DRN-3990997

The complaint

Mr and Mrs W have complained about their home insurer Lloyds Bank General Insurance Limited in respect of a claim they made when an oil leak contaminated their home.

What happened

There was a leak in 2018 and a claim was made in November. By March 2019 Mr and Mrs W were unhappy with the work that was being done by a specialist appointed by Lloyds. They complained and Lloyds agreed that Mr and Mrs W could appoint their own specialist. Lloyds also paid Mr and Mrs W £250 compensation.

Lloyds though had also, already appointed a loss adjuster to assist with the claim. The adjuster made its first report in February 2019. In around September 2019 Lloyds agreed to move the family into alternative accommodation and they moved from their large house (and garden) to a flat. They remained there through to late 2021 – the concrete floors in the home only having been re-laid in June 2021. But Lloyds stopped paying for the cost of alternative accommodation in May 2021, and refused to cover various reinstatement costs.

Lloyds paid Mr and Mrs W £57,000 in July 2020 for reinstatement work. They had appointed a contractor to do the works, including that recommended by the specialist, and the contractor felt the input of a structural engineer (SE) was needed. To which Lloyds agreed. The SE, in a November 2020 report, advised how to remove and replace supporting, contaminated brickwork. In December 2020, with no scope of works created for the work found necessary by the SE, and so that work could get under way without delay, Lloyds agreed in principle to the recommendations, advising Mr and Mrs W that it would agree costs later. It was spring 2021 when costs were submitted and Lloyds sent its surveyor to the property. Lloyds found the property had been extensively remodelled and work was on-going. So it wasn't prepared to pay further accommodation costs (beyond May) and it wouldn't agree to pay the majority of costs Mr and Mrs W put forward as stemming from the recommendations in SE's November 2020 report.

Lloyds did pay Mr and Mrs W £13,957.70 towards their outlay for reinstatement, but they put Lloyds' liability at around £180,000. Mr and Mrs W also felt Lloyds had forgotten or overlooked paying them for things like gym membership and electricity costs incurred during the period of works and the family living away from home. They felt it also needed to reinstate an out-house and concreted dog-run area which they said Lloyds' first contractor had destroyed. Mr and Mrs W said that even since the first contractor had been taken off the job, the claim had been poorly handled and stressful.

Mr and Mrs W complained to us.

Our Investigator thought Lloyds had handled and settled the claim reasonably. So he didn't uphold the complaint.

Mr and Mrs W were unhappy. Their complaint was passed to me for an Ombudsman's consideration. I was minded to uphold the complaint – but not to the extent of requiring Lloyds to pay Mr and Mrs W £180,000. I felt it was reasonably liable for paying for some

more of the work than reflected by its payment of £13,957.70, but not for all the work that represents the £180,000 Mr and Mrs W were asking for. So I issued a provisional decision to explain my views on the complaint, including in respect of the other outstanding cost issues, the dog-run and claim handling. My provisional findings were:

"The SE report and Lloyds' direction to 'go-ahead'

I think the problem now at hand – what does Lloyds reasonably owe for work completed at the property? – stems from what happened following the November 2020 SE's report. The November report was crucial in directing the course of the work. And I completely understand that Lloyds wanted to progress the claim once that direction was available. But the SE wasn't to be involved in implementing the work – and his report didn't contain much detail, and certainly no scope of works, for how the contractor, employed by Mr and Mrs W, should go about accessing the brickwork that the SE was recommending replacing. Which meant the result of Lloyds' direction to 'go ahead and sort the money out later' was to leave it up to the contractor to decide what he felt the best course of action was for doing that. I think that came with a very real and obvious risk that he would do things differently to how Lloyds' experts would expect or think things should be done. But Lloyds courted that risk by choosing to take that course. So, I think it's only fair that it covers the costs that reasonably came from that decision.

Now I realise that Mr and Mrs W will likely think that all of their requested £180,000 comes reasonably from that decision. But I'm not persuaded that is the case.

The essence of the SE's report was that the brickwork of an internal supporting wall should be replaced. And that should be reached by removing the sub-floor on either side of that wall (which was at different levels on each side). The report includes a brief drawing showing that in the utility and boot room, where the floor was lowest, the sub-floor should be dug out to a depth of 600mm, at a 45 degree angle from the surface, suggesting the hole needed in the utility room floor would come out about 600mm from the wall. On the other side of the wall was the sitting area of the open plan kitchen and the stairs in the hall. The floor level on that side was higher. So the report says that digging out 1.2m of sub-floor would be necessary, also at a 45 degree angle, suggesting the hole on this side of the wall would need to extend 1.2m from the wall. There was also a floor-plan for the house which showed that the area to dig out on both sides should start in-line with the turn in the stairs in the hall and extend along to roughly halfway through the sitting area of the kitchen.

