

The complaint

Mr and Mrs B are unhappy Lloyds Bank General Insurance Limited hasn't agreed to cover a claim on the occupiers and public liability section of their home insurance policy.

Although the policy is in joint names as submissions have been made by Mr B, for ease I'll refer to him in this decision.

What happened

In October 2019 Mr B took out home insurance with Lloyds which included occupiers and public liability cover. Prior to that he'd been covered by a different insurer (D). He contacted both Lloyds and D in March 2021 as a letter of claim had been served on him by solicitors acting on behalf of his neighbour's insurer. They alleged that property had sustained subsidence as a result of clay shrinkage caused by a tree at Mr B's property. They claimed the cost of underpinning work (carried out between February and August 2020) along with associated costs and losses relating to negligence and nuisance.

There was discussion between Lloyds and D as to who should take responsibility for the claim but no agreement was reached. In its responses to Mr B Lloyds said its policy didn't cover legal liability from an accident occurring outside of the insurance period. In this case the letter of claim said the damage giving rise to it started in August 2016 which was before its policy began (and when D was on cover). So any legal liability that might attach to Mr B in relation to the damage and underpinning works was a result of an incident that occurred during D's policy period. It thought D should take responsibility for this claim.

Our investigator thought it was reasonable to say the damage had occurred prior to Mr B's policy with Lloyds starting. So she didn't think Lloyds needed to take any action. In a separate complaint against D she concluded this was a claim it should take responsibility for.

Mr B and Lloyds didn't disagree with her outcome. However, as D didn't accept her view on the linked complaint against it, I also need to reach a final decision on this complaint.

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.

The relevant rules and industry guidelines say Lloyds has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I've looked first at the relevant section of Mr B's policy with Lloyds. The occupier's and public liability section says:

"You (or your personal representative in the event of your death) and any member of your family are insured against any legal liability for:

Damages which result from an accident occurring during the insurance period and causing

- *Accidental bodily injury (including death, disease or illness) to anyone not in your family or domestic staff*
- *Accidental loss of or damage to physical property other than property you or any member of your family own or are looking after”.*

The policy also say it will pay “*defence costs and expenses which are incurred with our written consent*”. And the insurance period is defined as “*the period for which we have agreed to cover you*”.

In this case the claim against Mr B related primarily to the cost of underpinning work which were allegedly necessitated by his decision not to remove a tree in his garden. Its roots were said to be causing clay shrinkage which had caused damage to an extension at his neighbour’s property. I don’t think it’s in dispute that this is something his policy could potentially cover. The issue is whether the damage results from an accident occurring during the insurance period which began in October 2019.

I don’t think it was unreasonable of Lloyds to conclude it didn’t. I say that because Mr B was first contacted by his neighbour’s representatives in September 2017. The correspondence from the time said damage to their extension had been discovered in August 2016 and the cause was believed to be clay shrinkage exacerbated by tree roots. They wanted Mr B to remove a tree on his property which they believed was partly responsible for the damage.

A report accompanying that letter (and dated November 2016) said “*damage has occurred due to clay shrinkage subsidence. This has been caused by moisture extraction by roots altering the moisture content of the clay subsoil, resulting in volume changes, which in turn have affected the foundations*”. It went on to say “*In the event the trees cannot be removed and movement progresses, then it seems little alternative exists other than to install a scheme of foundation stabilisation*”.

Mr B didn’t remove his tree and informed his neighbours of his decision in September 2018. The letter before claim sent to him in March 2021 said “*clearly removal of [your tree] as recommended by the arboriculturalist would have enabled costs to be mitigated and avoid the potential of underpinning*”. And it said “*the decision to underpin the property was notified to you on 06/09/2018 with underpinning commencing thereafter. It is therefore submitted that pursuant to Jones (Insurance Brokers) Limited v Portsmouth City Council (2002) you were given adequate notice and opportunity to undertake the identified preventative measures before the contract to underpin was entered into*”.

So the claimants were arguing from the outset that Mr B’s tree was causing damage and if he didn’t remove it underpinning would be required. I appreciate that work was carried out during Lloyds period of cover but the claim against him alleges that it was a consequence of his decision not to remove the tree (which he told his neighbours about in September 2018) which meant underpinning was required and caused a scheme to be drawn up.

I can also see there appears to be a long standing history of subsidence at the neighbour’s property which is referenced in the initial report Mr B was sent. Given that it may be that even if Mr B had removed his tree when the neighbours approached him then underpinning would still have been required. If that’s the case then, while the tree remained in situ at the point Mr B took out his policy with Lloyds (and arguably represented a continuing nuisance), any ongoing issues it might have been causing can’t have been what led to the need for underpinning at the property (and the subsequent claim against Mr B).

So for the reasons I've set out I think Lloyds acted fairly in concluding this claim wasn't one Mr B's policy covered. I've set out in a separate decision my findings on his complaint against D.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 7 June 2024.

James Park
Ombudsman