

The complaint

Mr K complains about Society of Lloyd's handling of a claim made under his Structural Defects insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr K has a buildings warranty policy underwritten by Society of Lloyd's (SOL) which covers structural defects at his home. Mr K bought his home in February 2020.

In February 2023, Mr K made a claim to SOL relating to issues with his property, including problems with a window.

SOL declined the claim. They said many of the issues raised by Mr K were not covered by the policy terms since they were not structural issues.

They also said many of the issues had been – quite properly – raised with the developer in the first instance and had either been resolved or the developer had offered to resolve them.

Mr K complained to SOL about their claim decision. And when they didn't uphold his complaint, he brought it to us.

Our investigator looked into it and didn't think SOL had done anything wrong.

Mr K disagreed and asked for a final decision from an ombudsman.

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.

It's important first of all to understand how the policy works. And how that impacts on our ability to consider complaints about the policy.

The policy says – very clearly – that any issues arising in the first two years after purchase should be raised with the developer or builder.

The developer or builder is expected to address those issues. Although SOL offer to mediate between the parties if there is an unresolved dispute.

In that first two years of the warranty policy, there is no insurance cover, assuming the developer is still in business and is trying to rectify any faults with the build.

That's important for us because we are empowered to handle complaints about financial services – such as insurance. We are not empowered to consider complaints about builders or developers. Nor can we look into complaints about organisations providing mediation

services.

In this case, during the first two years of his policy, Mr K raised a large number of issues about his property with the developer – as the policy terms suggested he should. His developer was still in business throughout that period. And the developer made a proposal in September 2021 (within the first two years of the policy) about how any remaining issues would be addressed.

I am aware Mr K didn't like some aspects of that proposal. However, at that point, his discussions were with the developer (who we can't look into) and related to issues raised in the first two years of the policy. At which time, there is no insurance contract (unless the developer has disappeared or refuses to address any structural defects causing damage).

The developer hadn't disappeared or refused to address Mr K's issues. Therefore, there was no insurance being provided. Therefore, we can't look into those issues.

The many issues raised by Mr K in that period included problems with a window, which Mr K believes isn't fitted properly. That's one of the points Mr K raised in his complaint to us. He wants SOL to repair or replace – or pay for repairs or replacement of – his window.

We can't comment on that – and we have no power to require SOL to do anything in respect of the window. No insurance service or product has kicked in as regards the window.

The developer dealt with the issue in the first two years of the policy and proposed a solution. They have not gone out of business, and they have not refused to remedy the problem. It's not for us to comment on the proposed remedy – that's out of our jurisdiction.

In his latest correspondence with us, after our investigator issued their latest view on the case, Mr K has asserted – without providing any compelling evidence – that the builder is in fact now refusing to do anything more.

If that is the case, Mr K should provide evidence to that effect to SOL, and they can then consider whether the insurance part of the policy should now kick in. As things stand though, I can't justifiably say SOL have acted unfairly or unreasonably on this aspect of Mr K's claim bearing in mind the evidence they had at the time.

The other issue with the property which Mr K has asked us to consider relates to a crack in one of the walls. Mr K says the crack indicates an underlying structural defect, which is – or ought to be – covered by the policy.

In this case, Mr K raised the issue with the developer – within the first two years of the policy – and they undertook some repair work at the time. But Mr K says the crack has returned – which seems to be evidenced by the photographs he's sent us.

It appears the developer believes the crack to be due to shrinkage, rather than any structural defect in the build of the property. And, in the case of the crack, the developer appears not to be proposing to do anything more about it.

As regards the crack then, Mr K is entitled – under the terms of the policy – to ask SOL to consider repairing the damage. In other words, the insurance element of the warranty may kick in here, because the developer has said they'll take no further action.

SOL declined this aspect of Mr K's claim on the basis that the relevant builders and/or assessors say that the crack is almost undoubtedly due to settlement in the building and not due to a structural defect which would be covered by the policy.

It's not unfair or unreasonable for SOL to take that view based on the evidence they had when they considered Mr K's claim. They are entitled to believe the assessment carried out by a relevant qualified professional.

Mr K believes the crack has got worse – and continues to widen. If he – or an expert he engages – believes the crack is therefore due to a defect in the build, then I'm sure SOL will consider any new evidence on that point and review their claim decision.

But again, as things stand, I can't reasonably conclude that SOL have acted unfairly or unreasonably in declining this aspect of Mr K's claim.

Mr K has also suggested to us that SOL acted unfairly because they didn't soon enough advise him that he might refer issues about the developer under the Consumer Code for New Homes (CCNH). He says that because of that, he missed his opportunity to raise a timely complaint under the CCNH.

We've seen evidence that SOL in fact provided Mr K with information about the CCNH at the latest by July 2021, when they wrote to Mr K about his policy terms. So, I'm satisfied SOL haven't acted unfairly or unreasonably in this respect.

My final decision

For the reasons set out above, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 January 2024.

Neil Marshall
Ombudsman