

The complaint

Mr and Mrs G complain that Lloyd's Insurance Company SA rejected a claim on their buildings insurance policy, and about the time it took to make a decision.

What happened

Mr and Mrs G made a claim on their policy after they noticed cracks in the walls and a drop in the floor level at their property.

Lloyd's appointed loss adjusters to consider the claim. They said the problem might be due to leakage from a drain or water pipe that had washed away material below the floor, and there may be subsidence caused by an escape of water.

When Mr and Mrs G questioned this, a surveyor was instructed to inspect the property. He said:

- the land next to the property was agricultural and there had been significant changes to the irrigation system used there;
- while there were problems with the drains, it was almost impossible to determine how much any leaks might have contributed to the ground movement;
- the timing of events and amount of movement was far more likely to mean the problem was due to changes in the ground moisture content, with movement and breakage of the drains happening as a result, leading to water leakage.

The loss adjusters didn't agree with the surveyor and said:

- given the type of soil at the property, there was no logic to the surveyor's argument and no scientific evidence to support it;
- the original analysis was correct – the subsidence had been caused by escape of water and so was excluded.

On this basis, Lloyd's said the subsidence was due to leaking pipes or drains and there was an exclusion in the policy for subsidence due to escape of water, so there was no cover. Mr and Mrs G complained but Lloyd's didn't change its position. It did accept there had been some delays in dealing with the claim and offered compensation of £400 for this.

Mr and Mrs G then referred the complaint to this Service.

Our investigator said the evidence from the surveyor was more persuasive and on the basis of this, the likely explanation was that the escape of water from the drain didn't cause the subsidence – rather, the drain cracked because of the subsidence. She asked Lloyd's to deal with the claim. She said the £400 compensation it had offered for the delay was fair.

Mr and Mrs G accepted the investigator's view but Lloyd's disagreed and requested 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides cover for subsidence. So if the problem is due to subsidence then, on the face of it, the claim should be covered unless Lloyd's can show an exclusion applies.

Lloyd's is relying on the comments from the loss adjusters rather than the surveyor, and on the basis of their comments is treating this as a claim for escape of water. Although there's cover for this in the policy terms, there's an exclusion for subsidence caused by water escaping from the home.

There seems no dispute that there has been subsidence, which is covered by the policy. But Lloyd's says it was caused by an escape of water and there's an exclusion for that. So the onus is on Lloyd's to explain why the claim should not be covered.

Neither report can say for certain what caused the problem. I appreciate the loss adjuster's comments are from someone professionally qualified. But they didn't carry out the same level of inspection at the property.

The surveyor visited the property twice and carried out fairly detailed inspections, including removing the toilet, opening up the septic tank and a CCTV inspection of the drains. He explains why he doesn't think water leakage could have caused the problem, especially given that any leakage was limited (Mr G has explained that the property was empty for long periods, with the water turned off). His professional opinion is that the subsidence was due to changes in the water content in the soil, as a result of change of use of the neighbouring land. And he says the drains probably broke as a result of the ground movement, rather than the other way round. The loss adjuster's report isn't based on the same detailed inspection, with pipes being exposed and inspected.

There's no conclusive proof either way as to the cause of the problem. But on balance, I don't think the evidence Lloyd's is relying on is persuasive enough for it to treat this as a claim for escape of water and apply the exclusion it has relied on.

I'm not satisfied it would be fair and reasonable in the circumstances to decline the claim. To put things right, Lloyd's should accept the claim and go on to consider how to settle it fairly, in line with the remaining policy terms.

There was some delay dealing with the claim but Lloyd's has acknowledged this and offered compensation of £400. Mr and Mrs G didn't accept this at the time though they did accept the investigator's view that it was reasonable. I agree they would have found any delay upsetting but I think the offer of £400 is fair compensation for the distress caused at the time.

My final decision

I uphold the complaint and direct Lloyd's Insurance Company SA to

- accept the subsidence claim; and
- if it hasn't already done so, pay compensation of £400 for the distress and inconvenience caused to Mr and Mrs G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 28 December 2023.

Peter Whiteley
Ombudsman