

The complaint

Ms C with the assistance of her representative, complains that Liverpool Victoria Insurance Company Limited (LV), has treated her unfairly when considering a claim made on her buildings insurance policy.

What happened

The background to this complaint is well known between the parties, so I've summarised the events.

- In August 2019, Ms C had an arborist report produced which identified two trees causing damage to her property. A Norway Spruce and an Ash tree. Both of the trees were located on Ms C's neighbours land with direct damage to the concrete slab surface on her land and to the fence, thought to be caused by the tree roots and the tree's positioning against the fence line.
- The report recommended that testing be undertaken to identify if the damage to the garage was tree related subsidence. And that a trench be excavated along the boundary of the neighbouring property adjacent to one of the trees under arboriculture supervision so an assessment of the importance of the roots (identified as being the cause of the damage) to the tree's stability could be determined. Damage to the fence could only be repaired if the other tree was removed entirely. Overall, although based on some uncertainties, the report gave a strong indication that the removal of both trees would provide the most appropriate solution to stop future damage.
- In September 2019 Ms C notified LV of damage to her external garage at her property. In October 2019 LV attended the property and carried out an initial inspection. A full site investigation was made and a factual report completed in November 2019 and minor subsidence damage was identified to the garage as well as the damage to the fence and concrete slab.
- The initial report produced by LV's Loss Adjuster recommended the removal of the Spruce tree and a reduction of the Ash tree together with a scope of works to repair the damage caused.
- In January 2020, LV wrote to Ms C's neighbour setting out what it thought needed to happen ahead of it completing its repairs. The neighbour rejected this request at the start of March 2020, setting out concerns about the tree being removed and that the reports completed had favoured Ms C. LV's Loss Adjuster responded to the points made and said if the tree was not removed, roots would have to be cut so the damage to the garage building and paving could be repaired.
- In April 2020 LV updated Ms C on the neighbour's response to the recommendation but explained they may be willing to have the roots cut.
- In May 2020, Ms C asked her expert to provide advice on the information that had

been produced by LV and its Loss Adjuster. The expert said they had no doubt that damage had been caused by the trees to both the fence and concrete slab. He couldn't confirm beyond doubt, because of a lack of monitoring, there was subsidence with the garage. But the conditions of the soil and foundation of the slab meant indirect damage could occur because of the trees. He highlighted legal principal that the owner of the trees is liable for the damage caused by them to the adjoining property. If either tree was to be removed, this would need to be agreed by the owner. If this couldn't happen, he suggested a compromise to repair the fence and root cutting, as advised by an arboriculturist. He thought it was likely the root cutting would not render the trees liable to failing. If the trees were causing the subsidence damage he thought it was more likely they'd need to be removed but as he couldn't say this was the case, he didn't think there was enough evidence to suggest the trees removal was required.

- In August 2020, Ms C let LV know she was unhappy that the tree removal wasn't being pursued. LV explained it was suggesting proceeding with a scope of repairs in line with her experts report and findings. LV requested a scope of works based on this with one of its contractors which was submitted on 14 August 2020.
- In September 2020, Ms C sent a letter to LV's Loss Adjuster office that was closed at the time because of lockdown restrictions. She raised a number of questions about the proposed works and whether it was the advice of LV to proceed with the works on the basis that it sufficiently addresses the threat to her property. LV responded in October 2020 and said if a compromise with the neighbour couldn't be reached, solicitors may need to be involved.
- In April 2021, Ms C explained she was unhappy that the likely outcome was a compromise with the root cutting and no tree removal. Later that month she appointed a family member to act as a representative for her with the claim. There was ongoing correspondence with Ms C's representative and the Loss Adjuster over the following months and in September 2021, the Loss Adjuster attempted to arrange a meeting with the neighbour and Ms C's expert.
- Ms C's neighbour didn't agree to the meeting and wanted to provide their own expert opinion but wanted all of their own expert costs met by LV or Ms C. Ms C's representative didn't think the request was reasonable and highlighted case law to support the position that the neighbour was liable for the cost of the damage caused by their trees.
- The Loss Adjuster offered a 50% contribution to the costs of the neighbour's expert report as instructed by LV – this was offered with a view to move the claim forward. At the end of September 2021, the Loss Adjuster set out two options to progress the claim. To progress with the tree root removal in consultation with the neighbour's expert before completing the repairs as set out in August 2020, or to pursue a legal claim against the neighbour.
- In December 2021, a complaint was raised with LV about its handling of the claim. LV looked at the complaint and didn't think it or its Loss Adjuster had added a delay with the claim. It explained what had happened and that some delays had been added as a result of the pandemic and lockdowns. But overall, the claim hadn't been delayed by LV and it felt it had tried to progress with the options available.
- In January 2022, the claim hadn't moved forward. There was no confirmation on what option was being progressed. A meeting was proposed by the Loss Adjuster to try and agree a way forward. No response was provided and in May 2022, Ms C brought

her complaint to this Service.

- Our investigator didn't think LV had done anything wrong. She said claims of this nature often took time to be resolved and the Covid-19 pandemic had added to this with unavoidable delays. She thought the options put forward to progress the claim were reasonable and had been based on expert opinion. If Ms C didn't think these were enough, she had the option to pursue legal action. She accepted the Ms C and her sister who often lived with her, are vulnerable with mobility issues, but she felt LV had tried to progress the claim as much as possible and it couldn't undertake short term measures when there was a dispute about the repairs.
- Ms C's representative responded to say they disagreed. They repeated the points of the complaint and that they didn't think LV had acted fairly. Our investigator's opinion remained unchanged and the complaint was passed to me for 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 decided not to uphold this complaint. I know Ms C will be disappointed, but I'll explain why I've reached this decision.

