

The complaint

Mr H complains about the way Liverpool Victoria Insurance Company Limited trading as LV= ["LV"] handled a claim he made on his buildings insurance policy following subsidence at his property.

What happened

I previously issued a provisional decision on this matter on 14 May 2024, an extract of which is detailed below:

"The background to this complaint is well known to the parties so I'll provide a summary here. This is not intended to be a detailed record of all that has happened over the life of the complaint, but an overview of the key issues.

- *Mr H's property experienced internal and external cracking in July 2018. He reported this to LV to make a claim on the policy for subsidence. LV appointed an agent to manage the claim.*
- *Monitoring of the property for movement was undertaken between September 2018 and August 2020. LV attributed the subsidence to the presence of trees alongside the property which it said were taking up moisture from the soil causing it to shrink. LV arranged for the trees to be removed as it said this would restore stability.*
- *Following this, LV said the property had stabilised and so structural work was unnecessary. Mr H was unhappy with this so he instructed a surveyor to inspect the property and damage.*
- *The surveyor was of the opinion that LV's conclusion as to the cause of the subsidence was questionable, particularly as it hadn't undertaken further monitoring after the mitigation works. He recommended a further 12 month period of monitoring before remediation work commenced. He also said that LV's proposed installation of heli-bars to address the damage could result in damage to the neighbour's property if they weren't installed correctly.*
- *Mr H had another report undertaken by a structural engineer. It also highlighted that no movement monitoring had been undertaken subsequent to the tree removal and concluded that it hadn't been demonstrated that the mitigation work had achieved stability. It also said, if the building proved to be stable, then the proposed superstructure repair appeared to be a reasonable solution but it wouldn't be appropriate to carry out works until the property was shown to be stable.*
- *Following receipt of these reports, LV agreed to continue with the monitoring to ascertain if stability had been established. In November 2022, LV decided the property had stabilised and it was ready to proceed with repairs. But Mr H said his expert didn't think stability had been achieved and Mr H didn't think LV had sufficiently shown the implicated trees were the cause of the subsidence.*

- *Mr H was unhappy with LV's claims handling including but not limited to, poor communication, slow progress with the claim, its expectations of him to monitor damage and failure to respond quickly to his concerns about safety. He made a complaint to LV in March 2023 about this and the issue of stability but he remained unhappy and raised a complaint with this Service.*
- *Our Investigator considered the evidence and concluded that LV had acted fairly in saying the property had stabilised based on the available evidence. He said it had caused unnecessary delays, had communicated poorly and hadn't given Mr H appropriate advice about the claim.*
- *He said LV should reimburse Mr H for the legal fees he incurred and for the surveyor's report. He also said LV should pay £500 for the delays and poor communication*
- *LV accepted the Investigator's recommendations; Mr H didn't.*
- *So the complaint has come to me for an Ombudsman's decision.*

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.

Mr H has commented extensively on LV's claims handling and the reasons for his dissatisfaction. The remit of this Service is to say how complaints should be solved quickly and with minimum formality. In my role as an Ombudsman at this Service, that means I will focus on what I consider to be the crux of a complaint and may not comment on everything that's happened over the entirety of a claim or all the parties have said. This isn't intended as a discourtesy, it merely reflects the quick and informal nature of our role.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should also settle claims promptly once settlement terms are agreed. I'll be keeping this in mind while considering this complaint together with what I consider to be fair and reasonable.

Stability

It seems to me, the questions of whether Mr H's property has been stabilised and whether LV has correctly identified the cause of the damage, are the crux of this complaint. So, I've gone on to consider the evidence presented by the parties on this issue.

LV undertook site investigations and monitoring of any movement and concluded trees adjacent to Mr H's property were the cause of the subsidence. From what evidence I've seen, this appears to be the most likely cause of the damage, that is to say I've been given nothing from any experts that suggests an alternative cause. LV undertook mitigation works, liaising with third parties to do this, and the implicated trees were cut down in November 2020.

Following the tree removal, LV said it believed this had achieved stability but it didn't undertake any further monitoring to confirm this. Mr H remained unconvinced particularly in light of the apparent lack of certainty from LV. In the circumstances of this complaint, this lack of monitoring strikes me as unusual, particularly given Mr H's concerns. Later, when Mr H challenged LV about why it hadn't undertaken further monitoring, its explanation was that

Mr H hadn't asked it to. This strikes me as unusual too as I wouldn't expect policyholders to have to tell an insurer how to manage site investigations on an insurance claim – nor have to ask for such steps to take place to ensure an effective and lasting repair has been carried out.

