

## **The complaint**

Miss M complains about how Lloyds Bank General Insurance Limited has proposed to settle a claim made on her home insurance policy after a fire. She is also unhappy with the service provided.

Miss M is assisted in this matter by Mr S and he has raised points on her behalf. However, for ease, I'll refer to Miss M throughout this decision.

## **What happened**

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the issues and focus on the reasons for my decision.

Miss M's property was damaged by a fire in January 2022, and she made a claim on her home insurance policy with Lloyds.

Its notes show when Miss M contacted Lloyds to make a claim, she told it she was staying with her partner when the insured event occurred. Later, she told Lloyd she wasn't living at the property, her friend was. After Lloyds had investigated this matter, it transpired the property had been rented to a person known to Miss M since January 2019. Had Lloyds been aware of this information at the time the policy was renewed with it, it would have offered the policy on different terms and charged a different premium. Notwithstanding its rights under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), it allowed Miss M to make a further premium payment to it. Lloyds then settled Miss M's claim for loss of rent.

Miss M's policy allowed for the reinstatement of the property in the event of a fire. However, due to a lack of contractors in the area, Miss M obtained her own quotation for the works needed to reinstate the property. Lloyds covered the costs of the architects plans, structural engineer and building warrant requested by the contractor. The quote was £296,495 plus VAT and dated 6 July 2022.

Anticipating the cost of reinstatement was more than the value of the property, Lloyds requested valuations of its value immediately before the insured event. Although it requested several valuations, there were issues obtaining them due to the location of the property. Ultimately, one valuation was obtained - after visiting the property on 28 September - of £165,000 prior to the fire. The report was dated 26 October and stated the likely market value at the time of the report, reflecting the fire damaged condition of the property and assuming it was sold at auction, was £45,000. As this was significantly less than the quotation for reinstatement of the property, Lloyds offered to pay Miss M the diminished market value (DMV). That is, the difference between the open market value of Miss M's property before the insured event (£165,000) and the open market value of it after (£45,000).

Initially, Miss M said she would obtain a further valuation but later decided she wouldn't do this and was willing to accept £250,000 as she intended to rebuild the property. Lloyds didn't agree to increase its offer. Miss M complained about this and the service she'd received, including lacklustre service and communications, a case handler who was deliberately trying

to confuse her and a lack of support.

Lloyds didn't agree to change how it proposed to settle the claim. It accepted there had been delays in the matter and, although some had been caused by the difficulties in obtaining valuations from third parties, it apologised for the time this took and lack of updates about this. However, it also explained some time had been spent at the outset of the claim due to its investigations regarding the property and who was living there. Even so, it paid loss of rent to Miss M throughout. To apologise for the failings it'd identified, it paid Miss M £400.

Miss M was unhappy so she referred the matter to this service for an independent review. The Investigator looked into matters and thought the complaint should be upheld, recommending Lloyds reinstate the property or by offering a cash settlement for Miss M to do the repairs herself.

Miss M accepted the Investigator's recommendation. Lloyds disagreed. It made several points including the following which are summarised below.

- The purpose of the insurance policy is to put Miss M back in the same financial position as she was in before the loss. Its proposal of DMV would do this as she would be able to buy another property which she can rent out in the same area. In the meantime, Miss M has been paid for the loss of rent and hasn't been put in a worse position.
- The policy terms allow it to do this by rebuilding, repairing or making a money payment. This includes using the DMV method. And the choice of which method to use is for the insurer, Lloyds.
- It didn't consider Miss M was likely to reinstate the property particularly given the difference between the amount required to reinstate it and the amount she has said she would accept. It also noted no notice had been given to the tenants before the fire to recover possession of the property and paid loss of rent on the basis the tenancy would've continued.
- The DMV term is included in the policy to ensure it pays claims in line with its policy terms and keeps premiums at a sustainable level for all customers.
- When Miss M originally corrected her misrepresentation and said it'd been rented to a friend for two years, it carried out its own checks which showed various people living at the property. When raised with Miss M, she confirmed she had rented the property out since 2015.
- The more intricate details concerning the mortgage would be discussed as part of the settlement process.

Miss M told the Investigator she asked Lloyds to pay *at least* £250,000 and, although this wouldn't have been enough to fix the property, she was thinking of getting a loan for the remaining costs to rebuild it. She needs to do this and move in herself as there isn't enough room where she's currently living (with her partner) and two children.

The Investigator and Lloyds communicated about this, but these points didn't change the Investigator's view. As agreement couldn't be reached, this matter was passed to me for a decision.

I issued a provisional decision to the parties on 20 November and my findings are set out below.