The contractor, in implementing that though, seems to have dug out a larger area of floor than seems reasonably to have been necessary even given that limited detail. The kitchen was also taken out, with some cabinets and the granite worktop reportedly being irreparably damaged in doing so, the whole of the tiled floor in the kitchen, hall and elsewhere was lifted and the stairs, along with the under-stairs cupboard were removed. I think the entire extent of that work was not reasonable, even given Lloyds direction to go ahead and sort the costs later whilst knowing the detail from the SE was so limited.

Reasonable reinstatement

Removing the stairs and under-stairs cupboard was, I think a reasonable way to progress work which entailed digging out of the floor below the stairs, to the point at which they turned. Lloyds' might have chosen to work in a confined space, particularly in the lower part of the stairs in the area of the turn, but I don't think the contractor choosing a course which avoided that difficulty was unreasonable. So I think the reasonable reinstatement area, along the internal wall, begins at the leading edge of the stairs along that wall.

Likewise I think that reasonably it was always likely that some tiling, in the hall as well as the sitting area of the kitchen, would be affected. The hole had to come out 1.2m from the wall to allow for the angle and depth of removal the SE recommended. And I think it's reasonable to say that tiling beyond the 1.2m line, even with careful removal of tiles within that area and digging out along the leading edge, would be damaged. I think it's likely that tiling up to 2m from the wall, would likely have been affected by the work such that it would reasonably need replacing. And I think that on the other side of the wall, where the hole only had to extend from it by 600mm, any finishing surfaces up to 1m would similarly reasonably have been affected.

I think it's also reasonable to say that the finishing surface of the internal wall, in the utility, boot room, sitting area and hall/stairs, would naturally suffer during the work, I think even if the wall surface in those rooms was covered, the dusty nature of the work immediately under and in front of that surface would result in it needing redecorating during the reinstatement phase.

So far Lloyds has not agreed liability for most of that work. But I think it should now review the two spreadsheets of costs Mr and Mrs W presented to it with a view to taking liability for any of the work detailed therein that relates to the details in these above three paragraphs. It will have to give its view on the costs stated by Mr and Mrs W for that work and will not be able to decline liability for it. I'm aware that Lloyds thinks it should have been given notice about the stair removal – but I disagree. As I said I think that was a reasonable way for the contractor to choose to implement the SE's recommendations, and Lloyds allowed for that choice to occur. I'm also aware that Lloyds thinks that it shouldn't have to pay for things like tiling because Mr and Mrs W did not reinstate their home as it was before. But Lloyds should know that when it settles a claim in cash that allows its policyholder the freedom to use the settlement in the way that they wish, and it isn't unusual for a policyholder to then take the opportunity to make changes to their home. So the fact that Mr and Mrs W were changing their home does not mean Lloyds can fairly decline liability for what they were reasonably entitled to from it under the policy – the cost for reinstating their home as it was before.

Loss of match

Lloyds may be wondering though what liability I might be envisaging it has for a situation where items it is reasonably liable for, in line with what I've said above, could not be replaced on a like basis which would, in theory, create a lack of match. In other words that if Mr and Mrs W could only, for example, replace damaged tiles with different ones to those that weren't likely reasonably damaged by the necessary work, that would cause a lack of match to those undamaged tiles, which in most circumstances would remain in-situ. And this service will often expect insurers to compensate for such a loss. But here I don't think it would be fair or reasonable to say that in revising its liability for the cost of necessary works, Lloyds should have to make any allowance for a circumstance of theoretical loss of match.

As I said, this service usually expects insurers to take into account a lack of match and compensate for it. That is often on the basis of the insurer paying towards the cost of replacing the undamaged, matching items. This is often not something afforded by the policy (although some insurers do choose to offer it). Rather it is something this service usually finds to be fair because the policyholder, as a result of a claim, shouldn't have to live with, or be entirely responsible for avoiding having to live with, a mis-matching finish. But here Mr and Mrs W were never going to face a mis-match because they took the opportunity to change their home and the finishes within it. In light of that I don't think it would be fair or reasonable for me to direct Lloyds to take any loss of match into account when reviewing the costs in order to make a revised settlement to Mr and Mrs W.

Kitchen replacement (including underfloor heating)

Now I know that Mr and Mrs W will say that all of the tiling in the kitchen at least, had to come up because of underfloor heating. And the kitchen had to come out because of that, and/or because of the extent to which the floor was being dug up.