The crux of this complaint is whether LV has acted fairly when handling the claim and whether it should it have done something else in the circumstances.

This claim was accepted by LV soon after Ms C notified it of the damage. It initially sought to have one of the trees removed as well as have the remaining tree cut back. As the trees are the responsibility of Ms C's neighbour, it notified them of their intention and looked for an agreement before anything else could take place. I think this was a reasonable step to take and this happened soon after the claim was raised.

When Ms C's neighbour didn't agree to the trees being removed, LV looked to find another solution which would enable it to stop and repair the damage. This involved recommending a compromise that Ms C was unhappy with – the trees being retained but the roots being cut. This was a solution that Ms C's own expert had suggested as an option, together with the fence repairs being completed to effectively allow for the tree growth – saying the following in their report provided in May 2020:

"It appears that a sensible approach would be to have the concrete surface removed with care taken to preserve the roots beneath. Having removed the concrete an arboriculturist (or one representing each property) could assess the roots exposed to determine which would require pruning to prevent further damage to the new hard surface to be laid. The significance of root(s) requiring pruning would need to be assessed and a decision subsequently taken as to whether the tree(s) could be retained in light of the root pruning required. At this stage, I consider it more likely than not that the necessary root pruning would not render the tree's liable to failure."

So, I'm satisfied this method seemed likely to succeed in achieving its aim – halting the subsidence damage – in line with the available expert opinion.

In August 2020, a scope of work was produced with this as the primary solution and it required Ms C to agree for the work to progress – with the co-operation of her neighbour.

I understand Ms C had concerns about this scope of work and questioned a range of different future scenarios and the impact of this repair over the trees removal. But as the plan was in line with expert opinion, I don't think LV or its Loss Adjuster acted unfairly when putting this forward as a way to progress the claim. And as this plan was reliant on the opinion of an arborist when completing the root cutting to ensure the roots could be removed without risking the future stability of the tree, a future assessment may have still meant it was right to recommend the removal of the trees. But I think LV acted fairly when assessing the information provided. It made a recommendation based on this and made it clear it might need to be changed, dependent on the opinion of experts and the roots that needed pruning.

Ms C didn't agree with the scope and there were delays to her questions being answered as a result of the Loss Adjuster's offices being closed and Ms C not sending her questions to the address she was provided with for subsidence support. But I don't think it would be fair to say these delays were the fault of LV. The office was closed because of the lockdown restrictions in place at the time and this was outside of its control.

The above option to progress the claim was repeated to Ms C in September 2021 together with her option to progress with legal action against her neighbour for the removal of the nuisance trees. At this point LV also offered to cover 50% of the neighbour's expert report costs with a view to help progress the complaint. Ms C has questioned the logic of this as the expert may provide contradictory opinion on the scope of works and add further delay. While I understand the concern Ms C has on this point, I don't think this means LV's actions were not reasonable. Ultimately if the advice supported the existing advice, then it's likely the neighbour would agree to the actions taking place. If the new opinion highlighted a reason why the proposed works shouldn't take place, then I'd also expect LV to take this into account given its goal is to stop the subsidence and it wouldn't be in any parties interest to carry out a repair that wouldn't be effective and lasting. Furthermore, offering to pay the costs with a view to keep the claim progressing is reasonable and it is not an uncommon step for insurers to take.

Ms C's representative has provided case law at a number of different points which she feels supports the position that a court would likely take. She thinks it would determine that Ms C's neighbour would be liable for the costs of any damage resulting from their trees. This is because of their proximity and foreseeability with the trees being on the boundary line. I understand why this point has been highlighted and it may well be a court would make a ruling in line with this if Ms C took the decision to action now or in the future. But I don't think it is relevant here, namely because at this point, LV has accepted the damage is covered under Ms C's policy and made recommendations to repair the damage. It hasn't said it is unable to progress without the trees being removed and has made a recommendation for the repair works which I consider to be fair.

Ms C should know that I will consider the law as part of my decision making. But I also have to apply what I consider to be a fair and reasonable answer in these circumstances. This is to say, even if a court might find differently, I would not be persuaded in these circumstances that LV's actions were unfair or unreasonable.

Ms C's representative has said the garden has not been able to be enjoyed while this claim has not been settled and I'm sorry if this is the case. With Ms C having mobility issues I understand why it is important that the garden doesn't make this more difficult. But I think LV made a fair proposal to settle the claim in August 2020 and this has been ongoing while Ms C disputes the proposed solution. As there was no agreement on the work, it follows that it wouldn't be reasonable to expect LV to make repairs until agreed.

Overall, I've not seen anything to demonstrate that LV has added a delay to this claim being settled. Nor do I think it has failed to treat Ms C fairly. I understand why she has a desire to

have the trees removed from her garden, but I think LV has made a fair claim decision when proposing the actions – in line with the available expert evidence – it has recommended to stop and repair the damage.

My final decision

For the reasons I've explained above, I don't uphold Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 4 April 2023.

Thomas Brissenden
Ombudsman