

## complaint

Mrs C complains that Lloyds Bank General Insurance Limited hasn't accepted her buildings insurance claim about fire and smoke damage to her home.

## background

Mrs C lives in her four bedroom semi-detached house with two of her adult sons – son A and son B. On Saturday 23 January 2016, fire broke out in two of the upstairs bedrooms. Fire and smoke damage was caused to those rooms while smoke damage was caused to the rest of the first floor.

Mrs C has revised her statement about the series of events on the day since it was first given. But the key points to her account are as follows:

- Mrs C discovered the fire at 6.10pm after hearing a smoke alarm and called the emergency services from a neighbour's house within 5 minutes;
- She'd been on her own in the house since approximately 5.20pm when her two daughters left with three of her four grandchildren - those aged six, three and one;
- To Mrs C's knowledge, no one went upstairs during the visit of her daughters and her grandchildren;
- Son A had left the house at approximately 4pm with another of Mrs C's grandchildren who was aged 7, having smoked in the rear garden and possibly leaving the back door unlocked;
- Son B was away for the weekend;
- The window of her bedroom (to the rear of the house), in which one of the fires started, was left open.

The emergency services, who attended the scene on the night of the fire and the next day, have reported the following:

- There were two places in which the fire started and neither one appears to have been caused by the spread of the other;
- The two fires were started at the same time and had been going for approximately 10 to 15 minutes;
- There was no obvious accidental ignition and they thought a naked flame had been applied to combustible materials;
- In one of the sons' bedroom there were various discarded lighters and cigarettes within easy access;
- Mrs C and her daughters were adamant on the day of the fire and the following day that the grandchildren were not left unattended and did not go upstairs. The family could give no explanation of how the fire occurred;
- The fire was not accidentally started, no accelerant was used and there was no electrical fault;
- There was no sign of forced entry;
- There was no evidence that a third party started the fire;
- Local house to house enquiries and closed circuit TV revealed nothing.

On 24 January 2016 the family reported the fire to Lloyds – Mrs C's buildings insurer.

On 25 January 2016, the family reported that Mrs C's jewellery had gone missing from her bedroom. The family also say they mentioned missing foreign currency to the police, but this is not recorded in the police notes for that day. It wasn't until 14 May 2016 that the police reported the incident as a crime.

On 3 February 2016, a forensic scientist appointed by Lloyds visited the property and reported the following:

- There were two places in which the fire started and one could not have spread to start the other;
- The two separate fires were started deliberately;
- He could find no potential accidental cause of ignition;
- The fire was most likely started using a naked flame by someone within the property.

Lloyds was first made aware of the missing jewellery during a meeting with Mrs C on 4 February 2016 and missing cash during a meeting on 4 March 2016. But it's worth noting at this point that Lloyds was not the contents insurer and a separate claim was made for these items.

Lloyds responded to the claim saying the fire brigade has confirmed all ground floor doors and windows were secure on their arrival at the house. Any intruder would have had to have gained entry via the open first floor bedroom window at the rear of the property, using a set of ladders. Having made the thefts and started the fires they would have had to exit the same way and remove the ladder.

Lloyds' response went on to say that the police initially thought that the fire may have been started by a member of the family, either deliberately or accidentally. But the police later reported that there was no allegation or suggestion that this was so. The police said that other than the allegation of stolen property there was no evidence of an intruder.

The response concluded saying it is implausible that an intruder started the fire in the circumstances and it considers the fire must have been started by someone with legitimate access to the house. It said damage caused by Mrs C, any member of her family, or anyone invited to her home is not covered under her policy. And Lloyds will not be making any further payments under the claim.

Mrs C's representative complained to Lloyds, disputing its claim that the front and rear doors to the property were locked as there was no forced entry by the fire brigade. He outlined alternative circumstances to support the possibility that the fires were started by an intruder to those given by Lloyds. He also pointed out that the police have recorded the theft of property and given the incident a crime number. He further pointed out that Mrs C has nothing to gain from the fire and has suffered hardship as a result of it.

