

The complaint

Mr V complains that Liverpool Victoria Insurance Company Limited (“LV”) has unfairly handled a subsidence claim under his home insurance policy.

Any reference to LV or Mr V includes respective agents or representatives.

What happened

The background of this complaint is known between parties, so I’ve summarised events.

In 2018 Mr V made a subsidence claim on his buildings insurance policy following damage to his property. LV accepted the claim and following some back and forth it arranged for the tree thought to be causing the problem to be removed.

Following the tree’s removal, water pooled in several areas within his garden around the location of the removed tree. Mr V said this has caused him to be unable to use the garden as he had previously. He raised this with LV and it looked into things – completing various inspections, commissioning several reports and carrying out works to put it right.

Following a recurrence of the water pooling issue Mr V raised the matter again. In November 2023 LV provided its final response letter. It said it had carried out a thorough investigation and said there was a steep slope from the street at the front of the property down towards the rear garden. It said rainwater would run off this slope and collect at the lowest point of the garden. It concluded it had no control over the topography of the ground, excess rainwater, and excess ground water. So, it said it could not be responsible for works to address what it termed to be “*a natural effect*”.

Mr V disagreed with LV’s findings, saying the water was not running down to the lowest part of the garden. He said removed the tree had been in the upper third of the garden, with water now pooling above, below, and at the side of where the tree was removed. And he said he’d been assured LV would take responsibility for any problems that stemmed from its removal. He also said he would’ve asked for an alternative repair (such as a root barrier or underpinning) had he known the tree’s removal would lead to such impactful consequences.

LV stood by its position, saying it had now exhausted all options in regard to the issue. That the pooling of water was a pre-existing issue hidden by the tree’s presence and was simply not connected to subsidence and not an insured peril under the policy.

The complaint was referred to this Service and our Investigator looked into things, saying:

- LV had completed detailed investigations into the cause of the water pooling which was reasonable.
- LV’s claim notes highlight there were no drainage issues prior to the removal of the tree – so it appeared most likely the pooling had only occurred as a result of the works it completed under the subsidence claim.
- She disagreed with LV’s description of the pooling issue as pre-existing but hidden,

saying there was no issue prior so it needed to put things right. She directed LV to find a solution to put right the drainage issue alongside £350 compensation for the distress and inconvenience caused.

Mr V accepted the assessment. LV didn't, saying photos from the property showed it to be on a heavily sloping ground with no drainage provision within the driveway – it said:

“The issue is the excess rainwater collecting at the lowest point of the garden on a clay soil which can be difficult to drain through. Whilst [Mr V] is suggesting that historically the tree would have extracted the rainwater, this is not the case as it is the hair and fibrous roots which take up ground water and these are not situated where the trunk of the tree would have been but spread out at the end of the root system away from the tree which is why these roots were found under the foundations of the home. In addition as seen in the below aerial photos there is a significant amount of surrounding vegetation that would still be extracting moisture from the ground and so the removal of one Oak tree in itself would not result in excessive ground water as confirmed by the Arborist who previously attended.

Any issues that may have affected the ground conditions following removal of the tree have been addressed with the historic works that have already been undertaken however we cannot be responsible for change in weather events over recent years and [Mr V] should look install drainage within the driveway to take away the rainwater run off from the heavily sloping site.”

The Investigator considered these points but didn't change her mind. She said:

- LV hadn't provided any evidence to substantiate its claim there were more severe weather conditions at the time when this pooling issue began or if there was, that this was connected to the pooling.
- LV's position meant the roots extending across the garden would mean ground water was no longer being absorbed elsewhere – so this was in line with the arborist's findings as to why the pooling is around the tree.
- The surrounding vegetation may absorb ground water, but she was persuaded it would take a greater period of time for the additional vegetation and ground conditions to accommodate the additional moisture that once would've been taken by the substantial oak tree.
- LV's notes reflect this problem with pooling had not been present prior to the removal of the tree.

LV disagreed and asked for an Ombudsman to review the matter, saying it was not its responsibility to provide preventative measures for water pooling in one area of the consumer's garden. So, the matter has been passed to me.

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.

Having done so, I'm upholding this complaint. I'll explain why.

There's no dispute that Mr V's property suffered subsidence and the claim was accepted by LV. Of which it chose to resolve matters itself by instructing an agent to remove the tree.

When an insurer chooses to settle a claim by repair, we expect it to indemnify the consumer

by carrying out an effective and lasting repair. To be effective the repair must fully put right the damage. And to be lasting it must do so for an appropriate amount of time.

LV will be aware of this Service's approach in circumstances where we would generally say if the only way to carry out an effective and lasting repair to the insured damage, an insurer may be required to carry out work on uninsured damage.

The questions I would consider in deciding this would be:

- Am I satisfied that the need to carry out the uninsured work has arisen as a direct result of the insured damage; *and*
- Am I satisfied the uninsured work is genuinely necessary for an effective and lasting repair to the insured work.

In this case I've seen from LV's notes it had considered various options as to how it could resolve the subsidence issue. This included removal of the tree, installing a root barrier or underpinning. LV decided to go for the solution of removing the tree – which from what I've seen has resolved the underlying subsidence issue. So, on its face, this seemed like a sensible solution for a prudent insurer to take. And it was in line with our approach to carry out repairs that aren't insured works (removing a tree) to resolve an insured peril (the subsidence to Mr V's property).

In making this decision I would expect an insurer to take into account the impact and potential risks that such an option may lead to. I've been given nothing to suggest LV had any reason to believe the pooling issue would occur – but I'm not persuaded this means it can simply walk away from the issue either.