Mr H instructed a building surveyor to provide his opinion on the structural movement of the property. The expert said LV's reasoning in relation to the trees and their effect on the ground was inconsistent. He identified a number of areas of concern including the vicinity and maturity of the trees, the lack of undulations around the stumps and the path which also showed no sign of having been repaired previously.

He concluded, in light of these, LV's decision that the trees were the exclusive cause of subsidence was highly questionable. He said it was premature to discuss the scope of remedial works and a further 12-month period of monitoring was recommended. I find the comments from this suitably qualified expert to be persuasive and I understand why Mr H was increasingly concerned about LV's conclusions and approach.

Mr H also instructed a report from a firm of structural engineers. This concluded it hadn't been proven the tree roots had been shown to be the cause of the movement of the foundations, nor that removing the trees had achieved stability. It also commented on the lack of monitoring after mitigation works, which it said would be standard practice in these circumstances.

While these reports were provided to LV, it didn't offer full commentary on the conclusions. I think LV should have engaged with the comments in these reports to explain its position and why it disagreed with Mr H's two experts who reached broadly similar conclusions, particularly given Mr H's ongoing concerns. But it didn't do this, causing Mr H further frustration and distress.

Following these reports, LV agreed a further period of monitoring in line with the report recommendations. In November 2022, LV let Mr H know it felt stability had been achieved and it was ready to proceed with repairs. I understand why Mr H remained unhappy about LV's apparent lack of certainty about stability having been achieved particularly in the light of his experts' opinions

In addition, it was acknowledged by the parties that there was still some movement at the property, the cause of which remained uncertain. This seems to be borne out in LV's monitoring results and the comments from LV themselves and its agents.

I note from LV's own records, in April 2023 it interpreted the agent's monitoring results as still showing movement at the property and it noted the agent would need to provide a detailed explanation why it felt this wasn't subsidence related. Subsequently in May 2023, it said it was confident in the findings that the property was stable – within acceptable tolerances, at least. But it also acknowledged the unexplained movement, outside of normal tolerance, which it thought might need to be investigated by an independent engineer.

For the reasons I've explained above, I'm not persuaded LV has satisfactorily shown it's more likely than not it has achieved stability of Mr H's property. I think there's sufficient uncertainty about this to mean a further inspection would be warranted. Given Mr H's distrust of the agents, it seems to me this inspection should be undertaken by an independent engineer to allow greater confidence in the results. So, I will be directing LV to make arrangements for this at its own expense.

If the independent report concludes stability hasn't been achieved, then I would expect LV to undertake further investigations to establish the cause of the movement, assess whether this

is covered under the terms of the policy and then clearly explain the plans to address it. And if the report confirms stability, then it would seem reasonable for LV to proceed with the repairs stage of the claim as it would seem most likely the cause was the implicated vegetation previously identified by LV.

The removal of the trees

LV arranged for the implicated trees to be removed by the third party on whose land they were growing. This is in line with what this Service would expect for trees shown to be causing an impact on a property.

Mr H has concerns the trees haven't been treated to prevent regrowth and that the third party has gone on to plant more trees in the same area. An insurer will be limited in the actions it can take when a third party plants trees on its own land particularly if there's nothing to show the new trees are having an impact on a property.

While I appreciate Mr H's concerns, I've not seen enough evidence to persuade me what remains of the original trees or the new trees planted since are having any influence on Mr H's property at this time. Based on the evidence available to me, I'm not persuaded LV needs to do anymore here.

But I would expect LV to revisit this issue if the independent engineer's report doesn't confirm stability of the property, or if any expert evidence is provided by Mr H that determines LV's current proposals/previous actions will not be effective and lasting.

The soakaway

LV's drainage agents recommended in their report in January 2019 that a rain water pipe should be re-routed into a new soakaway in the back garden and explained modern building regulations required this to be at least five metres away from the house.

From what I've seen though, at this stage, this was unrelated to the damage under the claim as it hadn't been shown to be related to the subsidence. The agent considered it would therefore be private work. I know Mr H thought LV was obligating him to undertake this work and I understand from some of LV's communications why he would have believed this.

But LV did clarify this for him definitively in September 2022 when it said "I don't think [the agent] or your insurers would have any intention of attempting to compel you to install a soakaway if you chose not to do so". I do acknowledge though, the issue was mentioned again in January 2024, although LV quickly confirmed, within a few days, this was a mistake made by someone less familiar with the claim.