In its final response letter Lloyds said no mistakes were made and its decision to decline the claim will stand.

Our investigator said he doesn't think Lloyds has enough to fairly decline the claim and that he thinks it should consider the claim. He referred to his conversations with Lloyds in which it said it thinks it is most likely that the grandchildren were responsible for the fire. And if this were true, it would pay the claim.

Lloyds responded saying it has three reports saying the fire didn't happen as portrayed by Mrs C. It says the basis for it not paying the claim is the principles of insurance and particularly of utmost good faith. And it hasn't declined the claim as fraudulent, but asked for clarification from Mrs C. As Lloyds didn't agree with our investigator, the complaint has been passed to me for a final decision.

I asked Lloyds to confirm its current position, given that during two discussions with our investigator it said it thinks it is most likely that the grandchildren started the fire and if this was so, it would pay the claim.

In its response, Lloyds said it believes that people with legitimate access to the house – family, friends or visitors – started the fire. But it says it has determined that the grandchildren did not start the fire. It also said it was unlikely to be an intruder – to gain access; they would have had to have brought a ladder and then taken it away with them. Lloyds said that it is just asking Mrs C to tell it what happened and when she does it'll be in a position to assess the claim.

I understand that Lloyds paid for alternative accommodation for approximately one month, for one of Mrs C's sons. It says it made other offers of alternative accommodation that weren't taken up by Mrs C and her sons, up to the time at which it declined the claim. I also understand that Mrs C and her sons had been living with relatives before occupying the ground floor of Mrs C's house, having paid to have it professionally cleaned. One of Mrs C's sons has provided a receipt/invoice for money he paid to a hotel for a stay he says has not been honoured by Lloyds.

I sent my provisional findings to both parties on 11 July 2017 – both have now replied. In my provisional decision I wrote:

*"I don't agree with our investigator that the complaint should be upheld. I'll explain why.*

*In reaching my decision, I've had to consider whether Lloyds' current position – not paying Mrs C's claim – is reasonable, given the evidence it currently has available. It says that it cannot be sure what happened – and it doesn't feel that Mrs C has provided all the information to persuade Lloyds that the principles of good faith have been satisfied such that it can pay a claim. To consider this, I've reviewed the evidence available to see if I think Lloyds does have enough information to meet a claim under Mrs C's policy.*

*In my first provisional decision, I explained how I thought it most likely of all the possible scenarios that the grandchildren started the fire. Lloyds has responded that it thinks they didn't. It has pointed to:*

- *a stiff door in an upstairs room;*
- *that the grandchildren knew entry to this room was a "no no"; and*
- *testimony from one of the grandchildren that she didn't go above the third stair.*

*It says this shows the grandchildren didn't start the fire. In addition, it says that if we find the grandchildren started the fire, we must also find that the grandchildren took the jewellery and the cash.*



*I disagree on both points. In order to find that the grandchildren started the fire, I have already had to accept that the version of events outlined by the family may not be entirely accurate. In taking the stance that Lloyds has to date, it is clear that it hasn't found the family's version of events to be reliable. So I don't think it would be reasonable to rely on the evidence bulleted above (coming from the family), simply because it supports Lloyds' stance.*

*I don't agree that the grandchildren must have taken the jewellery and the cash if they started the fire – there are other possibilities. The property was empty after the fire and the jewellery and cash were found to be missing late in the following day. It's therefore possible that the items went missing after the fire. As Lloyds doesn't insure Mrs C's contents, this is not something I need to consider in depth and make a finding about here.*

*However, my understanding of the children present up to 5.20pm on the day of the fire has changed. We received confirmation from the family, via the representative, that all four children were present. But more recently this was changed to only three – the eldest being out with his uncle. Previously it appeared that Mrs C was certain about the time her family left the house, but we've recently heard from one of her sons that it may have been later.*

*I accept that it was likely to have been a confusing time for Mrs C. But I have to consider Lloyds' position as well as hers. Lloyds has been presented with contradictory evidence and changing statements throughout its consideration of Mrs C's claim.*

