

The complaint

Mrs P is unhappy her claim for damage to her property was declined by Liverpool Victoria Insurance Company Limited (“LV”) following a build-up of water. LV were providing a home insurance policy.

What happened

Mrs P noticed a problem with the floor structure in her front room. She said she hadn’t noticed it before as the area is concealed by a big chair / sofa that sits near the window. She commissioned a builder to review the floor and he identified rotten timbers in the floor structure. He thought torrential rainwater had breached the air vent and penetrated the front of the building.

Mrs P made a claim and LV appointed a surveyor to validate the claim and inspect the property. The surveyor said there was no storm conditions on the incident date, and he concluded the damage was due to a gradual operating cause.

Mrs P doesn’t contest that there wasn’t a storm, but she believes her damage has been caused by a build-up of water under her floor, so she thinks she should be covered under the flood peril within the policy. She has also had her own surveyor investigate the cause of the flooding.

LV has since said, a claim under the flood peril still wouldn’t be covered as there is a general exclusion in the policy for “*faulty design*” of Mrs P’s drive. LV said the drive was installed incorrectly, with block paving too high against the level of the property which led to water running straight back through the air vent.

Mrs P would like her claim covered in full.

Our investigator decided to uphold the complaint. She thought the build-up of water met our service’s definition of a flood (a build-up of water), so she thought the claim should be considered under the flood peril. She didn’t think LV’s surveyor had provided evidence that the drive had been installed incorrectly, so didn’t think it should rely on the policy exclusion to decline the claim. She asked LV to settle the claim and reimburse Mrs P the cost of getting her own survey completed (plus 8% simple interest per annum). She thought the compensation paid was reasonable. LV disagreed, so the case has been referred to an ombudsman.

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.

Based on the circumstances and as Mrs P has accepted there wasn’t a storm, I’ve considered the claim under the flood peril. The policy doesn’t define this term, so I’ve used our own service’s definition of a flood to guide me: “*a flood doesn’t have to be a sudden or violent event. A flood can occur when water enters (or builds up) in a property slowly and*

steadily, and this doesn't necessarily have to be caused by a natural event. The key factor is that water has built up, regardless of where the water came from".

Mrs P has explained that she rarely ventured behind her sofa as it was positioned in front of her window, so I don't think she would've known if a build-up of water was occurring or not. She wouldn't have been able to see under her floor. She noticed the issue with the floor when she dropped something behind her sofa.

Reports from both Mrs P's own builder and from LV's surveyor show water was entering the property most likely through the air vent at the front of the property. So, given the extent of the damage that can be viewed in the photographs provided, I think it's reasonable to assume at times of heavy rainfall this is likely to have caused a build up of water. So, I think it's fair this claim is considered under the flood peril.

LV has said it wouldn't accept a claim under the flood peril as there is a general exclusion in the policy for faulty design. I've checked the policy and it says: *"we will not pay for any claim arising from faulty design, materials or workmanship"*.

For LV to rely on this exclusion, I'd expect it to provide robust evidence to support its viewpoint. However, I'm not persuaded it has done so. I'll explain why.

I don't think LV has made a fair assessment of the claim, rather than looking fairly at the claim, I think it has tried to find any reason it can to decline it. LV dismissed the claim under the storm peril, saying the cause was gradual. It then dismissed the claim as it said Mrs P didn't have accidental damage cover. Then finally, when the case has been progressed via our service, it said it wouldn't consider the claim under the flood peril due to the general exclusion in the policy for faulty design.

I've read through LV's surveyor's report, and he said: *"at the time of the inspection the insured has had the driveway replaced and has had a soakaway installed around the bay and the driveway has been lowered which should stop any further ingress of water"*.

However, when LV's surveyor did his inspection, Mrs P had had a new drive installed. I haven't seen any photographs or images provided by LV or its surveyor to support what it has said about the faulty drive. I've noted the words used by LV's claims handler also show the findings aren't certain. He states:

"It is highly likely that the block paving was installed too high making the drive height closer to the level of the airbrick".

"I suspect when the block paved driveway was installed pre 2016 that the ground wasn't lowered to accommodate the additional height of the blocks".

I think what LV have said is a possibility. However, as it hasn't provided evidence to support its statement and the drive that LV say has caused the problem wasn't available to inspect, I don't think it's reasonable that LV has used the exclusion in the policy to decline the claim.

Therefore, I uphold this complaint, I now require LV to settle the claim. As Mrs P had a further survey completed to try and overturn what I think is an unfair decision, I require LV to refund the cost of the survey (on receiving evidence of the cost). As Mrs P has been without this money LV need to add on 8% simple interest per annum (from the date the survey was paid to the date it is reimbursed).

Mrs P accepted our investigator's view which didn't consider offering additional compensation. The investigator thought the compensation was fair. So, as Mrs P hasn't disputed this, I won't consider this point anymore.

My final decision

My final decision is that I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to:

- Settle Mrs P's claim in line with the remaining terms and conditions
- Refund Mrs P her surveyor's costs (following the cost is proven), plus 8% simple interest per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 1 January 2025.

Pete Averill
Ombudsman