

The complaint

Mr B complains about how Liverpool Victoria Insurance Company Limited ('LV') dealt with a claim he made under his buildings insurance policy.

Much of Mr B's dissatisfaction relates to the actions of LV's agents. As LV accept they are responsible for the actions of their appointed agents, any reference to LV should be interpreted as also covering the actions of their agents.

What happened

The background to this complaint is well known to Mr B and LV, and has occurred over two years. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

In November 2022, Mr B says his property suffered water damage. In early December 2022, he notified LV and registered claim against his insurance policy. LV say they offered to arrange for the contractors to investigate the matter, but Mr B wanted to use his own contractors due to the specialist nature of some of the decorative work. Mr B provided LV with two quotes for the work. They ranged from £33,500 to £38,000.

Due to the quotes provided, LV appointed an agent to assess the claim in detail. LV ultimately declined the claim because of fraud concerns related to the quotes provided and part of the claim for damage to flooring.

Mr B raised a complaint about how LV had responded to the claim and as he remained unhappy with LV's response, he referred it to our Service for an independent review. Our investigator considered the complaint and recommended it be upheld. As LV didn't agree, the complaint was then referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As both parties have now responded, I've considered the complaint for a 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The responses to my provisional decision

I thank both parties for responding. Mr B responded to let us know that he had further developments with the independent surveyor visiting his property. He says that surveyor gave an opinion that the dark staining to the flooring might be indicative of water damage. This information is just an opinion - as well as being new evidence and it doesn't materially change my earlier finding that LV had fairly relied on gradual causes to decline this part of

the claim. If Mr B has new evidence, he'd need to present that to LV for their consideration.

LV provided a detailed response, objecting to my intended decision. Their comments don't change the outcome I'd intended to reach and I'll explain why.

It's not the role of our Service to determine the proximate cause of any damage being claimed for. It's our role to determine if LV have fairly considered and investigated the claim before reaching their decision/position. In this case, LV largely focused on the quotes for repair being presented dishonestly as evidence of a fraudulent claim. It was when their own digital forensic expert was unable to substantiate their suspicions that they doubled down on the flooring part of the claim.

It's important that I make it clear my findings in this complaint are in keeping with our general approach to this type of complaint, but they don't set a precedent and shouldn't be interpreted as such. I make this point as AXA have referred to policy holders making claims generally:

"....are we saying there are no consequences for Mr B [name redacted by Ombudsman] or indeed any claimant who tries to include existing damage as part of his/her claim?"

Ultimately, I've found that AXA can fairly decline the flooring part of the claim based on the available evidence - but it was unfair to do so for fraud reasons, as they haven't been able to persuasively show that it's more likely than not that Mr B has made a fraudulent claim, or exaggerated his loss within this claim. I've reached this finding having carefully considered all of the evidence and recent comments from LV.

As no new evidence has been presented that would materially change the outcome that I'd intended to reach, I find no fair or reasonable reason to deviate from my previously set out findings. Therefore, they form the basis of this, my final decision.

The scope of my decision

This has been a long running dispute between Mr B and LV. Since the complaint has been referred to our Service for investigation and our Investigator issued their assessment, LV have modified their position on the claim. After Mr B let us know he'd had further contact from LV about arranging a site visit, our Investigator clarified things with LV:

"...can you please confirm you're still declining the whole claim on fraud grounds or just negating to pay for the flooring and still considering the rest of the claim which will be dependant on the report you receive?"

LV said, in an email dated 21 November 2024:

"At the moment, this is the flooring element only and we are considering the remainder of the claim, although this will depend on the outcome of the report."

This is a departure from their position when our Investigator considered and upheld the complaint and recommended that LV had unfairly declined the claim for fraud. Generally, our Service will only consider events up until the date of the final response letter that addressed the complaint referred to us. This is what our Investigator considered in her assessment.

Anything that's occurred after that final response letter would generally be regarded as potentially grounds for a new complaint. However, in the specific circumstances of this complaint – and particularly because LV have put into action what would have been part of

my direction, I've considered the further developments in this claim as part of my provisional decision.

The previous overall fraud decline

LV argued that Mr B dishonestly presented quotes for the repairs. They've referred to inconsistencies in Mr B's version of events and him initially saying he was sent the quote and then later confirming it was his brother. I accept that how Mr B was sent the quotes by his brother was slightly unusual, as was Mr B, his brother and the companies that provided the quotes being unable to provide the original emails. But the expert evidence in this complaint (the digital examination evidence) provided by LV doesn't undermine Mr B's explanation. Therefore, I find that LV have unfairly relied on the fraud terms to decline the claim (roof/internal damage).

However, based on their recent email, my interpretation is that LV have put to one side a large part of their fraud concerns raised about the quotes presented. This could mean, as things stand, I don't need to make any findings on this part of the previous dispute.

