

The complaint

Ms M complains about the way Society of Lloyd's ("Lloyd's") has handled a subsidence claim made on her buildings insurance policy.

Any reference to Lloyd's and Ms M includes the actions of their respective agents and representatives.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events. Ms M has a buildings insurance policy which is underwritten by Lloyd's. In 2018 she made a claim on the policy. Ms M's flat is one of three flats in a house – all of which have been affected by subsidence.

Together with the two other flat owners, Ms M instructed a consulting and structural civil engineer ("E") to report on the damage. At the same time, Lloyd's accepted the claim and appointed a loss adjuster to manage it on its behalf.

Trees owned by the local council were implicated as a cause of the subsidence, along with defective underground drains, and Ms M says she was told the claim would take approximately two and a half years to complete.

Unhappy with how the claim was progressing and a lack of communication, Ms M complained, and in August 2020, Lloyd's issued a final response letter addressing those matters.

A drain survey was carried out in September 2020 which identified defects. Upon receiving the report in March 2021, E asked Lloyd's for authorisation to complete further drain repairs. These were authorised a few months later, and the repairs were completed around the same time.

Also in March 2021, the council pollarded the implicated trees. The following month the council wrote to Lloyd's to say if it wanted to pursue the matter of removing the trees, it would need to provide it with crack level monitoring to show the trees were the cause of the property's damage. But Lloyd's didn't respond and so, the council closed the matter.

A year later, E told Lloyd's that whilst the trees remained there was a risk of the cracks opening and he explicitly asked if Lloyd's had spoken to the council about the matter. He also raised the issue of how much longer Ms M should reasonably wait before another course of action was agreed - given 19 months of monitoring had already occurred. He also highlighted implications of not taking action sooner.

Unhappy with how things had progressed, Ms M complained again. In October 2022, Lloyd's issued a final response letter which acknowledged there had been lengthy delays due to a lack of proactive claim management on the part of its loss adjuster, and so, it awarded £1,000 compensation. It said it had arranged for a visit to take place to assess the current damage and that following this, a plan would be put in place to resolve the claim based on

the trees being removed by the local council, but also if they weren't. It also gave Ms M a specific point of contact.

Ms M didn't consider the compensation to adequately reflect the difficulties she'd experienced and so, brought a complaint to this Service. An Investigator considered things and upheld the complaint. She said there'd been extensive delays and so, Lloyd's needed to pay an additional £500 compensation.

Lloyd's accepted the Investigator's findings, but Ms M said it didn't account for the significant stress she'd experienced owing to not being able to sell her home as intended due to the delays.

The Investigator appreciated Ms M was in a difficult situation and the strain it had caused but she didn't consider Lloyd's to be responsible for her property not selling, and so, didn't consider it necessary to further increase the compensation. Because Ms M disagreed the complaint has been passed to me for 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.

I've also kept in mind Lloyd's responsibility as an insurer to handle claims promptly and fairly, as set out in the Insurance Conduct of Business Sourcebook (ICOBS). Having done so, I agree with the outcome our Investigator reached.

Before I explain why, I must make it clear I am only considering events which occurred between Lloyd's final response letter in August 2020 and the one it issued in October 2022. I'm aware the claim has moved on and Ms M has other concerns about how it's progressed, but those are the subject of a new complaint, and so, do not fall within the scope of this complaint.

I also want to explain that my decision focusses on what I consider to be the key issues – and so, I won't comment on every concern raised. This isn't meant as a discourtesy but rather reflects the informal nature of this Service. Though I want to assure both parties I have considered all the information provided to reach my decision.

Delays

At the heart of this complaint is Ms M's unhappiness with the lack of progress with her claim, and that she considers Lloyd's to be responsible for lengthy, avoidable delays.

I don't consider it necessary to detail every delay but from what I've seen the bulk of the delay can be attributed to Lloyd's failing to provide evidence to the local council to support its and E's position that removing the trees was necessary in order to stabilise Ms M's property.

Lloyd's has suggested the council's unwillingness to cooperate has caused a delay, but I'm not persuaded that's accurate. Whilst the council may have pollarded the trees, as opposed to felling them, it did ask Lloyd's for evidence to show the trees were causing the damage – but Lloyd's failed to provide this. And so, the claim didn't move forward. So, it's possible that had Lloyd's provided evidence of the crack damage worsening, the council would have felled the trees.

But, even if Lloyd's considered the council to not be complying with its request, it should have - much earlier on - moved to considering and planning for an alternative stabilising

solution, so that the claim could move to the repair stage.

