

The complaint

Mrs H has complained about the amount Liverpool Victoria Insurance Company Limited (LV) has paid in settlement of a claim for subsidence damage to her property.

What happened

There have been several businesses involved in Mrs H's claim and complaint, acting as representatives or agents of either Mrs H or LV. For simplicity, I'll only refer to Mrs H or LV by name in this decision, even when referring to evidence or arguments put forward by their respective representatives.

Mrs H held a home insurance policy underwritten by LV. She made a claim to LV for subsidence damage, which was accepted following LV's claim investigations.

LV settled Mrs H's claim by cash settlement. But a dispute over the amount it paid toward the damaged windows has since arisen. LV's cash settlement included the amount its window specialist would have charged to remove and refit the existing windows, including providing new cills. But Mrs H says the company she employed to remove the windows said they were too damaged to be reused and needed to be replaced. Mrs H wants LV to pay the additional costs she incurred in replacing the windows.

LV's window specialist reattended to inspect the windows which had been removed. They maintained the frames, although damaged, could have been reused. So, LV has refused to pay anything further.

Our investigator considered Mrs H's complaint but didn't think it should be upheld. She said Mrs H had the option of allowing LV's specialist to reuse the windows but elected to use her own contractor. So, she thought it was fair for LV to limit its cash settlement to the amount it would have cost its contractor to do the works required.

Mrs H didn't accept our investigator's assessment. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision, to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

"What I've provisionally 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.

Having done so, I'm minded to reach a different outcome to our investigator. So, I'm issuing a provisional decision to give the parties the opportunity to respond, before I reach my final decision.

This complaint essentially boils down to a dispute about whether Mrs H's windows could have been successfully reused, or whether they required replacement. There is conflicting evidence about this point from the different contractors, loss adjusters, loss assessors and window specialists involved. In situations like this, where there is contradictory expert evidence, I'll reach my decision on the balance of probabilities. That is, what do I consider to be most likely, in light of the available evidence.

LV maintains that the windows could have been reused, based on the comments from its window specialist's initial report, which stated:

"Following our surveyors (sic) recent inspection and in guide with your instruction regards the front elevation of the property only our surveyor list the following items affected by subsidence and our proposal at this initial stage to take out each item listed and refit level and square and reseal and new external cills to the bay window products."

This same window specialist has also reinspected some of the windows, following their removal, and added the following comments:

"Our surveyor found five of the original windows. These frames had suffered damage and all the cills and ancillary items are missing, most of the glass was also missing. The frames although missing parts are in a good condition.

There had been twelve windows and a door originally and there would have been three bay window cills, None of the frames had cracked welds and could have been reused."

Mrs H has provided comments or estimates from two different contractors, including the one she paid to replace the windows, which contradict LV's position. The first stated:

"It is evident that, due to subsidence of the property, the frames and openings have suffered from buckling and movement. The door is now difficult to lock and several of the openings are now non-operational.

Many of the openings have a differential of up to 100mm from one corner to the opposite corner.

It is our recommendation that the front elevation of the property is completely re-glazed due to the damage inflicted by subsidence."

And the second said:

"We would advise complete replacement of the damaged windows would be required. In our 25 year (sic) of double glazing experience, including many window replacement jobs due to subsidence, we have never heard of windows being taken out, realigned and replaced. This would certainly compromise the energy efficiency and structure of the walls, especially as there are bay windows to consider.

....

"We do not believe that PVC windows that have been distorted by the subsidence can be removed, straightened and refitted and still be as they were prior to the incident occurring, their structural integrity must have been compromised but to move matters forward we require your costings to be replaced."

The second contractor is the one who replaced the windows. Following the replacement, they said:

"Please be advised that the windows removed from the (redacted) home due to subsidence, were completely unusable and would never have been safely or efficiently replaced. We had some difficulty with the removal of many of the units as they had distorted and we need extra care, so not to damage the structures."

I've thought carefully about all the available comments and evidence. Having done so, I'm not persuaded that reusing the windows, in line with the quote LV based its cash settlement on, would have put Mrs H back in the position she was in prior to the insured event (subsidence) occurring – which is ultimately what the insurance policy is there to do. Instead, I'm persuaded on balance, that the windows most likely could not have been reused safely or without unfairly impacting their efficiency.

In relying on the comments from Mrs H's contractors, I have considered the fact they might have had a commercial interest in advising a full replacement was required. But I'm also mindful that LV's specialist's initial proposal was just that, an initial proposal. And while I understand they reinspected some of the frames, they didn't inspect them all. Ultimately, when taking all the variables into account, I still find the arguments and reasoning put forward by Mrs H's experts to be more logical and persuasive than those put forward by LV.