In an email to Mr B from LV's agents dated 27 August 2024 Mr B was told:

"Please note that your Insurers LV= have requested that we reopen your claim and appoint a contractor from our network to undertake a full roof survey as well as appoint an independent surveyor to attend to scope for the required works internally."

I consider this action fair.

However, I also note this directly contradicts LV's repudiation letter dated 21 September 2023. In it, they stated that they were declining the claim for fraud, but *also* gradual causes:

*"Your claim is also declined for a secondary reason; the impact of the discrepancies and concerns is such that **we can't accept that you have sustained a one-off insured event**. [bold added for emphasis by Ombudsman] The occurrence of an insured and fortuitous event (Peril) as the cause remains unproven. This is because in light of the concerns, we can't satisfy ourselves that a one-off insured event operated."*

Given that LV's recent actions of arranging a surveyor to visit the property is positive, it's not one I'd seek to interfere with and therefore I've made no findings in relation to the above, secondary claim decline reason for the non-flooring part of the claim.

For completeness, I've outlined what LV will need to do to put things right, in relation to the unfair fraud decline reasons later in my decision.

The flooring claim

LV argued that Mr B dishonestly presented an exaggerated claim for damage to flooring. They've referred to a site visit and photos of the general condition of the floor as evidence to support their position. Mr B, on the other hand, has said that he was told by an agent on behalf of LV to include flooring as part of the quotes he was obtaining.

I've carefully considered this. An onsite conversation between two individuals might not always be fully reflected in business notes or records. This wouldn't be unusual. And where there are differing positions, I will consider if the other evidence presented supports or undermines one party's position.

A report carried out 20 February 2023 refers to the flooring:

*“As previously stated, there was a question into the damage to the wood effect panel floor. It was not possible to determine if it was a solid or engineered floor. **The floor has lacquer peeling from the surface, but this was reflective of the general condition throughout and not limited to one area....** [bold added for emphasis by Ombudsman]...”*

I've considered this comment alongside the photos and detailed reports provided. I've also carefully considered LV's comments in response to our Investigator's assessment:

*“...but our argument for fraud beyond reasonable doubt is on the flooring. **There was no damage to it from the Peril, PH has been unable to explain it, it had existing damage with lacquer peeling** [bold added for emphasis by Ombudsman] **and he presented it as part of his claim at FNOL and then sent documents to try and claim costs?**”*

On balance, I find that LV *can* fairly decline the claim for damage to the flooring on the basis that the damage wasn't caused by a one off, loss event being claimed for here. This isn't a new claim decline reason, it had previously been communicated to Mr B, but LV chose to place more weight on the overall fraud decline – which I have found to be unfair.

But I also find that LV acted unfairly when declining the flooring part of the claim for fraud reasons. I don't find that Mr B has gained financially through the flooring part of the claim as LV have fairly declined it for gradual causes.

The service provided by LV

Part of Mr B's complaint is how LV went about responding to his claim, including the actions of LV's agents. With any claim, there will almost always be inconvenience caused as the claim is validated. Here, LV challenged the evidence provided by Mr B and this added to the overall time taken and inconvenience caused. For balance, LV are entitled to investigate a claim before making their decision on their position.

Whilst the service provided may not have met Mr B's expectations, based on the available evidence, it wasn't poor to the extent that I find compensation would be appropriate for this reason.

Summary

I find that:

- LV acted unfairly when declining the entire claim for fraud reasons.
- LV can fairly rely on gradual causes to decline the flooring part of the claim, based on the evidence presented so far.
- LV will need to reconsider* the remainder of the claim (excluding flooring), in line with the remaining policy terms.

*This doesn't mean the claim automatically succeeds, it means based on the available evidence I find that LV have unfairly relied on the relevant policy fraud term to decline this claim and need to consider it again. It may be that LV choose to rely on another policy term to decline the claim.

Putting things right

Liverpool Victoria Insurance Company Limited need to:

- Remove any internal or external references to Mr B having presented a dishonest/fraudulent claim for flooring.
- Remove any internal or external references to Mr B's policy ending by way of an insurer led cancellation.
- Arrange for an independent surveyor to visit Mr B's property to help determine the proximate cause of all the damage being claimed for. *
- Reinstate the policy for the purposes only of reconsidering this claim, in line with the remaining (non-fraud) policy terms.
- If the claim progresses to settlement, give Mr B the choice of either having LV arrange and carry out repair works themselves or offer a cash settlement. Any cash settlement should be on the basis of what the independent surveyor deems to be the reasonable cost of repairs.

* If this has already occurred (as has been suggested), LV don't need to do it again. But they will need to follow the relevant, remaining parts of my direction.

My final decision

My final decision is that I partially uphold this complaint. Liverpool Victoria Insurance Company Limited now need to follow my direction, as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 January 2025.

Daniel O'Shea
Ombudsman