I don't think the kitchen reasonably had to come out for the floor to be dug up. And even if it had to come out because of the tiling, and the tiling had to come up because of underfloor heating – in that respect I think Mr and Mrs W acted somewhat recklessly by not reverting back to Lloyds before going ahead with that work. Mr and Mrs W have said that removal of the kitchen was never initially intended – that it was boxed off to protect it instead. I think that was a reasonable approach given the location of the kitchen – being more than two metres away from the internal wall. And I know Mr and Mrs W were of the view that the kitchen and tiles were of a high finish and knew that Lloyds had not inspected the area or agreed what costs were necessary, or even indeed what work was likely necessary for implementing the SE's plan. So I think they acted unreasonably when forging ahead with that work without reverting to Lloyds and instead expecting that its direction to 'go ahead' meant they had an open remit for implementing the plan. I think Mr and Mrs W should reasonably have foreseen that Lloyds would want to consider this work further before agreeing to it.

I think they also likely knew that Lloyds had no idea of the presence of underfloor heating in the kitchen. But rather than opting, when their contractor told them that working on the brickwork of the internal wall would necessarily damage the underfloor heating such that it would need replacing, which would cause a lot of knock-on work, to tell Lloyds and give it chance to consider this, they went ahead. Whilst many photos have been taken during the course of the work, no photos of the underfloor heating; either in-situ, or having been removed and waiting to be disposed of, have been provided. Mr and Mrs W seem to me to be prudent, intelligent people, and they'd been living with this claim for a long time and were well aware, I think, that Lloyds needed evidence to act. I'm not persuaded it would be fair or reasonable of me to make Lloyds liable for any costs that relate to removal or what it would have cost to replace the underfloor heating, including in respect of 'knock-on' work such as removing the kitchen.

Summary

So, in essence, my review has found that Lloyds is reasonably liable to Mr and Mrs W for the cost of reinstating the area I think was likely reasonably affected by the work to the internal wall. And I've explained that, in my view, that area begins at the leading edge of the stairs along that wall, and ends part way through the sitting area, extending into the hall and sitting area to 2m and, on the other side of the wall, into the utility and boot room by 1m. Lloyds won't be liable for an loss of match compensation and nor will it have to pay for the cost of removing and replacing tiling beyond that area, or for removing and replacing the kitchen and underfloor heating. Lloyds should work out its costs using the spreadsheets that already show its uplift to £13,957.70, and it should show what it now (following my final decision if it remains the same and Mr and Mrs W accept it) will pay for the work I've said it's liable for. Lloyds can calculate its liability excluding VAT. To that sum interest will have to be added from the date the spreadsheets were sent to it in spring 2021, until settlement is made.*

VAT

I'm not making any award regarding VAT for these revised costs because it seems that Mr and Mrs W most likely haven't actually done that work, they've done other work instead. But if there is any element that is the same, perhaps the staircase for example, they can submit invoices to Lloyds and if they show that work, reasonably in line with what was there before, has been done, it should pay the related VAT due on the cost it agreed to pay for that work.

On a similar note, Mr and Mrs W have said that Lloyds hasn't paid them £11,400 of VAT due against the July settlement sum of £57,000. But I note that when Lloyds offered that sum, it said it would look to pay VAT as and when invoices showing VAT, on the work agreed for that sum, had been completed. I haven't seen the scope against which £57,000 was paid. If that included things like the digging out of the floor, then it seems likely to me that work was done and Mr and Mrs W might have invoices showing such, and that VAT is due. If they do, then they should send the invoices for work to Lloyds for it to consider making a VAT payment to them up to the value of £11,400.

Financial losses

Mr and Mrs W have also complained that Lloyds has not made any payment to them for electricity costs, loss of oil, contents cover for the temporary accommodation, gym membership, broadband, land and property charges, and £2,500 for moving home.

Machines were used during the initial phase of the claim to extract vapours from the air that had been released into it as a consequence of the oil leak. The machines were powered by the home's mains electricity. So the cost for running them reasonably comes under the claim. But the family were still living at home during this time. So Lloyds couldn't just take readings before installation of the machines and then after to work out what they had used. Lloyds doesn't dispute, I don't think, that it owes Mr and Mrs W a payment in this respect under the claim. Mr and Mrs W should, therefore, provide electricity bills to Lloyds, showing their usage during the period the machines were working, but also for the same period prior to their installation. Lloyds can then compare the usage in the different periods to help it determine what power was likely used by the machines necessarily installed as a result of the claim and what that cost Mr and Mrs W. It will then have to pay this to them, plus interest from the date any extra costs, due to the usage of the machines, was paid by them until settlement is made. But Mr and Mrs W will need to present their evidence in a timely manner – I've explained at the end of this section what period I think that is and what will happen if the evidence is provided later.

