent freezing and any potential damage this may occur. If your park home has a sealed heating system containing antifreeze then this does not need to be drained down but antifreeze levels checked annually and particularly prior to the period of unoccupancy. (Please refer to Draining Your Water System for Winter Occupancy On Page 7). In addition all water tanks must be emptied by leaving both hot and cold taps fully open with plugs removed throughout the park home.*

*Or*

*If you wish to leave the water supply turned on between 1st November and 31st March both days inclusive, you must ensure:*

- The entire home benefits from a heating system being gas or oil fired central heating or a geothermal or full electric system (not night storage heaters), fitted with automatic controls and a separate thermostat. The system must be set to operate continuously for 24 hours of each day (not controlled by a timing device) and the thermostat set to not less than 13 degrees Celsius and all internal doors must remain open throughout the park home and where fitted the loft hatch left open.*

*Or*

- If the heating system described above is installed and additionally fitted with a 'frost stat' that is designed and installed to override all the heating controls, irrespective of their functional status, then this may be set to operate at no less than 4 degrees Celsius.*

*Before we can pay you any claim it is a requirement that you (at our request) provide any bills for any utilities being supplied to the insured premises at the time of any loss or damage resulting in an escape of water for verification by us.*

*Failure to comply with the requirements above will result in loss or damage resulting from escape of water or burst pipes being excluded from this insurance."*

SoL says that Mr and Mrs C haven't complied with this. This is on the basis that SoL say Mr and Mrs C's plumber said the boiler was switched off when they discovered the escape of water damage, and the system hadn't been drained down. By contrast, Mr and Mrs C maintain it was on, with the frost protection stat in place, so they say they complied with the requirement.

*Mr and Mrs C have attempted to get further information from the plumber but have been unable to do so. But SoL's loss adjuster did speak with the plumber on more than one occasion about what happened. With conflicting or unclear information, I can't be sure with certainty exactly what happened. So, I'm considering on balance, what I think is most likely.*

*If SoL is declining the claim based on a breach of condition, they need to demonstrate the condition was breached and was relevant to the loss. But based on what I've seen, I'm not minded to conclude they have. I'll explain why.*

*SoL says Mr and Mrs C's plumber told them:*

*"I have spoken with the plumber after he reattended today. He advised that the thermostat was calling for heating but he has found that the boiler was switched off."*

*Therefore, on the face of it, this does look like the boiler was switched off, and the system wasn't drained down, so the policy terms haven't been complied with. However, there is a further note from the loss adjuster within the file which also says:*

*"I have just spoken to the plumber, who has advised of the following: Engineer has advised he is unsure if the boiler is damaged or not, he has advised all that he has seen is the result of the leak from generalised frost damage, he has advised that the pipes were blown due to frost damage in 2 – 3 places. There was a pipe under the boiler that was blown apart. He is 100% certain all the damage is due to frost.*

*Engineer has advised that he can only comment on how he found the boiler after the fact, he has advised that after the new year, and at that point the boiler was electrically isolated, he is unsure of how it was left before, but when he attended site, there was no power at all to the lodge. He has advised that it may have been left off or switched off later. He did not touch the switch of the boiler on his visit. He has advised that he can't comment on when it was isolated, or that if the power had failed into the lodge due to water.*

*All he can say is when he got there is was flooded and there was no power to the lodge."*

*So, taking this into account, I don't think that first note is quite so clear in showing the boiler was already turned off, or consequently that the policy requirements have been breached.*

*The second note seems to indicate that when the plumber arrived at the property, there was no power and it was flooded. So, in my view, reference to being 'switched off' could equally be due to a lack of power, rather than by the switch itself. The plumber also said that it may have been left off at the time or may have been switched off later, but they didn't know either way. Instead, there was no power and flooding when they visited. This to me further shows that he may have been referencing a lack of power on that visit, rather than being switched off by the physical switch. If they noted the switch itself was off at the time of their first visit, I think they'd be able to answer that question more conclusively.*

*Furthermore, the closing comment also says he is unsure when it was isolated, or if the power had failed into the lodge due to water. In my view, this further implies that the boiler didn't have power as far as they were aware, rather than specifically was turned off at the switch.*

*Mr and Mrs C also spoke to the plumber and let SoL know that the plumber told them:*

*"On talking with the plumber we find that the boiler had been turned off at a switch on the wall and that this was only seen when he made a visit to the lodge in the last couple of weeks."*

*This was in March, three months post loss. And this implies that the switch being off wasn't noticed until a significant time after the loss occurred. So, whilst the boiler switch may later have been turned off, after several people had visited, including the loss adjuster, the plumber revisited, site management and the contents removal company, I'm not persuaded the evidence supports that it was most likely turned off before the loss occurred.*

*What I also think is important to note here is that I don't think the fact there was an escape of water due to frozen pipes necessarily supports that this must mean the boiler was off at the time either. I say this because there were extreme temperatures immediately before the loss and damage was discovered.*

*I've checked the weather records for the time. And immediately before the loss and damage was discovered, in the local area, there were temperatures as low as -11 degrees. Given it was a park home, rather than a normal brick construction building, the insulation is unlikely to have been as effective in these temperatures as you might otherwise expect from a standard construction property. So even if the boiler was still in operation, it's still very possible in those temperatures that the pipes still couldn't cope, freezing and resulting in an escape of water.*

*Furthermore, the fact that there was no electric when the loss was discovered could have been as a result of the escape of water. But it also could have been before the escape of water occurred, impacting on the boiler functioning effectively, along with the frost stat. This also could have led to the pipes freezing and bursting, even if before the failure of the electric the boiler was on, and even if the frost stat was in operation.*

