

## complaint

Mr A has complained because Society of Lloyd's declined his buildings insurance claim.

## background

Mr A's policy with Lloyd's ended on 5 October 2016. After that he insured with a new insurer. In March 2017 Mr A made a claim with his new insurer for damage caused by a leak under the bath. The new insurer declined the claim on the basis that the leak occurred before their policy started. It referred Mr A to Lloyd's.

Lloyd's appointed a loss adjuster to inspect the damage. He reported that there was a leak from a bath wastepipe and that damage had been occurring for a period of time. Although he couldn't determine how long for, he felt it had been occurring over at least the previous five months ie when the new insurer was insuring the property. So Lloyd's declined the claim too. It felt there was no evidence that the damage occurred whilst it was insuring the property. It said its position would only change if it could be shown that the leak was happening prior to the policy ending.

A damp specialist later inspected the damage and said the floor joists were affected by wet and dry rot and woodworm. He confirmed the loss adjuster's findings that it had been caused by a leaking bath. He felt it had been ongoing for more than six months. Lloyd's maintained its position. It said the 'six months' was still after its policy ended.

Lloyd's later discussed the matter with Mr A's new insurer and it was agreed that a new report would be obtained in order to determine when the leak occurred and what proportion, if any, Lloyd's would contribute. A disaster response and damage management consultant inspected the damage and said the leak could have been running for a significant period of time before it was discovered, and that it was likely to have preceded the start of the new insurer's policy.

Following this report Lloyd's loss adjuster felt that the damage pre-dated Mr A even owning the property. So Lloyd's confirmed its previous decision. It said the policy wasn't in force when the damage was caused or when it was discovered.

Our investigator felt Lloyd's position that there was no cover as no damage had occurred whilst it insured the property was unfair. She felt it was likely that some damage had occurred while Lloyd's was insuring the policy – and it was liable for that damage.

However, Mr A also has a complaint with us against his new insurer. And our investigator's conclusion in that case was similar to the one here ie that the new insurer was responsible for the damage that had occurred whilst *it* insured the property. What the conclusions on the two complaints effectively meant was that:

- Lloyd's was liable for the damage that occurred up to 5 October 2016; and
- the new insurer was liable for the damage that occurred after 6 October 2016.

That presented an issue because it wasn't clear what damage occurred when. So our investigator concluded that the new insurer should be liable for *all the damage* unless (a) it could distinguish the post-6 October 2016 damage from the pre-6 October 2016 damage and (b) it could repair that damage in isolation. What that meant for Lloyd's was that it would

only be liable for any damage occurring whilst it insured the property if the new insurer could show (a) and (b).

Lloyd's disagreed with our investigator. It said the disaster response and damage management consultant report noted that the damage and previous repair probably pre-dated Mr A buying the property – and therefore its policy. It also felt the new insurer should deal with the claim unless it could show what damage Lloyd's was liable for. Ultimately, it felt there is no claim for it to respond to.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr A's policy provides cover for damage caused during the life of the policy by a range of insured events (which includes water escaping from a pipe). For any claim to be valid, Mr A needs to show three things:

1. that an insured event occurred
2. that the insured event caused damage to the property
3. that the damage was caused during the life of the policy.

It's not disputed here that there was a leak or that it caused damage to the property. The issue is when the damage Mr A claimed for occurred – and, specifically, whether any occurred whilst Lloyd's insured the property.

It's important to note that the crucial date is the date the damage occurred – it's not the date the insured event occurred/started or the date the damage was discovered. That's because Lloyd's isn't insuring the insured event; it's insuring the *damage caused by* the insured event. So the insured event doesn't necessarily have to happen during the life of the policy for a claim to be valid.

To illustrate the point, Mr A's policy might end on day one and a new policy, with a different insurer, starts on day two. There's a fire on day one in a neighbouring property, although no damage is caused to Mr A's property. But the fire is hard to put out and on day two it spreads to Mr A's property and causes damage. Because the damage occurred on day two, it would be the new insurer who is liable for the damage. It doesn't matter (at least as far as this argument is concerned) that the fire started the day before the new insurer started insuring the property.

So, the issue I need to decide is whether it's been shown that some damage was caused by the leak while Lloyd's was insuring the property. The evidence that I've seen and that Lloyd's has relied on isn't entirely clear in this respect:

- the new insurer felt the leak occurred before 6 October 2016
- Lloyd's loss adjuster felt it had been occurring over the previous five months as a minimum
- the damp specialist felt it had been ongoing for more than six months
- the disaster response and damage management consultant felt it was likely to have occurred before 6 October 2016. He also referred to the joists being repaired previously, which coupled with Mr A confirming he never did the repair, suggested that the problem might have pre-dated Mr A owning the property.

The time period given by Lloyd's loss adjuster and the damp specialist is slightly ambiguous because it's unclear whether the five/six months they refer to are from the date they saw the damage (in May and June 2017) or the date the damage was noticed. As the leak was effectively repaired in March 2017 when the bath was removed, I think it's fair to assume that the reference is from March 2017 – therefore back to October/November 2016. Obviously that's still after the policy with Lloyd's ended. But both experts said the five/six months they referred to was the *minimum* period of time the damage had been occurring. With that in mind, particularly with what the disaster response and damage management consultant said, I think it's fair to conclude that on the balance of probabilities the leak, and therefore some damage caused by the leak, was ongoing while Lloyd's insured the property.

For completeness, I'm not sure how significant the previous repair is because there's nothing to say that it related to this particular leak.

That therefore means that Lloyd's is liable under the terms of the insurance policy it provided for the cost of repairing the damage caused up to 5 October 2016 (but not for any damage that occurred before it actually started insuring the property). However, as our investigator pointed out, this causes a problem because it's unclear what damage happened before 5 October 2016 and what happened after. And I can't make both insurers pay for the repairs as Mr A will then receive payment twice.

So, in the circumstances, I think it's fair for Lloyd's to only become liable for the cost of repairing the damage caused before 6 October 2016 if the new insurer can identify and separate the damage it's responsible for and can repair that damage in isolation.

To summarise, Lloyd's declined Mr A's claim because it felt there was no cover as it didn't insure the property when the damage occurred or when it was discovered. In essence, it felt Mr A should contact his new insurer. For the reasons outlined above, I think Lloyd's treated Mr A unfairly by absolving itself of responsibility like it did. It would have been fairer, in my opinion, if it explained to Mr A that as he was now insured elsewhere he needed to contact his new insurer first, but that Lloyd's accepted some damage was probably caused while it insured the property, so it would cover any damage that his new insurer could show happened before 6 October 2016.

### **my final decision**

I uphold this complaint.

*If* Mr A's new insurer is able to separate the damage that occurred after 6 October 2016 from the damage that occurred before then, *and* if they can repair that damage in isolation, then I require Society of Lloyd's to settle Mr A's claim subject to the terms of the policy for the damage that occurred whilst it insured the property.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 March 2018.

Paul Daniel  
**ombudsman**