Arguably any of the reinstatement work would also have used the home's power such that the electricity used could be a cost reasonably due under the claim. But I'm not going to extend my award to the cost of electricity used after the vapour extraction machines were removed and/or the next phase of stripping the property and digging out the floors began. At that time Mr and Mrs W were making substantial changes to their property and there's no reasonable way to determine what electricity was used in the pursuit of those uninsured changes as against the insured work that was also on-going.

The loss of oil is something that Lloyds' policy offers Mr and Mrs W some cover for. It is something they can claim for under the contents section of the policy. But I understand there is a limit to Lloyds' liability in this respect. If they want to make a claim for oil lost, they should contact Lloyds, and it should consider the claim.

The other items in the list above are all costs associated with the family living elsewhere. And in respect of gym membership at least, Lloyds has previously agreed to pay for that cost. The email correspondence on file shows that Mr W agreed to come back to Lloyds after the claim was resolved in respect of this cost at least – that way the total outlay could be taken into account rather then he and Lloyds working on a piecemeal basis. I can understand Lloyds and Mr and Mrs W wanting to deal with costs like this at the end. I think that for the contents cover, gym membership, broadband, land and property service charges, as well as the costs associated with moving home, Mr and Mrs W should send evidence of their outlay to Lloyds. It can then consider its liability, or at least the extent of it, for each of these and make any payment fairly and reasonably due. I think some interest should be

applied to any settlement to be paid on these costs, but as the parties wanted to deal with matters at the end, I won't require that to be applied from the date each cost was paid for by Mr and Mrs W. Rather I think it should reasonably be applied from a date a week after the additional settlement sum of £13,957.70 was paid to Mr and Mrs W in July 2020, and until settlement is made.

With all that in mind, Mr and Mrs W should present their evidence of outlay, for these items and the electricity usage to Lloyds within 30 days of the date we tell it they've accepted my final decision (if it remains the same and they do). If they provide the evidence later, the interest application will cease temporarily at the end of the 30 day period and begin being applied again when Lloyds receives the evidence, remaining until settlement is made.*

Outbuilding and dog-run

The final thing for me to look at before I look at the general handling of this claim, is the outbuilding and concreted dog-run. Mr and Mrs W said that Lloyds first contractor destroyed these and they want Lloyds to agree to covering the cost of their reinstatement.

In considering this, I bear in mind that they haven't described or shown how these were 'destroyed'. And Lloyds did accept that the area needed some remediation following the leak – but due to a dispute that arose between it and Mr and Mrs W as to the extent of that work, nothing was done in this area. Lloyds' file shows that work was planned to make the materials in the area safe from the oil contamination but that Mr and Mrs W weren't prepared to let that work go ahead as they weren't satisfied with the extent of it, or at least not with the extent of the remedial work that was planned to follow. In essence that the concrete would be patch repaired. And when the first contractor stopped work at the property this was exactly the dispute that was in progress – not that the area/outbuilding had been destroyed by that contractor and Lloyds wouldn't pay for their reinstatement. I think, given how unhappy Mr and Mrs W clearly were at that time, about what had been done and the extent to which they felt the first contractor had got things wrong – if anything had been 'destroyed', they'd have complained about exactly that. But they didn't. So I can't reasonably find that Lloyds must pay for the cost of reinstating these on the basis it 'destroyed' them.

However, Lloyds has agreed to go out and reassess the area to see if it still needs remediation – it says the oil contamination may have dissipated with the passage of time and action of the elements. I think that is a reasonable response from Lloyds, so I'll include it doing so within my award. Along with it doing any work found necessary, or paying Mr and Mrs W the cost of that.

I'd add here though that if this area at the property has changed so dramatically, such that there is no longer an outbuilding or concreted dog-run there, then Lloyds will not have to attend and consider remediation in this respect any further, although I am going to suggest it makes a payment. I've seen nothing that makes me think Lloyds' actions or inactions most likely 'destroyed' the area or damaged it such that the only way to resolve it would have been to demolish it and re-build. And if Mr and Mrs W felt that was the case, they should have reverted to Lloyds on this issue before acting to remove it. Not doing so prejudiced Lloyds position to assess its liability in this respect and I don't think it's reasonable, or workable in practice, to require it to consider that now.

