

## The complaint

Mr C complains about Liverpool Victoria Insurance Company Limited's ("LV") decision to decline a subsidence claim made on his buildings insurance policy.

## What happened

The circumstances of the complaint are well known to both parties, so I'll summarise events. Mr C made a claim on his buildings insurance policy when crack damage was discovered to his property.

LV declined the claim saying there was no obvious subsidence related damage and so, there wasn't an insured peril. Mr C disagreed and provided expert evidence which led to LV undertaking further investigations. But already unhappy with how the claim had progressed, Mr C brought a complaint to this Service.

An Investigator upheld it saying LV hadn't done a sufficient initial investigation and so, had caused delays. Approximately twelve months of level monitoring followed, ending in January 2024. LV declined the claim saying the results showed negligible downward movement to the foundations. So, it wasn't satisfied the damage to Mr C's property was caused by subsidence. It said the verticality report confirmed the end gable wall was moving at the first-floor level and twisting outwards at the top. It said this was likely due to the weight of the roof and a lack of lateral restraint and ties, not subsidence.

Mr C provided evidence from his structural engineer and arborist – both of whom disagreed with LV's conclusion. In summary, the experts said adjacent vegetation was the most likely cause of the damage - having caused the composition of the clay soil to shrink and the foundations built on it to move downwards. LV considered the evidence but didn't change its position.

A complaint about whether LV's decision to decline the claim was considered by the Investigator. The Investigator concluded it was fair. She said the monitoring results *didn't* indicate movement to the property as a result of subsidence. Instead, it highlighted movement which was most likely due to the wall not being tied correctly.

Mr C disagreed and so, the complaint has been passed to me for an Ombudsman's 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.

Together with his experts, Mr C says vegetation absorbing moisture from the soil - thus changing its composition - has caused the foundations to move downwards and in turn damage his property. So, I've looked at the available evidence.

LV has carried out approximately 12 months of level monitoring. It said the results showed

negligible downward movement to the foundations. Having looked at the results, I'm satisfied this is a reasonable conclusion as the variation in readings is minimal – less than 1mm across all three points. The results do not therefore, support Mr C and his expert's position that there is continual downward movement of the foundations.

I've also looked at the verticality report which shows clear movement to the end gable wall. LV has said the end wall is bowing out at around 80-85mm – and from looking at the report, this appears to be a reasonable conclusion. LV has said it can't confirm if this movement is due to the property being built without lateral restraint or is due to a failure of lateral restraint. But either way, based on the monitoring results, I'm satisfied LV has shown the foundations are stable – which is what's key.

Mr C has provided expert evidence to refute this, and so I've considered whether this persuasively shows LV's conclusion is unreasonable. Mr C's arborist reported in June 2024 that he considered the building to be affected by vegetation related clay shrinkage. This was based on: the property having been built on shrinkable clay soil; there being tree roots under the foundations; the vegetation being in influencing distance. He also said there aren't any drains in the area of the damage – suggesting there's not an alternative cause – and he said the damage has been described as “ongoing”.

While the existence of clay soil *may* predispose a property to subsidence – the very existence of it, doesn't mean the property *is* subsiding. Nor does the absence of faulty drains mean any movement to the property *must* be as a result of subsidence. And the damage having been described as “ongoing” doesn't mean it's attributable to subsidence. It's quite possible – as LV has evidenced – the damage is due to a lack of lateral restraint. Whilst the existence of roots under the foundations *may* cause subsidence, the monitoring results – which shows the foundations are stable - appears to persuasively rebut this at this time.

Notably, the arborist hadn't had sight of the monitoring results at the time of his report and acknowledges the information was limited. So, I can't ignore that their findings have seemingly been provided without consideration of material evidence. When I consider this, together with the above, I'm not persuaded their findings compellingly challenge the monitoring results.

I have also reviewed the findings of Mr C's suitably qualified chartered structural engineer. The engineer had previously said the structural movement is significant and appears to be ongoing. They recommended using an underpinning injection and lateral ties to stabilise the property.

The engineer's findings say the arborist's report clearly shows the most likely cause of subsidence is vegetation. And I note the engineer doesn't consider the damage to be due to a lack of lateral restraint. But other than referring to the arborist findings - which notably, were made without sight of the monitoring readings – I'm not persuaded the engineer has provided sufficient evidence to explain why the 12-month monitoring results can't reasonably be relied upon. I consider these to be very persuasive, and Mr C's engineer hasn't, for example, provided their own monitoring readings to challenge LV's.

I note the engineer has said they fail to see why LV is declining the claim when LV's own expert said it was subsidence related damage. I've looked at the report the engineer refers to and note it says, “*this report has been prepared at the request of our client [Mr C]*” and “*our instructions have been taken directly from the Client.*” So, I can't agree it was LV's engineer who made this finding, but in any event, that report was made in October 2021, and since then the monitoring has shown the foundations to be stable for a period of 12 months.

I'm not determining whether there is, has or continues to be subsidence related damage – rather I'm deciding whether LV's decision to decline the claim is fair and reasonable based on the investigations and evidence.

I'm satisfied LV has undertaken reasonable investigations before reaching its decision, and the results of the monitoring investigations persuasively support its decision to decline Mr C's claim for subsidence related damage.

I appreciate this decision will be very disappointing for Mr C as I don't underestimate the stress this situation has caused him. But for the reasons set out above, I'm not upholding his complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 February 2025.

Nicola Beakhust  
**Ombudsman**