*With the above in mind, unless anything changes as a result of the responses to my provisional decision, I'm not minded to conclude SoL has shown, on balance, that Mr and Mrs C failed to comply with the policy requirements. Consequently, I'm not minded to conclude it's fair or reasonable for SoL to rely on this to decline Mr and Mrs C's escape of water claim.*

*Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing SoL to reconsider Mr and Mrs C's claim in line with the remaining terms of the policy.*

*However, I'll add at this stage that my understanding is that Mr and Mrs C have had to destroy and dispose of the park home due to the extent of damage to it. This means a repair won't be possible now. Therefore, if my direction remains the same in my final decision (and Mr and Mrs C accept it), when considering the claim in line with the remaining terms, SoL would also need to explore alternative settlements with Mr and Mrs C.*

*If after that Mr and Mrs C were unhappy with whatever settlement was ultimately offered, they'd need to raise a new complaint about that, before referring it to this service in line with our usual rules and timescales.*

*SoL paid Mr and Mrs C £200 for communication issues. But I don't think this is enough. For the reasons outlined, I'm minded to conclude that SoL has unfairly declined the claim. This took time, and due to the extent of damage, this resulted in the park home deteriorating and ultimately having to be destroyed and disposed of.*

*This was Mr and Mrs C's holiday home, which they have now lost and are no longer able to use. And it's clear from the information that this has been very distressing for Mr and Mrs C. Unless anything changes as a result of the responses to my provisional decision, I'll also be directing SoL to pay a further £1,000 compensation for the distress and inconvenience caused and the impact this has had on Mr and Mrs C."*

So, I was minded to uphold the complaint and to direct SoL to reconsider Mr and Mrs C's claim in line with the remaining policy terms and pay a further £1,000 compensation.

### **The responses to my provisional decision**

Mr and Mrs C responded and said they had nothing further to add.

SoL responded but they didn't agree with the provisional decision. They said the purpose of the frost stat is to provide protection against extreme temperatures. They said a great deal of weight has been put on an unsubstantiated argument, put forward by Mr and Mrs C, that even if the boiler was in operation, the pipes could still burst due to the extreme temperatures. SoL said the extreme temperature is irrelevant as the frost stat is there to stop the pipes from freezing.

SoL said the complaint must be decided on the facts and where they cannot be established for certain, on the balance of probabilities. They say the facts are that the damage was due to frost, and frost damage could only occur if the boiler frost stat failed to operate. Therefore, on the balance of probabilities, they say the power was off before the escape of water occurred, and it would not have occurred if the frost stat had kicked in.

They also said there was little effort from Mr and Mrs C to get a written report from the plumber. And there is no expert opinion which explains how the damage would occur if the boiler had been switched on.

SoL also say that an assumption has been made that a power failure had caused the boiler to lose power and there is no evidence to support that, and no evidence that there were problems or faults with the power supply during the period in question.

They said the evidence supports the decision to decline the claim on the basis Mr and Mrs C didn't comply with the conditions under the policy, and the onus is on Mr and Mrs C to demonstrate there was another reason why the frost stat failed to operate.

SoL also said Mr and Mrs C were asked to provide electricity meter readings which would show if the park home was drawing power during the period in question, but they haven't done so. They maintain that the cause of the escape of water wouldn't have happened if the boiler had been left on with the frost stat set, so they say Mr and Mrs C have failed to comply with the policy conditions.

## **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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision.

SoL says that the case needs to be decided on the balance of probabilities. As explained in my provisional decision, that's what I've done.

SoL has said the purpose of the frost stat is to provide protection against extreme temperatures. However, I'm already aware of its purpose. And whilst it is there to provide protection and decrease the risk of this happening, this doesn't mean that a pipe could never freeze or burst. And unlike SoL, I do think the extreme temperatures here are relevant. For example, a sudden sharp temperature drop to -11 degrees could result in a heating system being unable to cope and/or cause a pipe to burst.

I also explained my thoughts about the possibility of a power failure in my provisional decision too. SoL has said Mr and Mrs C haven't provided anything to show there was power loss, or the park home was drawing power at the time of the loss either. However, Mr and Mrs C have explained the park home doesn't have smart meters, and the readings are taken twice a year by the management. And in any event, putting aside the readings would only show a six-month usage, a meter reading isn't going to show if or when there was a power cut specifically. So, this wouldn't show specifically if one occurred before and impacted on the functionality of the boiler and frost stat and that caused the escape of water, or power failed after the escape of water had already occurred.

Furthermore, it is unknown exactly when the pipes burst, as it wasn't discovered until extensive water under the park home was noticed by the park management. But that doesn't mean it was noticed on the same day it happened. If for example it wasn't noticed until several days after the burst, then the property would have been in a saturated condition for several days before it was noticed, and the plumber attended. Given the temperatures at the time, this could also be a reason why there was frost damage.

SoL has referred to part of what Mr and Mrs C's engineer said, however I discussed this in detail in my provisional decision, so I won't revisit that in detail again here. But in summary, I explained if one note is read in isolation, it could be interpreted that the boiler was turned off at the switch. However, I also explained why, taking into account the other notes, it makes that note less clear overall.

With the above and my provisional decision in mind, I'm not persuaded that it's been shown by SoL, on balance, that Mr and Mrs C failed to comply with the policy requirements. Therefore, I don't think SoL has acted fairly or reasonably by declining the claim.

With this in mind, I'm directing SoL to reconsider Mr and Mrs C's claim in line with the remaining terms of the policy. In addition, I'm also directing SoL to compensate Mr and Mrs C an additional £1,000 for the reasons outlined in my provisional decision.

## **My final decision**

It's my final decision that I uphold this complaint and direct Society of Lloyd's to:

- Reconsider Mr and Mrs C's claim in line with the remaining terms of the policy
- Pay Mr and Mrs C a further £1,000 compensation

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

Callum Milne  
**Ombudsman**