I've also thought about the fact that Mrs H went ahead with the window replacement with her own contractor, and whether this prejudiced LV's position. But LV had already had the opportunity to inspect the windows prior to Mrs H instructing her repairer. And as the windows had already been removed by the time it was confirmed they couldn't be reused, I don't think it would be reasonable to have expected Mrs H to pause the works and wait for further approval from LV in the circumstances.

Taking all of the above into account, I'm currently minded to decide that LV needs to increase the cash settlement paid to cover the reasonable costs of replacing, rather than reusing, the windows.

LV's policy allows it to limit cash settlement costs to the amount it would have cost its supplier to carry out the works. And as Mrs H was the one who decided to use her own repairer, rather than allowing LV to carry out the works in the first instance, I think it's fair and reasonable to allow LV to rely on this term to limit any further cash settlement due to the amount its specialist would have charged to complete the works.

So, unless the responses to this provisional decision change my current thoughts, I'm intending to direct LV to calculate how much extra its supplier would have charged to replace the windows, and to pay this amount to Mrs H. I'm also intending to direct LV to add 8% simple interest to the amount due to Mrs H, from the date it paid the initial cash settlement, to the date she is reimbursed. This is to compensate Mrs H for being deprived of the use of funds I think she was reasonably entitled to under her policy.

In addition to the above, I'm also intending to direct LV to pay Mrs H a further £200 compensation for the understandable distress and inconvenience she has suffered as a result of its, in my view, unfair claim decision. For example, the inconvenience of having to raise a complaint and pursue it all the way through the Financial Ombudsman Service, just to receive a reasonable settlement for a valid claim."

I asked both sides to send me any further comments or evidence they wanted me to consider before I reached my final decision.

LV responded to ask for clarity on what I expected it to do. In summary it asked:

- Did I expect it to apply its agent's rates to all of the windows Mrs H had replaced, or just those that were accepted to have been damaged by subsidence?
- Its agent only quoted for repair, not replacement, in October 2020. Would it be required to obtain a copy of Mrs H's invoice and to apply its agents' rates to each item based on size, detail, quality – given they may not have been replaced on a like for like basis?
- Would the settlement need to be made based on October 2020 rates, or current rates?

Mrs H didn't provide any further comments or evidence for me to consider. And the deadline to do so has now passed, so I'm moving forward with my final 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 carefully considered the responses to my provisional decision. Having done so, in the absence of any new evidence or arguments, I've reached the same conclusions, for the same reasons.

In answer to LV's questions:

1. LV's liability to Mrs H in this case is only for damage caused by the insured event claimed for – the subsidence. So, I would only expect LV to cover the cost of replacing the windows which have been shown to have been damaged by subsidence.
2. LV is required, as far as reasonably possible, to put Mrs H back in the position she was in prior to the insured event occurring. So, in order to ensure that she is properly indemnified, it may well wish to assess the claim evidence, including Mrs H's invoice, to ensure that it pays the suitable cost of a like for like replacement.

Should LV be able to persuasively evidence that Mrs H's replacement windows were significantly superior to those in place prior to the loss, then it can reasonably base the replacement cost on a like for like replacement of the ones in place prior to the loss, rather than the superior windows Mrs H purchased.

What I mean by significantly superior is that they are markedly different in terms of size, quality or detail. Not simply that they are slightly better, given how much newer they are in comparison to those in place prior to the loss. I think it's likely that the newer windows would be somewhat superior, based purely on being newer, and it wouldn't be fair for LV to make any deduction for this.

However, should LV be unable to evidence that Mrs H's replacement windows were not like for like, and/or to appropriately quantify any alleged betterment, then in those circumstances I think the fairest thing to do would be for it to meet the full replacement costs incurred by Mrs H. I say this because ultimately the position, as it exists today, has only arisen as a result of LV's unfair claim decision.

3. LV can reasonably base its calculation for the replacement costs on the rates applicable at the time Mrs H replaced the windows, rather than today's rates.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mrs H's complaint.

Liverpool Victoria Insurance Company Limited must:

- Calculate how much extra its supplier would have charged to replace the windows damaged by subsidence, at the time Mrs H replaced them, and pay this amount to Mrs H.
- To this amount, add 8% simple interest* from the date it paid the initial cash settlement, to the date it pays the final settlement.
- Pay Mrs H £200 compensation for the distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 April 2024.

**If Liverpool Victoria Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding
Ombudsman