LV has carried out a lot of investigation as to the cause of the pooling and it seems from its claim notes it was keen to try to resolve the matter. It provided a report from a leak detection specialist from October 2021. They made various comments regarding the extent of water absorbed by a mature tree and the absence of this absorption leading to soil to swell, concluding:

"...we are of the opinion that the surface water on the rear lawn, is likely due to the removal of the large oak tree which was previously located within the affected area."

LV has described an arborist's report from late 2021. I've not been given a copy of the report but LV has provided a summary of their findings which say:

"The arborists believe that in grinding-out the stump, the tree-works contractors in effect buried a large degree of the stump grinding arisings – either intentionally in order to save on waste disposal, or inadvertently, as part of the stump-grinding process. This created a large 'spongey' mass of saturated chipped-up wood now overlaid with soils and grass. The wood-chip mass, being extremely loose, compressible and absorbent, appears to be acting as a sponge and retaining the water just below the surface."

The other smaller patches of a similar nature around the garden, also appear to coincide with where the tree work's contractors ground-out surface roots that were protruding through the lawn."

Without further investigations however, the arborists advise that this is only the most likely cause of the waterlogging taking into account the history of the site, the works, and the conditions found. The only way to know with certainty is to excavate the main area to assess the extent of the wood-chip mass that sits below the surface – and

then re-import clean topsoil to replace. Additionally, it is reported that there may also be a degree of panning of the underlying clays which may be exacerbating the water logging of the upper topsoils across the area. This again would need significant excavation to confirm but could possibly be resolved by mole-draining or air-injection of the soils to break up any pan and improve subsoil permeability."

So, it would seem the most likely cause known at the time was either the tree removal itself or the works related to the removal of the tree.

Following these findings LV contracted a specialist in line with the arborist's recommendations – LV's notes state:

"they [the specialist] are advising that they think the issue is due to the tree being removed & the fact it no longer takes the gallons on water from the ground & is recommending that a French drain be installed."

Within these notes LV says it and the arborist disagrees with their findings so it seeks another specialist. I've been given limited information as to why this was the case other than one line in its notes which says "...even if the tree was still in situ it wouldn't be taken a lot of water from the ground at this time of year & there is still a significant amount of other vegetation in the area to draw water...". I've not been provided with any notes or a report from the arborist directly to support this.

LV then arranged for a different company to dig up and dispose of the area compacted by the woodchip, including various works ending with laying new soil and re-seeding. It appears this took place around March 2022. Following this there was a back and forth between Mr V and LV in which he described the matter not being resolved. LV essentially asked him to be patient and LV agreed to reconsider the matter later if it re-occurred (which was Mr V's concern). From what I've seen LV was trying to resolve the matter – and I think its request to wait and see in the circumstances was reasonable.

Mr V raised the issue again around a year later in September 2023. And following this LV appears to suggest a different cause for the pooling – the slope of the pathway – saying the water has pooled at the lowest point of the garden. From the evidence I have, including a map of the garden produced by one of LV's agents, the water doesn't appear to have pooled at the lowest point of the garden, as Mr V has said himself. LV's provided little in the way of explaining this when challenged by our Investigator. And it's also unclear to me why – if this were the case – that such a straightforward solution of water flowing from the highest point to the lowest with an absence of drainage wouldn't have been considered and established earlier within its various investigations from various experts in their field.

LV has also described the matter as pre-existing but hidden by the presence of the tree. I don't agree in these circumstances it is fair to say there was a "*pre-existing*" issue. I say this as from the reports and evidence I've been given, Mr V previously had a garden that did not suffer from heavy water pooling in the time he's lived at the property. Following the repair works that LV carried out – and was responsible for ensuring an effective and lasting repair, it appears this issue of pooling has occurred. I want to recognise again that LV did make efforts to try to identify and resolve this. However from what I've seen these attempts did not work. And ultimately it would seem the method it chose to resolve the subsidence claim led to this issue occurring. In these circumstances I don't agree it would be fair or reasonable to leave Mr V in a position where LV's actions have led him to have such issues at his property – even if this was unexpected to LV.

LV has mentioned commentary from the arborist regarding surrounding vegetation but failed to provide evidence of this when the Investigator has challenged LV's most recent position.

LV has also made comments about recent weather conditions in the last few years causing this issue – again unsupported by any sort of report or detail. So, while I recognise its possible LV's position may be accurate, this hasn't been supported by evidence and expert opinion – or at least not provided to this Service.

I recognise LV has raised that this matter of water pooling is not caused by subsidence. And I entirely agree that the matter of water pooling in Mr V's garden does not appear to be caused by subsidence nor any other peril under this policy. But this does not change anything in line with the reasons I've given above.

For all of the above reasons I'm satisfied LV still needs to do more to put things right for Mr V – and that this issue is directly linked to the repairs and remedy it put in place to his subsidence claim. So, I am directing it to accept this damage and put this right under its obligations to provide an effective and lasting repair as part of that previous subsidence claim. Should there be a later dispute about this repair/settlement that LV is unable to resolve, this may be a matter Mr V is able to bring back to this Service subject to our usual considerations around jurisdiction.

I also want to recognise the distress and inconvenience LV has caused – and I'm satisfied the sum of £350 proposed by our Investigator puts right the frustration he would have experienced during the time Mr V has been unable to use his garden and the back and forth he's had to engage in to try and move this matter forward.

My final decision

I uphold this complaint and direct Liverpool Victoria Insurance Company Limited to do the following:

- Pay Mr V £350 in compensation for the distress and inconvenience caused.
- Accept this water pooling issue as part of the previous subsidence claim and put this right under its obligations to provide an effective and lasting repair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 8 January 2025.

Jack Baldry
Ombudsman