*'Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.'*

*I recognise I've summarised this complaint in far less detail than the parties and I've done so*

*using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.*

*Having done so, I must tell Miss M I don't currently intend to uphold her complaint. I'll explain why.*

### Misrepresentation

*Firstly, I wanted to explain insurance customers are required to make a fair presentation of the risk (or take reasonable care not to make a misrepresentation) when taking out a consumer insurance contract (a policy of insurance). This duty also applies when renewing a policy.*

*If a customer fails to do this, the insurer has certain remedies provided the misrepresentation is a 'qualifying' breach or misrepresentation meaning the insurer must show it would have offered the policy on different terms or not at all if the customer hadn't made the misrepresentation.*

*Here, Miss M didn't tell Lloyds the property was rented out and I'm satisfied Lloyds would've offered the policy on different terms if she had. So, I consider a qualifying breach was made. Even so, Lloyds ultimately decided to accept Miss M's claim and allowed her to top up the premium that would've been due had she given Lloyds accurate information on renewal.*

*Whilst Lloyds isn't seeking to rely on Miss M's misrepresentation to avoid her policy or pay her claim proportionately (the remedies set out under the relevant law which I consider may have been available to it in this matter), I've taken the misrepresentation – and impact of it – into account when considering Miss M's complaint.*

### Settlement method - DMV

*The starting point of any claim made under an insurance policy is the contract between the customer and the insurer - the policy document.*

*Having determined the cost to reinstate Miss M's property significantly outweighed the market value of it before the insured event, Lloyds decided the most appropriate way to settle her claim was by awarding her the amount by which her property had diminished in market value because of the fire.*

*To do this, Lloyds relies on the following term which it says is set out in Miss M's policy.*

*'This section details how we settle claims under your policy. We decide how a claim will be settled...*

*How we settle a claim under your buildings cover and buildings – optional accidental damage cover:*

- We will pay the cost of rebuilding or repairing the part of your home which is damaged (using a suitable equivalent material wherever possible) but not more than the cost of completely rebuilding it in its original form.*

- We have the option of giving you a money payment instead of repairing or rebuilding your home. We will either:
  - pay the cost of repairing the damage less an allowance for wear and tear or;
  - pay the difference between the open market sale value of your home prior to the damage and its open market sale value after the damage.'

*Taking everything into account, I'm currently satisfied the DMV approach is the most appropriate way for Lloyds to settle Miss M's claim in this particular matter. I don't, therefore, currently intend to interfere with Lloyds' decision in this matter. I say this for a number of reasons which are, in summary, set out below.*

- *I haven't seen any evidence a settlement based on DMV isn't going to place Miss M in the financial position she would've been in were it not for the fire. Particularly as Lloyds has agreed to pay Miss M (subject to the remaining policy terms and limits):*
  - *the property value (subject to it being transferred to Lloyds and I consider this should reasonably be at Lloyds' cost); and*
  - *up to £2,500 for the legal fees of Miss M buying a new property.*
- *I also understand the more intricate details concerning the contents claim (which relates to carpets only), loss of rent claim, availability of a mortgage and any additional costs such as stamp duty will be considered by Lloyds, if applicable, as part of the settlement process.*
- *The policy Miss M took out with Lloyds isn't designed for the type of loss Miss M has sought to use it for – which is that of a landlord renting out a property.*
- *Lloyds wasn't aware Miss M was insuring a tenanted property – neither at the time the policy was renewed or when Miss M first made the claim. Lloyds wasn't given accurate and full information about the property which had been rented out by Miss M for a number of years. And this was only done after Lloyds had carried out its own investigations.*
- *I acknowledge Miss M now says she's intending to live at the property, and this is why it must be reinstated by Lloyds. However, I'm satisfied in this matter it's important to consider what was happening at the date of the insured event. At that time, Miss M wasn't living at the property - it was being treated as a rental and an investment for a number of years prior.*

*Lloyds has provided an expert opinion the property was worth £165,000 at the time immediately before the fire. I haven't seen any evidence to counter the view of Lloyds' expert and I'm aware Miss M has had time to provide it. I therefore currently consider it reasonable to conclude the property was worth £165,000 at the time immediately before the fire. In light of the location of the property, Lloyds has agreed to pay this amount to Miss M in return for her transferring the property to it. It has also explained the legal and other costs of Miss M doing this will be considered by it as part of the settlement process. I consider this to be a reasonable approach for it to take to settle Miss M's claim. It follows I don't currently intend to uphold her complaint.*

*Finally, I note Miss M has asked for further compensation for the distress and inconvenience caused to her for the poor service she's received. I am aware Lloyds paid £400 to Miss M for this. Balancing all the circumstances in this matter, I consider this to be fair and reasonable in the circumstances and likely more than I would've awarded had this amount not already been paid to Miss M.*

*To be clear, my decision in this matter isn't indicative of this service's general position on an insurers use of the term to settle a matter on a DMV basis. Each case is decided on its own specific merits.'*

Lloyds confirmed it accepted the provisional decision.

Miss M responded to express her disappointment with the decision. However, she explained she understood the reasons that were taken into consideration. Ultimately, she feels she has no alternative but to accept the offer.

### **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.

Having done so, and as both parties accepted the provisional decision, I see no reason to depart from it. It follows I don't uphold Miss M's complaint.

### **My final decision**

For the reasons set out above and in my provisional decision, I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 3 January 2024.

Rebecca Ellis  
**Ombudsman**