That said, Lloyds had a plan for removing oil contamination from that area and reinstating it – so it likely would have known how much that would cost – or at least it can likely easily determine that. And I think that was a claim cost it was always liable for. The fact that a dispute arose, the claim moved on and the property changed during reinstatement, did not change or reasonably remove that liability. So, if the outbuilding and concreted dog-run no longer exist, Lloyds should calculate what it would have cost to repair and reinstate that area

as it had planned to do so in 2019/2020. It should then add interest to that sum from the date that work was scoped for until settlement is made and pay the total to Mr and Mrs W.*

Claim handling

I haven't seen anything that makes me think Lloyds handled the claim poorly or caused delays since its loss adjuster was appointed and Mr and Mrs W began using their own specialist. It was agreed in March 2019 that Mr and Mrs W could appoint their own specialist. And the specialist completed its first report in May 2019 – with Lloyds being sent it for review at that time and agreeing straightaway to the specialist completing investigation work.

In August it became apparent that the family could no longer stay in their home and Lloyds offered to find them alternative accommodation. I think Lloyds acted reasonably in this respect at this time. Lloyds agreed to the family seeking emergency accommodation in the short-term, and within two-weeks the parties had come to an agreement, put forward by Mr and Mrs W, for the family to move into a flat they own but usually rent out, with Lloyds covering the cost of the rental income that would be lost. I think Lloyds managed this issue reasonably and I can't fault it for Mr and Mrs W living in a property that was not like their own because they chose that property.

It was then November 2019 before the specialist forwarded its next report, which included a repair scope, to Lloyds. Understandably Lloyds wanted its own specialists to review that. Also understandably in my view, Lloyds chose to challenge some of the work detailed and it also wanted to know what the likely costs would be, but the specialist hadn't priced the work itself and only one quote from a contractor was provided. In February 2020 Lloyds' surveyor sent a revised scope, including costs, to Mr and Mrs W for consideration. I think that was handled reasonably by Lloyds.

From there it seems that Mr and Mrs W's specialist began taking on more of a validation role – ensuring the necessary specialist work had been done, rather than undertaking it or even overseeing it itself. But also that the contractor working for Mr and Mrs W had begun the necessary work to remove materials contaminated by the oil. From what I've seen the parties then, in around April 2020, began negotiating the revised scope and costs put forwards by Lloyds (in February 2020). This resulted in Lloyds initial claim settlement of £57,000 being made in July 2020. I think that timeframe was reasonable in the circumstances – there was clearly a lot to discuss and a number of people involved in the consideration, furthermore the work was somewhat complex and the sums in question – even at that time, were not inconsiderable. I don't think it was unreasonable for either party to have challenged the other's view on this and that naturally lead to an unavoidable period of delay before the payment was finally agreed to and made in July 2020.

I know some further costs came to Lloyds for consideration in August and that the specialist then completed a further report on what had been done so far, and what work was still needed, in October 2020. Also that around that time, Mr and Mrs W's contractor had asked for input from a SE. The SE report came in November 2020 and it was then December 2020 when Lloyds gave its go-ahead in principle for the work to be done. Lloyds, reasonably, I think, had to wait for the expert reports, and when they were received it acted on them, in my view, in a reasonably timely manner to progress the claim.

I know Mr and Mrs W were disappointed that, shortly after Lloyds gave the go-ahead in principle, it asked for an update on when the family might move home. But I don't think Lloyds acted unreasonably when asking for that update. It needed to ensure the claim moved on in a timely manner and I'd have expected the contractor to have had an idea how long the work would likely take.

At that time Lloyds had paid for the alternative accommodation up to May 2021. And it was only in March 2021 that Mr and Mrs W sent their revised costs for work in the utility and boot room following the SE's recommendations. Costs for the hall and sitting area followed thereafter – but no costs for these rooms had been considered at all previously, that is because it was only with the SE's November report that work on the sub-floor, on both sides of the internal wall, became necessary. Lloyds had told Mr and Mrs W in December 2020 that it would consider additional costs 'later'. And once it received the revision for the utility and boot room, followed by the costs requested for the hall and sitting area, that is exactly what it did. Its offer to pay £13,957.70 for this additional work came in mid-May 2021. I think that was handled reasonably, including in a reasonably timely manner, given the complexities of the claim, including the changes which had occurred to the property.