Overall, I think LV could have communicated its intentions much more clearly here and because it didn't, I think it caused Mr H additional unnecessary distress and inconvenience.

The proposed solution and remedial work

LV's proposed approach to resolving the damage to Mr H's house was by installing heli-bars which would link Mr H's property to his neighbour's. His surveyor's opinion was this was a highly contentious solution and would only work if the property had achieved stability.

Additionally, his engineer said if Mr H's property was connected to his neighbours and the property wasn't stable, it would lead to further damage to Mr H's property, his neighbour's, or both. But his opinion was the proposed repair seemed to be reasonable on the understanding that the building was now stable. I find these professional opinions

persuasive.

Overall, I've not seen enough to persuade me the approach proposed by LV is inherently wrong and that other engineered solutions are required. But it's clear to me, the work must be undertaken correctly and can only be undertaken once it has been shown the property is stable.

LV's obligation is to ensure whatever remedial work – including decorative - it undertakes results in an effective and lasting repair. While I can't make findings on something that may or may not happen in the future, if LV's proposed solution isn't effective, LV would then need to reconsider other available options. Mr H could of course raise a further complaint with LV about this if it were to occur.

Mr H says during discussions LV said that certain damage wasn't covered under the terms of the policy. I understand why this would have been distressing for Mr H and he asked his legal representative to consider the terms of the policy for anything unusual. Ultimately though, LV has accepted the claim and has confirmed it's not going to be relying on any exclusions or clauses at this time. So while this no longer seems to be an issue, I understand why Mr H would have found it distressing at the time.

General claims handling

Mr H has referred to numerous aspects of poor claims handling by LV. I haven't commented on every one individually in my decision, particularly where they were part of ongoing claims management and subsequently an alternative position was adopted by LV. But I have kept them all in mind when considering the overall claims journey, the impact this had on Mr H and how I think LV should recognise this.

It's evident from my careful review of the evidence, LV's communication was poor throughout the claim. Mr H often had to make multiple requests for information or updates from LV and it was often slow to respond or didn't respond at all until chased repeatedly.

This happened regularly throughout the claim and several times when Mr H was inquiring about safety issues including the structural safety of his house and the potential consequences of any instability on the children who used the path running adjacent to it. I understand why LV's slow response to these kinds of enquiries would have been particularly concerning for Mr H.

Mr H also identified that LV told him he needed to monitor aspects of the damage, a task which he reasonably said he wasn't qualified to do. While I think LV's request was just to visually observe the damage for any changes, Mr H pointed out the difficulty this would present due to the lack of visibility of the area in question. I understand why Mr H felt LV was pushing responsibility for this back on him.

I also think the claim could have been handled significantly quicker than it was. I accept there may have been some impact due to the Covid pandemic and it was necessary to undertake a further period of monitoring on Mr H's expert recommendations, but given my experience of claims of this type, I still consider this went on longer than was necessary. For example, if monitoring had been undertaken following the mitigation work, the claim would have moved forward much quicker than it did.

Mr H employed legal representation as a consequence of LV's lack of responses to some of his enquiries. He did this out of a sense of frustration at LV's lack of cooperation. And while LV has agreed to cover these legal costs – more on that below – it's clear to me this was another thing that added to his distress and inconvenience.

Overall, I think LV has made the claim journey much more distressing for Mr H than it needed to be. And I'll be keeping this in mind when considering the compensation it should pay Mr H as a consequence.

Legal fees and engineer's report costs

Our Investigator said LV should pay Mr H's legal fees up to the point LV agreed to recommence monitoring of the property and to reimburse his surveyor's report which resulted in monitoring of stability to be recommenced and claim to be progressed. LV has agreed to do this so there's no need for me to comment on this further.

Depending on the outcome of the independent engineer's report on whether LV has achieved stability and its approach to next steps, Mr H may decide to make another complaint and I would expect LV to consider any request for further reimbursement as part of that claim.

Putting things right

For the reasons I've explained above I am directing LV to pay for a report on the stability of Mr H's property from an independent and suitably qualified professional expert to give Mr H a clear conclusion on whether stability has been achieved.

LV should provide Mr H with the names of three such independent experts and allow him to choose one to undertake the inspection. If the results show stability has been achieved, it would be reasonable for LV to proceed with the repairs as its proposed. But if it hasn't, then LV will need to undertake further investigations to identify the cause and then take appropriate action to ensure stability is achieved and then cover the cost of a reinspection by the independent expert.