I note that in December 2021 and April 2022, E raised the matter of alternative stabilising solutions with Lloyd's - explicitly raising concerns about how much longer Ms M was reasonably expected to wait for a response from the council before alternatives were to be considered. And E highlighted that monitoring had already occurred for 19 months.

Given Lloyd's were aware in April 2021 that pollarding the trees was unlikely to be sufficient, it should have, after six months, considered other stabilising methods – and because it hasn't done so, I consider it to have caused significant delays to Ms M's claim.

I'm aware that in August 2022 Lloyd's offered to contribute to the cost of the council felling the trees in the hope of persuading it to agree to its proposal (because it considered the removal of them to be the only suitable solution). But by this point a significant amount of time had passed, and I consider its gesture to move things forward to have been too little, too late.

There were also delays with regards to the drain repairs and how long it took Lloyd's to authorise these. Lloyd's hasn't disputed our investigator's findings that there was a nine-month delay between the drain survey being carried out and the repairs being authorised. And I've seen evidence of Ms M and E having to chase up authorisation so the repairs could commence. Whilst the survey was completed in September 2020, the repairs weren't completed until summer 2021 – and from what I've seen, this appears to be most likely because of Lloyd's handling of the claim.

Ms M understands subsidence claims can be lengthy – she was prepared for the claim to take approximately two and a half years. But here, even allowing for monitoring and the original time frame, it is clear things have taken far longer than they reasonably should have and that this is attributable to delays and poor claims handling on Lloyd's part.

Distress and inconvenience

I've read Ms M's testimony about how the condition of her property and the handling of the claim has affected her mental and physical health. I appreciate her sharing this information as I know it's not been easy. Whilst I'm not going to detail it here – to respect Ms M's privacy – I want to make it clear I have taken on board what she's told us, and I don't doubt the toll this situation has had on her.

Ms M attributes much of the impact on her health to not being able to sell her home, which she says is because Lloyd's has not handled her claim fairly. She's explained that prior to the discovery of the damage she intended to sell her home, and that the need to sell it and buy a cheaper property became even more pressing following a redundancy in 2020.

Without question this has been a very stressful time for Ms M. Having to change her plans upon discovering the damage would have been upsetting, and I recognise this upset has been compounded by Lloyd's causing avoidable delays. But I have to keep in mind that Ms M's plans ultimately changed because of the subsidence - which isn't something Lloyd's can reasonably be held responsible for. Lloyd's is, however, responsible for any avoidable delays on its part which occurred during the claim – which as I've explained above, did occur.

It's difficult to say with certainty that were it not for Lloyd's delays in handling the claim Ms M would have sold her property sooner – and at a higher price. I must keep in mind that there are many factors which could influence her ability to sell the property – which would be both outside her and Lloyd's control.

Whilst I appreciate Ms M would want to sell her property once the repairs had been completed – arguably, she could have chosen to market it still, with potential buyers being informed the repairs were due to be completed by the insurer and this potentially being included as a condition of the sale. Furthermore, it's likely she would have been required to disclose in any pre-contract enquiries that the property had been affected by subsidence. And so, I'm not persuaded the repairs having not been completed, prevented her from marketing her home.

So, whilst I'm not persuaded Lloyd's is solely responsible for Ms M's property depreciating in value as she says, or the increased financial obligations she's incurred by having to stay in it for longer than she'd intended, I do consider it responsible for the distress the ongoing situation has caused her – and that owing to delays she's had to experience this for longer than necessary. And when I consider things overall, I'm satisfied £1,500 compensation is fair and reasonable in the particular circumstances.

Next steps

Lloyd's will be aware of its responsibility to provide a lasting and effective repair. At the time of its final response letter, the parties were due to get together to agree a way forwards with the claim.

Our Investigator said Lloyd's needed to consider E's recommendation of using resin injections as a means for stabilising the property – and I'd expect it to take into account all the available expert evidence when reaching a decision.

However, I'm not, as part of this decision, being asked to determine which stabilising solution should be used and so, I won't comment on this further. Other than to say, if in the future Ms M considers a lasting and effective repair to have not been achieved, she can raise a separate complaint about this with Lloyd's.

My final decision

My final decision is I uphold this complaint and direct Society of Lloyd's to pay Ms M £1,500 compensation. If it's already paid £1,000, it can deduct this from the total amount.

Compensation must be paid within 28 days of the date on which we tell it Ms M accepts my final decision. If it pays later than this, Society of Lloyd's must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 April 2024.

Nicola Beakhust
Ombudsman