

The complaint

Mr C's complaint concerns the way Lloyds Bank General Insurance Limited has dealt with a subsidence claim under a Home Insurance policy.

What happened

Mr C's garage experienced movement and Lloyds accepted a claim for subsidence in 2021. Lloyds proposed a cash settlement, which Mr C wasn't happy with this as he wouldn't know how to arrange and manage repairs. Lloyds had recognised its communication had been poor at times and offered £750 compensation. Mr C didn't think the compensation was enough and thought a previous subsidence incident, for which repairs were carried out in 2002, hadn't been done properly and had failed.

Our investigator looked at both issues and gave the following opinion:

2002 repairs

- Lloyds hadn't agreed to review these repairs as the only information available from that time was a certificate of structural adequacy and a report Mr C had provided. But there wasn't any information about the repairs that were carried out.
- The investigator said the cause of subsidence was related to drains, which was different from the more recent incident. And although Mr C had consulted a retired civil engineer, there was no evidence to support the 2002 repairs as being inadequate or faulty. The investigator didn't think Lloyds needed to do anything further.

2021 claim

- While the policy permitted a cash settlement, the investigator didn't think Lloyds had acted fairly in the circumstances. Lloyds hadn't offered its own contractors to carry out the work and Mr C hadn't requested a cash settlement. In such circumstances it wouldn't be fair for Lloyds to offer an amount based on the preferential rates it has with contractors.
- The investigator thought Lloyds should pay a reasonable market rate that Mr C would have to pay. And to facilitate this Lloyds would need to share the Schedule of Works with Mr C for him to obtain quotes on the insured repairs.
- In terms of the impact on Mr C of the delay and instances of poor communication, the investigator thought Lloyds offer of £750 was a fair.

Lloyds agreed with the investigator stating it would review the settlement offer in line with market rate, but Mr C could also provide his own for consideration. And it had offered £1,500 for the subsidence related repairs. It stated though that there was severe lateral damage that wasn't insured, evident from 2001, and so it wouldn't cover this.

Mr C didn't accept the investigator's opinion and made the following points, which I've summarised:

- Lloyds' process was long and included a series of new investigations which led to the discovery of structural defects and puts him at a disadvantage.
- Lloyds and its agents are difficult to deal with, multiple people involved with poor understanding of what had happened.
- No mitigation work was offered, and he hasn't been able to sell the property, which formed part of an estate and so was to be sold.

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 considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Insurers are under a duty to:

- handle claims promptly and fairly
- provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress
- not unreasonably reject a claim (including by terminating or avoiding a policy); and
- settle claims promptly once settlement terms are agreed.

2021 claim

What's apparent is Mr C's claim was accepted but that issues arose in determining what was 'insured' damage and covered by the policy as distinct from damage not covered. The expert evidence available shows the main point in contention, that of the bulging wall, is not insured damage under the policy. Within the causes of damage covered are subsidence, heave and landslip. These are defined in the policy and the bulging wall does not fit into those definitions. Experts have concluded that the bulging wall is a result of it not being able to properly retain the earth and ground it is required to. And the pressure of that is causing the bulge. I'm satisfied that Lloyds has fairly declined this aspect of the claim.

The extent of subsidence related damage in this wall is minor in comparison and while I understand why Lloyds decided to offer a cash settlement as opposed to carrying out repairs, I am satisfied that it's fair to expect Lloyds to offer the market rate to cash settle as opposed to the preferential rates it can obtain. This is because Lloyds isn't offering to repair the insured damage and so Mr C will need to arrange repairs himself. He won't have access to the discounted rates Lloyds does so he will only be properly indemnified by having the market repair rate. I am pleased that Lloyds has now recognised this and will review the repair cost in line with market rates and it has offered to review any estimates that Mr C provides for the insured related damage.

2002 repairs

While the 2021 damage is in a similar place to that repaired in 2002 that of itself doesn't mean the initial repair was inadequate or faulty. What's clear from the information is that the hydrostatic pressure in the retained ground is causing an outward push and it's this that's the major problem rather than the initial repairs. Without expert evidence to challenge that view I'm satisfied Lloyds' decision not to review the 2002 repairs is fair.

Claim handling

Lloyds has already accepted that some of its handling and communication impacted the overall claim journey and took longer than it should have. I agree, there some points at which Lloyds didn't respond and didn't progress things promptly. And the fact that Lloyds initially refused to offer a market rate for a cash settlement has also added delay to final settlement. I am satisfied though that the £750 paid is a fair reflection for the impact on Mr C.

While I'm mindful that Mr C understandably wanted to sell the house, I'm not satisfied that Lloyds' handling is the reason he hasn't been able to or indeed marketed it for sale. The main damage to the retaining wall isn't covered by the policy and so Mr C would always have been in a position where he'd have to decide whether to spend a significant sum to put that right or sell it in a damaged state.

My final decision

I uphold this complaint in so far as Lloyds Bank General Insurance Limited treated Mr C unfairly on two points; not offering a market rate settlement value and inadequacies in its handling and communication. To put things right I require Lloyds to do the following:

- Pay Mr C the market rate for the required insured repairs (not discounted rate)
 - First step is to make Mr C an offer based on Lloyds' revised assessment of the cost at market rate within 14 days of the date we advise that Mr C has accepted this final decision
 - If Mr C obtains his own detailed estimate of the repair works (from a VAT registered builder) he should provide this to Lloyds within 28 days of accepting this final decision. Lloyds should then issue a final offer within 14 days of receiving Mr C's estimate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 November 2023.

Sean Hamilton
Ombudsman