Given all of the work that was done at the property I don't think it was unreasonable that Lloyds wouldn't pay for alternative accommodation beyond May 2021. That is even though it did not make its payment for the offered amount of £13,957.70 until after that. And, even that I've found above, that that was not fair and reasonable to meet the extent of its liability for the claim. But the family seem to have had to remain living elsewhere beyond May 2021 because the concrete floors at their home were not re-laid until the summer, and these then needed time to dry. And I'm not satisfied that the laying of the floors was delayed due to Lloyds handling the claim unfairly and unreasonably, thereby causing delays. I'm also not satisfied, given how much other work was being done, that the floors only being laid in the summer of 2021 was a natural likely consequence of the reinstatement work necessary under the policy. It is only in the event of policy entitlement or an insurer causing a delay which then impacts on the work, that I could reasonably require the insurer to pay for an extended period of alternative accommodation. That, in my view, simply is not the case here.

Whilst I know this will be disappointing to Mr and Mrs W, I haven't found that, in the way it handled their claim, Lloyds failed them. As such I don't intend to make any award for compensation due to any upset experienced, and nor do I intend to make it pay for a longer period of alternative accommodation."

Lloyds said it accepted my provisional decision.

Mr and Mrs W provided comments against my provisional decision document. I've read everything and summarised here their main points:

- They did not receive £250 following their complaint in March 2019.
- Air quality tests had delayed the floors being laid until late June 2021.
- It was the specialist, not the contractor which requested the SE input.
- Concrete was not dug up extensively in the dog-run area, but a trial pit was dug and boreholes were made in the outbuilding floor, piercing the damp proof membrane. So this area does need reinstating.
- Lloyds' letter of 15 June 2021 upheld their second complaint; an alternative surveyor – who was affiliated with the loss adjuster – attended their home, but two and a half months after Lloyds' first surveyor had done and he had less information available to him, yet Lloyds completed a u-turn on its view of things.
- The measurements I had used when talking about the SE report were incorrect – it was more like 1.5m, and the contractor applied half a metre tolerance. So there was at least a 2m impact into the rooms.
- Most decoration costs were already taken into account in the payment of £57,000, the additional costs requested are really for demolition, and the expanded scope, the former of which at least Lloyds agreed to pay for.
- There was no plan to change the tiling in the kitchen and hallway and the footprint remained the same.
- It's not fair to refuse compensation for loss of match.

- The specialist recalled that underfloor heating in the kitchen would not be affected by work in the lower area on the other side of the wall.
- The fact of a radiator (an argument Lloyds had raised) did not mean there was no underfloor heating in place.
- A statement from their contractor confirmed there was underfloor heating.
- They did not act unreasonably when going ahead with works, I should consider their position in all of the claim activity – how long it had been going on for and how it had been handled. They really needed to progress things.
- Lloyds gave the go-ahead for work with no caveat to inspect or provide evidence. They'd have been more diligent if Lloyds had indicated it would not honour this agreement.
- When the fans were in use, they were spending less time at home than normal so it was agreed that electricity usage would be calculated using the power rating of the fans.
- They will contact Lloyds about the loss of oil and the items listed regarding costs incurred for the family living elsewhere.
- They'd complained to the first contractor and the loss adjuster about headaches and breathing issues – but it was still several months before action was taken.
- It wasn't that they felt Lloyds shouldn't enquire about the progress of the work – rather that its enquiry showed it had agreed for the work as a whole to progress, not just the structural, below floor work.
- In May 2021 the floors weren't laid and there was no plumbing installation, satisfactory air quality results were not achieved until mid-June 2021. Electricity work and tiling followed with kitchen and sanitary ware being fitted in December 2021. Further works followed in early 2022 and the family moved home in April 2022. It's not unreasonable to request some further extension to accommodation costs after May 2021.
- Lloyds' concern about paying for extra costs beyond May 2021 is noted, but a further six months of costs, given the state of the property in mid-June 2021, is not unreasonable.

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.

Lloyds' file records £250 being offered in respect of what had happened in the first few months of the claim. It also records that a cheque for this sum was requested to be sent in April 2019. If Mr and Mrs W did not receive this cheque or did but didn't cash it, they can ask Lloyds to reissue it.

I was aware when issuing my provisional decision that satisfactory air quality tests were not achieved until June 2021.

Mr W and his contractor had discussed the remediation scheme proposed by the specialist and explained to the specialist that they believed there was a better way of doing things – removing the blockwork. So the specialist said if that was done an SE should be appointed. So I think it's fair to say that the contractor was heavily involved in the need for an SE to be appointed, but whether this is viewed as the contractor asking for SE input, or the specialist, makes little difference.

The clarification about the work done in the dog-run and outbuilding is noted.