If it hasn't done so already, LV should reimburse Mr H with the costs of the legal advice he received and the cost of his surveyor's report which led to monitoring recommencing. It should also pay 8% simple per annum on these amounts from when Mr H paid them until it reimburses him.

It should also pay Mr H £800 to reflect the impact of its poor claims handling and delays".

Both parties responded to my decision and I've summarised their comments below:

LV said:

- Recent monitoring readings showed minimal downward movement and it thought the only way of confirming stability was through further monitoring over summer into autumn. It didn't consider an inspection by an independent third-party engineer to be necessary. It accepted the increased award of £800.
- Mr H hadn't provided it with invoices of the fees he incurred after it agreed to reimburse him and so it wasn't fair to include 8% interest on the reimbursement.

Mr H said:

- He remained unhappy with LV and stated a belief it would likely fail to act on instructions from this Service.
- He welcomed the inspection by an independent expert to confirm stability but thought LV ought to prove the cause of the subsidence.

- All his legal and professional fees ought to be covered and he was willing to provide invoices.

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.

LV has submitted additional more recent monitoring readings which weren't previously provided when I first considered this complaint. I acknowledge these do now seem to show less significant downward movement than the ones previously available to me.

While LV may be willing to undertake further monitoring – and that's a matter I'll leave LV and Mr H to discuss - given Mr H lost faith in LV and its contractors some time ago, I remain of the view that an inspection by an independent expert is likely the only thing that will give Mr H peace of mind that the property is indeed stable. So, my opinion on this hasn't changed.

As I explained in my provisional decision, if the independent inspection confirms stability, on balance, it seems more likely LV has successfully dealt with the cause of the subsidence. If on the other hand, the property is not shown to be stable, I would expect LV to undertake further investigations to establish the cause of any ongoing movement and address it if it's caused by an insured peril. It would also then need to arrange a re-inspection by the independent expert. This should establish the cause of the subsidence has been identified and addressed appropriately.

Regarding Mr H's concerns about LV acting on what this Service directs, if Mr H accepts this final decision within the required timescale, it becomes legally binding on LV. So, if it *did* fail to adhere to my direction, Mr H could enforce the decision in a court without the merits of the complaint having to be reconsidered by the court.

I remain of the view that LV's agreement to reimburse the cost of Mr H's legal fees up to the point it agreed to recommence monitoring and the fees he paid for his surveyor's report is fair and reasonable in the circumstances. I can't see that the full extent of the cost of legal fees has been dealt with by LV so, these would sit outside the scope of this complaint. But as I said in my provisional decision, if Mr H makes any further complaints to LV about this issue or its actions subsequent to this complaint, I would expect LV to consider any request for further reimbursement, on provision of supporting evidence.

I acknowledge what LV says about not having received invoices from Mr H to show what he paid, and when, so it can arrange reimbursement. I understand Mr H had held back from providing the invoices until the outcome of this complaint was known. But I see no reason why this would have been necessary as LV had already agreed to pay these, irrespective of this Service's final decision. Given this, I think it would be fair for LV to pay interest from when Mr H shows he paid the fees, until two weeks after LV asked him to provide paid invoices as substantiating evidence. I'm satisfied this is a reasonable timescale for them to have been provided in.

My final decision

My final decision is that I uphold this complaint and direct Liverpool Victoria Insurance Company Limited trading as LV= to:

- Provide Mr H with the names of three suitably qualified professional experts to assess whether stability of Mr H's property has been achieved.
- Mr H will then be able to select which of the experts undertakes the inspection.
- The cost of appointing the expert – including a re-inspection if necessary - will be covered by Liverpool Victoria Insurance Company Limited trading as LV=.
- Once the results are known, it should undertake the next steps as detailed above.
- Reimburse Mr H his legal fees up to the point monitoring recommenced and reimburse the cost of the surveyor's report on receipt of appropriate evidence to show the cost and that payment was made. Together with interest at 8% simple per annum* on the amounts from when Mr H paid them until two weeks after Liverpool Victoria Insurance Company Limited trading as LV= requested invoices from Mr H.
- Pay Mr H £800 for the distress and inconvenience it caused him through its delays and poor claims handling.

Liverpool Victoria Insurance Company Limited trading as LV= must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

*If Liverpool Victoria Insurance Company Limited trading as LV= considers that it's required by HM Revenue and customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue and customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 July 2024.

Paul Phillips
Ombudsman