

## **The complaint**

Ms C has complained about the way Liverpool Victoria Insurance Company Limited (“LV”) handled a claim she made under her buildings insurance policy.

## **What happened**

The circumstances aren’t in dispute, so I’ll summarise the background:

- Ms C got in touch with LV to make a claim following damage to her property caused by roots from her neighbour’s tree.
- LV said the damage hadn’t been caused by subsidence. But it accepted the tree roots had caused a problem with the drainage which was covered by the policy. I understand it carried out repairs to put the problem right. It didn’t agree to cover any other damage or take any other steps in relation to the neighbour or their tree.
- Ms C complained about several aspects of the claim. In summary, she said LV:
  - Hadn’t covered the patio damage.
  - Wasn’t taking any measures to prevent future damage.
  - Wasn’t seeking to recover the claim costs from the neighbour.
  - Had caused avoidable inconvenience during the claim.
- LV said it had acted fairly on all points.
- Our investigator agreed LV had acted fairly during the claim. And she noted we didn’t have the power to consider complaint handling in isolation.
- Ms C disagreed, so her complaint 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.

- Ordinarily, I’d restrict the scope of this complaint to LV’s response in June 2024. But Ms C provided further information after that, which LV responded to, and that’s been included within our investigation. So the scope has expanded to include this too.
- As our investigator has noted, this Service doesn’t have the power to consider complaint handling in isolation. So, whilst I acknowledge LV’s complaint response was provided well outside the regulatory timeframe for doing so, I can’t take that into account when considering this complaint.
- The complaint referred to this Service concerns a number of points, so I’ll consider each one in turn.

- When considering what's fair and reasonable in the circumstances I've taken into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Whilst I've read and taken into account everything said by both parties, I'll only comment on the points I think are relevant when reaching a fair outcome to this dispute. That's a reflection of the informal nature of this Service.

*Has LV provided as much cover as it should have done?*

- The policy covers the buildings against loss or damage caused in certain ways only. As a result, for a claim to be covered, there must first be loss or damage. And, secondly, it must be caused in one of the ways covered by the policy. There may be policy terms which mean certain loss or damage is excluded – but those first two points must be met in order for a claim to possibly be covered.
- The policy includes 'standard' accidental damage cover, but not the optional extra of 'full' accidental damage cover. Relevant to this claim, that means accidental damage cover is limited to underground drains and pipes. LV has accepted a claim under this part of the policy. I understand repairs have been carried out.
- Ms C has suggested that as part of the drainage claim, LV should remove roots found underground. LV hasn't agreed to do so because these roots haven't damaged the drainage. I'm satisfied that's fair, because this part of the policy covers damage to the drains and pipes only – it doesn't cover the removal of nearby roots, which may go on to cause damage to the drainage in the future.
- I understand those roots have damaged the patio. And, given the presence of roots underground, it was possible they'd caused subsidence. The policy covers subsidence damage, so LV arranged for the property to be inspected and an assessment made as to whether there was subsidence. The first loss adjuster didn't find any signs of subsidence damage. A second one considered the matter independently and reached the same conclusion.
- In late 2024, Ms C arranged for E, a surveyor, to inspect her property. E's report said, in summary, there was no obvious indication of subsidence damage, but they couldn't confirm if damage was being caused under the house. And they said future subsidence damage couldn't be ruled out.
- That means none of the three professionals, all working independently, found signs of subsidence. So I'm satisfied it was reasonable for LV to conclude there was no evidence of subsidence at the time. In these circumstances, I wouldn't expect it to go further and carry out other investigations.
- Overall, I'm satisfied there's no evidence of any subsidence damage at this time. And, even if there was, the policy only covers subsidence damage to outbuildings and external areas, such as the patio, if the main home is also damaged by subsidence at the same time.
- There are no other causes of damage covered by the policy that might be relevant to this claim. So I'm satisfied it was fair for LV to limit the claim to the drainage repairs.

- This finding is based on the available information, within the scope of the complaint. Ms C is entitled to get back in touch with LV if things change or she takes further professional advice.

*Should LV take preventative measures?*

- As noted above, unless there's loss or damage – and it's caused in one of the ways covered by the policy – LV has no obligation to take further action.
- Whilst I can understand Ms C's concern that the tree roots may cause further damage in the future, the LV buildings insurance policy simply doesn't provide cover to prevent such damage.
- As a result, I'm satisfied LV acted fairly when it said it wouldn't take action to prevent further damage that may occur in the future or to support Ms C with the damage that isn't covered by the policy.

*Has LV acted fairly in relation to the potential recovery?*

- Ms C has suggested LV should recover its outlay from the neighbour who owns the tree or their insurer. She's also said LV could cover more aspects of her claim and add those costs to the recovery. And LV could support her by seeking tree removal.
- The policy doesn't include legal expenses cover, so there's no obligation on LV to consider the matter from that perspective.
- The policy says: "*We're entitled to ... take proceedings in [Ms C's] name, at our own expense and for our own benefit to recover any payment we've made or to pursue a claim for damages*".
- In summary, that means LV has a contractual right to take steps to recover its outlay from a third party if it chooses to do so. But that doesn't mean LV is obliged to do so. Or that it should incur costs, outside the policy cover, and seek to recover them.
- Whilst I can understand the benefit to Ms C if LV were to pay for things that weren't covered and then seek to recover such costs from a third party, LV simply isn't obliged to do that. It's entitled to limit the claim payments to those things covered by the policy, regardless of whether a recovery may be successful.
- Recovery is a choice for LV to make and it's entitled to consider, amongst other things, whether that's likely to be successful and whether it's economic to pursue.
- There's been much discussion about whether a recovery from the third party would be successful. But LV has said it wouldn't be economic to pursue, given the relatively low costs involved, regardless of how successful it's likely to be.
- It's not my role to determine whether a third party is liable for claim costs. My role is to decide whether LV has acted fairly and reasonably. I'm satisfied it has, because the claim costs mean that even a straightforward recovery is unlikely to be economic. And it's not clear the recovery would be straightforward – or that it would be successful in any case. So I don't think LV has acted unreasonably by not pursuing it.

*Has LV handled the claim fairly?*

- It's clearly been an inconvenient and distressing experience for Ms C. But I haven't seen anything to persuade me LV was materially the cause of this.
- Whilst I can understand Ms C's natural concern about the tree and its potential to cause future damage, this isn't something LV caused or is responsible for resolving – for the reasons given above. In my view, LV has handled the claim reasonably promptly and communicated reasonably well. And it took steps to help Ms C by providing a second loss adjuster opinion – which it didn't have to do.
- Whilst Ms C may be disappointed by the minimal role LV has played in her broader problem, for the reasons given above, I'm satisfied LV has acted fairly. So any distress resulting from that isn't something I can hold against LV.
- LV has been clear throughout that it would consider a recovery and potentially other steps, such as seeking tree removal, depending on the circumstances. And a recovery would usually include Ms C's excess. I don't think any of that was incorrect or misleading, and it's all in keeping with usual claim handling approaches. But, once LV had looked into the claim circumstances, it decided not to pursue recovery – which, as explained above, is a decision it was entitled to make.
- Overall, whilst Ms C's distress and inconvenience isn't in doubt, I'm not persuaded LV has acted unreasonably. So I won't require it to pay compensation.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 17 April 2025.

James Neville  
**Ombudsman**