The final response in June 2021 explained that Lloyds felt it was difficult for it to disagree with its expert's findings about the cash settlement – but that it would arrange for a second opinion. Lloyds' further final responses issued in July and August 2021 explained that following that second opinion being sought it was satisfied that the cash settlement had been correctly provided based on its limit of liability. So the June final response was an uphold,

but I don't think it's fair to say that Lloyds ever felt its cash settlement was incorrect. Or that its further final response(s) represented u-turns. I understand that Mr and Mrs W feel these decisions by Lloyds were flawed, generated by incorrect detail being given by the loss adjuster. But as they were final responses, they gave Mr and Mrs W the opportunity to complain to the Financial Ombudsman Service, which they did and which I am now issuing my final decision in respect of. And I have found that Lloyds was wrong about the settlement provided, that it was not sufficient.

In respect of the measurements I referenced, I see that in reply Mr W has explained what his specialist had put in their report, and how his contractor interpreted what was needed. But I'm satisfied by what I said provisionally in this respect – my measurements were taken from the SE's drawings and his report confirmed the blockwork could be safely removed if done as suggested in the report. I used those measurements and I allowed a tolerance for going beyond the necessary area of work – similar to that Mr W explains his contractor allowed for based on the measurements he felt he was working too. And I did say the area likely affected in the upper floor was up to 2m from the wall (including the tolerance). It was only in the lower area where I said the area was less than that, at 1m. Both were based on the SE measurements. And I remain of the view it's fair to rely on the SE report in this respect as the SE was reporting on how the work should be done. I'm not persuaded to change the measurements I set out and relied upon provisionally.

It is noted that most of the necessary decoration work was accounted for in the scope that generated the payment of circa £57,000. That the outstanding costs mostly relate to the structural work of removing and replacing blockwork. I also note that Mr W has said in reply that Lloyds agreed to pay for that structural work. I accept that Lloyds agreed for structural work to be done to remove and replace blockwork. The extent and cost of that was never agreed – as I said provisionally, Lloyds courted a risk in giving the agreement it did. And I've had to think about what is fair and reasonable in light of that, given what work was done and what costs came into question. I'm still of the view that it would be unfair and unreasonable for me to say Lloyds must pay for everything.

I appreciate that Mr and Mrs W have said that the floorplan for the kitchen and hallway did not change during their renovations and they had never intended to change the floor tiling. In light of that I can understand why they think it is unfair for me to say that a loss of match compensation should not be applied. But whether or not the floorplan for the areas in question was to change during the renovation – the renovation was extensive. I'm not persuaded the floor tiling, as an example, but this stretches to the woodwork and other 'matching' interior parts, would have stayed the same. I'm also mindful though in this respect about the replacement kitchen – the need for which, along with taking up a larger area of tiles than that required to dig out the SE's recommended floor area, all turns on the underfloor heating issue.

Regarding the underfloor heating – I've reviewed the detail Mr and Mrs W have sent. They reference the statement of their contractor – Lloyds considered this when it first raised concerns about the underfloor heating. It was provided after work had been done and Lloyds concern was that it wasn't supported by any other detail. I've looked at the text message exchange between Mr W and the specialist from August 2021, regarding the specialist being aware of underfloor heating in the kitchen. I don't think the specialist does confirm there was underfloor heating. Mr W asked the specialist if he remembered a conversation about whether drilling through lower blocks in the utility would damage the sub-floor or underfloor heating in the kitchen. The specialist replied that any work they did in the lower section of the property would have "been well below the sub-floor level in the kitchen". I appreciate that it was only following the SE report that work on the kitchen side of the wall was also required.

I don't put much store in what Lloyds said about the presence of a radiator. I accept Mr and Mrs W's view that this does not show that there was not underfloor heating.

I appreciate that Mr and Mrs W say they felt Lloyds had agreed to them doing work. I'm also mindful that the claim to that point had been quite prolonged and I can understand that there was a real need for the reinstatement to progress at speed. But I think that in light of everything that had already occurred, forging ahead without evidence to show what was being done was warranted, even though Lloyds had not specifically asked for such, was not a reasonable thing for Mr and Mrs W to have done. I absolutely understand that they were in a difficult position and as I've said, Lloyds also acted somewhat recklessly when giving the go-ahead as it did. But I remain of the view that there is a lack of any contemporaneous evidence of underfloor heating having been in place. Their contractor's statement does not sufficiently overcome that and, for me, that means I can't say it would be fair and reasonable to make Lloyds pay any costs involved with removing and reinstating underfloor heating.

