

The complaint

Ms B complains Liverpool Victoria Insurance Company Limited ["LV"] has unfairly declined a claim she's made on her buildings insurance policy following subsidence at a property she owns.

What happened

Ms B is represented by a third party in bringing this claim. References I make to Ms B's actions include those of her representative.

LV is the underwriter of the policy, i.e. it's the insurer. Part of this complaint concerns the actions of its agents for which LV has accepted responsibility. Any reference to LV includes the actions of its agents.

The background to this complaint is well known to the parties so I've provided a summary here.

- Ms B purchased a property in 2002 and it came with the benefit of a building warranty from a company I'll refer to as "N". In 2006, she reported fractures in the property to N and she says it incorrectly diagnosed the cause as thermal movement. The fractures were repaired.
- The property is currently insured under a buildings insurance policy underwritten by LV, inception in 2018.
- In 2018, fractures started to appear in the property again and Ms B reported this to LV. It instructed an expert to inspect the damage and it was accepted the cause was subsidence but the claim was declined under an exclusion for defective design and/or construction of the foundations. Ms B raised a complaint with this Service (under a separate reference) but it wasn't upheld. The Investigator said if more evidence became available, they would expect LV to consider it. The complaint closed around this time.
- In 2023, Ms B got back in contact with LV with additional commentary on the original decline, provided by her representative, a building surveyor. He said Ms B's previous insurer had inspected the damage but declined the claim and had said it thought LV ought to accept the claim instead. And he pointed out other insurers of properties adjacent to Ms B's which had also experienced damage had agreed to accept those claims. Additionally, he said the property was still sinking and this suggested the cause wasn't defective workmanship or design.
- LV said that the new points raised hadn't altered its position on the claim, and it remained declined. Ms B raised a further complaint with this Service.
- Our Investigator explained he couldn't reassess the original complaint decline as this had already been considered by this Service previously, he could only consider the new evidence and say if LV's actions in response to this were fair. He didn't think the

evidence Ms B presented definitely disputed the conclusions previously reached in relation to the poor workmanship exclusions, existing damage or movement of made ground. He didn't uphold the complaint.

- Ms B asked an Ombudsman to make a 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.

Ms B explains the damage to her property and the claim relating to it have caused her stress and worry and have detrimentally impacted her mental health. I'm of course sorry to hear this and empathise with Ms B's position. The nature of my role though means I need to undertake an impartial review of all the evidence and so, at times, my decision may sound dispassionate. I mean no offence by this, it merely reflects the nature of my role.

I acknowledge Ms B is unhappy not only with LV's actions but those of N and her previous insurer too. The nature of my role means my investigation and determination will focus on the actions of LV and I won't make findings about any other party. If Ms B wishes to pursue complaints against other parties, that would be separate from this complaint about LV.

Our remit is to say how complaints should be resolved quickly and with minimum formality. That means I will focus on what I consider to be the crux of this complaint and may not comment on everything the parties have said or asked. But I have considered all the evidence provided by the parties in reaching my decision even if I don't reference it specifically or answer every point made.

The crux of this complaint is whether LV has fairly maintained its decline of the claim in light of the new evidence presented by Ms B. In short, does the new evidence challenge the original claim decline to the extent LV should have changed its decision.

Original claim decline

The claim was originally declined as it was found that the subsidence was caused by the defective design and/or construction of the foundations on land that was fill/made ground. For the reasons I've explained above, I'm not reassessing the fairness of this original decline which was already considered by this Service previously.

New evidence

Ms B's representative provided commentary on the claim, the original decline and the roles of the various parties. The key comments relating to the decline reason were:

- Vibro-compaction was a common method of construction in the area at the time Ms B's house was built. It's easy to suggest in hindsight something else should have happened.
- The properties would have received Building Regulation approval before they could be sold and a member of the public can't be expected to be a design expert and has to rely on checks put in place by others.
- The property is still moving and LV does not seem concerned, preferring to focus on the make-up of the foundations and actions of other parties.

While vibro-compaction may have been a common method of construction in that area at the time Ms B's house was constructed, this doesn't, in my view challenge the reason for the claim decline detailed previously. Nor does it provide an alternative reason for the cause of the damage which would be covered under the policy terms.

And I've not seen any evidence relating to any checks undertaken by building control which persuades me it's more likely the foundations weren't defective.

I also have to keep in mind in 2021, Ms B's representative, a chartered surveyor, seemingly accepted the foundations had been incorrectly constructed:

"...the property was sinking due to the building having been constructed on made up ground which had been vibro-compacted to provide stability for new foundations. The developer should have in fact built the house on a piled foundation which would have prevented any significant movement".

So, it seems broadly accepted the foundations had been defectively designed.

Other factors

Ms B says a number of insurers of neighbouring properties have accepted claims for similar damage and believes this sets a precedent and a compelling reason for the claim to be accepted. My decision focuses on LV's actions in relation to the claim Ms B has made for the damage to her property. I can't comment on the actions of other insurers regarding other insurance claims.

But as a general comment, there will likely be any number of differences in the individual details of claims – for example, the individual circumstances of the case and policy terms of the insurance contract - which may lead to a different outcome. So, in the specific circumstances of this complaint, I'm not persuaded the outcomes of other claims have any bearing on Ms B's claim.

Ms B has also commented on the actions of N and her previous insurer in relation to the damage her property has experienced but for the reasons I've already explained, I won't be commenting on those other parties in this complaint about LV.

Summary

Overall, I'm not persuaded the new comments and evidence challenge the original decline reasons to the extent LV should have changed its original decision. While I know this will be disappointing for Ms B, I'm satisfied LV has acted fairly in maintaining its decline of Ms B's claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 14 June 2024.

Paul Phillips
Ombudsman