*Having considered all the information, I think the cause of the fire remains unclear, although the expert reports from the scene, both independent and appointed by Lloyds, agree that it was deliberate. I don't think any one of the possible causes looks most likely, and I can understand Lloyds' concerns that it doesn't have a complete picture as to how this claim came about. While I don't think the intruder theory - be it with a ladder or entering through a door not properly closed - is impossible, I understand why Lloyds finds it unlikely. I say this because of the lack of evidence to support it. Again, it was the experts who inspected the scene who confirmed there was no evidence of an intruder, aside from the fire itself.*

*I understand that Mrs C is in a difficult position and I understand that she's had an unpleasant experience which has gone on for some time. But, while I do have a lot of sympathy for her, I don't think Mrs C has provided Lloyds with a sufficiently full and clear account of what happened and I understand its concerns about the contradictions and changes to the chain of events leading up to the fire. So I think it's reasonable that Lloyds has asked for further clarity before it accepts or declines Mrs C's claim."*

Lloyds has accepted my provisional decision. But it did ask me to correct a point and it made some observations. It said the information, about Mrs C's granddaughter telling the police she wasn't allowed to go above the third stair, came from the police report and not the family. On checking the evidence we have, I can confirm that this point was made in the police report, rather than directly from the family. Lloyds also pointed out that Mrs C's house was guarded by police overnight after the fire and there was a thorough inspection of the bedroom by the emergency services the following day. It says this means there would have been very limited opportunity for the jewellery theft to occur after the fire.

While I acknowledge the points Lloyds has made, they don't lead me to alter my final decision. And as the cause of the fire and the alleged theft is not for me to decide, I won't speculate further on these points.

Mrs C, via her representative, has not accepted my provisional decision and made numerous points. I've not listed them all here as I had been made aware of most of them before and I had already dealt with them in my provisional decision. I'll address what I consider to be Mrs C's main point in the findings section of this decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As I explained in my provisional decision, the evidence hasn't led me to uphold Mrs C's complaint and the responses to my provisional decision haven't led me to change my mind. But I do want to address some points Mrs C has made.

In her response to my provisional decision Mrs C makes reference to points made by Lloyds about the likelihood of her grandchildren going upstairs and the intruder not necessarily accessing the house through her bedroom window, via a ladder. But, I haven't accepted Lloyds' assertions here and I haven't allowed them to lead me to reach any conclusions about the cause of the fire in my provisional decision.

More generally, Mrs C's response to my provisional decision centres around her assertion that it is at least as implausible that someone legitimately at the house started the fire as it is that it was started by an intruder. I understand that it is this assertion that leads her to emphasise that the burden of proof should be based on '*the balance of probabilities*,' rather than '*beyond reasonable doubt*.'

I've given this point careful consideration over the time I've been looking at Mrs C's complaint. From all that I've seen, I think Mrs C's evidence has been contradictory, inconsistent and at times more vague than I would reasonably expect. I accept that English isn't her first language and that, at times, she may have been frightened and confused. But it appears that, at the actual time of the fire and all the way through the claim and complaint process, Mrs C has had the support of her family. So I don't agree that there has ever been any genuine barrier to her communicating her understanding of events. I say this because I've seen no assertion that her children have any difficulty with English or understanding Mrs C.

So, while I accept that the evidence in this case doesn't point to a clear cause of the fire, given the inconsistencies of Mrs C's evidence, I understand why Lloyds is still seeking more clarity from her before considering her claim further. And I think this is a reasonable position. I don't think it would be appropriate for me to conclude that it's for Lloyds to prove an exclusion applies to defeat Mrs C's claim when her evidence is contradictory, inconsistent and incomplete. She hasn't been able to provide a clear explanation, so I don't think she's really done enough to show she has a valid claim under the policy for an insured event at this stage. And in these circumstances, I think Lloyd's position is reasonable.

### **my final decision**

My decision is that Lloyds Bank General Insurance Limited's current position of not paying Mrs C's claim, based on the evidence received so far, is reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 14 September 2017.

Gavin Cook  
**ombudsman**