Lloyds agreed to consider the electricity usage for fans at the property, and I think that with the family living there it makes sense to consider the power draw of the units when doing that. But I think the utility bills are still important. Not least because they will show the unit charge by the utility provider. In reviewing the bills Lloyds should bear in mind that Mr and Mrs W have said they and their family spent less time at the property after the leak and before they moved into alternative accommodation than they had done prior to the leak occurring. The parties may need to discuss this further and if Lloyds asks for further evidence or detail from Mr and Mrs W, they should assist with its reasonable requests.

I appreciate that it was difficult and uncomfortable living at the property before August 2019. But some discomfort will arise naturally following an incident that gives rise to a claim. Only if a property is uninhabitable, which may include it being unsafe to live in, does an insurer usually need to rehouse its policyholder. When Mr and Mrs W's specialist became involved it was not initially stated that the home was unsafe to live in and that the family should move out. Rather an extraction unit was fitted to make conditions better in the shower room. And further testing followed. On 31 July 2019 it was noted that more contamination had been released into the air and it was following this that it was agreed the family should move out. I remain of the view that this was handled reasonably by Lloyds.

I note that Mr and Mrs W didn't think Lloyds' enquiry about when work would finish was unreasonable.

I appreciate that after May 2021 there was still a lot of work to do at Mr and Mrs W's home, including a lot of work related to the insurance claim. But work done at their home after the appointment of their specialist in May 2019 was not restricted to work necessary to reinstate the home as a result of the insured damage. Rather the house was greatly extended and changed. It's reasonable to think, in my view, that the work as a whole took longer to complete than the period that would have been necessary just for the insured work to be done. I think Lloyds' concerns about accommodation costs beyond May 2021 were fair and reasonable. I'm not persuaded to make it pay anything more in this respect.

Having reviewed Mr and Mrs W's response to my provisional decision, I find it hasn't changed my view on their complaint from that stated provisionally. As such my provisional findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Lloyds to:

- In line with my directions about the reasonable area of reinstatement, review the spreadsheets of costs which were previously used when determining and explaining the uplifted July 2020 payment, decide and show what it will now pay for the work I've said it is liable for. That will not need to include VAT or any allowance to compensate for a theoretical loss of match.
- Apply interest* to any reinstatement work sum now due, from the date the spreadsheets were sent to it in spring 2021 until settlement is made.
- upon proof being received from Mr and Mrs W showing that work, reasonably like that which has been paid for in those spreadsheets has been done, with VAT being due – Pay Mr and Mrs W the VAT cost due on the sum it agreed to pay for that work.
- upon proof being received from Mr and Mrs W showing that work, reasonably like that which made up any part of the previous £57,000 settlement has been done, with VAT being due – Pay Mr and Mrs W the VAT cost due for that work, up to its maximum liability in that respect for VAT of £11,400.
- upon proof of electricity costs and usage being provided by Mr and Mrs W – Review electricity used at the property and taking into account the power draw of the vapour extraction units, d determine what power was used by those and what the cost of that was to Mr and Mrs W, paying that to them.
- In respect of the electricity payment** due to Mr and Mrs W, add interest* from the date any extra costs were paid by them and until settlement is made.
- Consider a claim under the policy for loss of oil, if Mr and Mrs W tell it they wish to make a claim in this respect.
- upon proof of outlay being provided by Mr and Mrs W for the other financial loss items set out above – Consider that and make any payment fairly and reasonably due.
- To any financial loss payment** due to Mr and Mrs W, add interest* from a date one week after the July 2020 settlement was paid to Mr and Mrs W, until settlement is made.
- if the outbuilding and dog-run still exist – Reassess these to see if remediation is still required, if it is, what reasonably needs to be done. Then offer to do that work or, if Mr and Mrs W don't want it to do so, pay Mr and Mrs W what it will cost it to do the work.
- if the outbuilding and dog-run don't exist anymore – Calculate what it would have cost it to do the work planned in 2019/2020, add interest* to that from the date the work was scoped for until settlement is made and pay that total to Mr and Mrs W.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires Lloyds to take off tax from this interest. If asked, it must give Mr and Mrs W a certificate showing how much tax it's taken off.

**Evidence should be provided by Mr and Mrs W within 30 days of the date we tell Lloyds they've accepted my final decision (if it remains the same and they do). If they provide the evidence later, the interest* application will cease temporarily at the end of the 30 day period and begin being applied again when Lloyds receives the evidence, remaining until settlement is made.

My final decision

I uphold this complaint. I require Lloyds Bank General Insurance Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W and Mrs W to accept or reject my decision before 20 April 2023.

Fiona Robinson
Ombudsman