complaint

Ms M and Mr S are unhappy with their home insurer Legal & General Insurance Limited in respect of a subsidence claim they made to it initially in 2010 but which is still on-going.

background

Ms M and Mr S noticed cracks in their home in 2010 and contacted L&G. A loss adjuster was appointed (LA1). LA1 said a 4 foot rosebush in the front garden was causing the problem but began monitoring the movement of the property anyway. Into 2011 Ms M and Mr S removed the rosebush. They always doubted it was the cause of the problem though so asked LA1 for proof the property was stable. LA1 promised to monitor the property even after crack repairs were carried out but this didn't happen. The monitoring data it had gathered prior to the repairs starting wasn't shared with Ms M and Mr S but in September 2012 a certificate of structural adequacy was issued.

The crack repairs had completed just prior to this. But they had taken longer than expected and there had been problems with the quality of the work undertaken.

Following the issuing of the structural adequacy certificate, Mr S asked LA1 about the continued monitoring and kept complaining about this to LA1 into 2013. LA1 then closed its file. During the summer of 2013 Ms M and Mr S noted cracks reappearing. They called L&G and L&G asked if they wanted to make a new claim. Ms M and Mr S said "*no*", that this was the same claim. L&G wouldn't accept that and, at that time Ms M and Mr S weren't prepared to have another claim on their record so they continued trying to persuade L&G to re-open the old claim.

During the summer of 2014 the cracks got worse but Ms M and Mr S felt abandoned by L&G. The whole situation was causing them a lot of upset.

In the early summer of 2015 Ms M and Mr S decided to ask L&G to consider a new claim. L&G accepted the new claim and appointed LA2 (a different loss adjusting company than had been involved before). LA2 accepted that the damage was a continuation of that suffered previously (not a new claim). LA2 thought a small shrub in their right-hand neighbour's garden was to blame and then that a large tree on the other side of Ms M and Mr S's left-hand neighbour's home was causing the problem. The tree was owned by the local council. Some soil investigations were undertaken and, on the basis of those LA2 asked the council to remove the tree. The council objected. Ms M and Mr S made a lot of enquiries themselves with the council and, in early 2017, following its own loss adjuster visiting the area, the council removed the tree.

Ms M and Mr S though had never believed the tree, or the other vegetation, was the problem. They felt, and always had, that the whole row of houses, apart from their left-hand neighbour's was moving. The left-hand neighbour had underpinned their house previously so Ms M and Mr S felt this had created a hard spot leaving their home more vulnerable to normal seasonal movements. They obtained their own expert report in this respect (which L&G initially agreed to pay for). They remained of the belief that L&G hadn't carried out enough investigations to be sure what the problem was. And following the removal of the large tree, their home continued to move.

L&G agreed that some underpinning of Ms M and Mr S's home was required. But it thought that only the front elevation and left hand party wall needed support. It was around the time

of L&G making this offer that Ms M and Mr S complained to this service. They felt this repair would mean their home would ultimately rip-in two as the unsupported bits were pulled downwards with the movement of the rest of the houses to their right-hand side in their row.

At this point Ms M and Mr S's house was still moving and their left-hand neighbour, from his side, stitched a crack that was breaching the party wall upstairs. Whilst L&G had said it would pay for Ms M and Mr S expert's report it then refused to do so. This was eventually sorted but not quickly and not without hassle.

Our investigator considered the complaint. He felt that LA1 could have done more in the early stages of the claim and if it had, things would likely have progressed more quickly. He thought the recommendations issued by Ms M and Mr S's expert should be followed, and that L&G should pay £500 compensation.

Ms M and Mr S were prepared to accept these findings – what they really wanted was their home to be fixed. L&G disagreed with them. It said that Ms M and Mr S's expert's report suggested that underpinning should be done only if further investigations showed such was necessary and it hadn't seen the results of any further investigations. It said it had paid £1,000 compensation already but it ultimately agreed to pay the £500 suggested by the investigator.

The complaint was passed to me and I felt further information was required before I could reach a decision. During the course of the investigator gathering that information, what appeared (to the investigator) to be an offer to underpin Ms M and Mr S's whole property was made. This was put to them and they cautiously accepted. Unfortunately this wasn't an offer at all and L&G clarified that it was still of the view that only partial underpinning was necessary.

Ms M and Mr S were, understandably, frustrated. They said that monitoring of their home had continued in the interim and this showed their home was moving, particularly the right-hand end of the front elevation. However, L&G hadn't been aware that monitoring was continuing. When it saw the data it thought the movement of the house had stopped and said this meant it would likely opt to not carry out any underpinning at all.

Ms M and Mr S, again understandably, felt unable to accept this opinion from L&G. In the circumstances I took the unusual step of asking L&G to appoint an independent expert (IE), chosen by Ms M and Mr S (from a list of three suggested by L&G) to consider the technical data available in order to determine whether or not the house was stable and what repairs, including underpinning if appropriate, were required. This was agreed, the expert was appointed and his report has now been submitted.

The IE found that Ms M and Mr S's home had been affected by subsidence caused by vegetation drawing water away from the property. He was satisfied that, based on the recent monitoring data, the ground had stabilised and the property was no longer moving. He recommended that robust crack repairs, along with some reinstatement works should be completed followed by decoration. He was satisfied that, as long as no new vegetation is put in place in the area surrounding the property, there would be no further movement.

I issued a provisional decision. I thought that the IE's report was persuasive and that L&G should comply with his recommendations. I also thought that it needed to appoint the IE going forward to manage the claim. I said it should settle the decoration in cash if Ms M and Mr S wanted it to and pay them £3,000 compensation (L&G had confirmed that it hadn't, to date, paid any compensation).

The parties responded and I issued some further findings regarding how the claim would be managed going forwards. I'm now issuing my final decision; my provisional findings, the parties' responses, along with my thoughts on these and my updated findings are all set out below as part of this final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I said provisionally:

"necessary repairs

I know that Ms M and Mr S have a concern that this review hasn't been truly independent. They say that the IE said he had known LA2's senior manager for a number of years. Whilst I can see that would be troubling for them I don't think that means the integrity of the review has likely been compromised. And in saying that I'm mindful that once a person has reached a certain level within their profession it isn't unusual for them to 'know' others. That doesn't necessarily mean they hold any particular kinship or alliance with them. Or that they will be unable to act professionally with a view to reaching their own conclusion on an issue without being swayed by other conclusions merely because they know the person who made them.

Having seen the report and communication that has followed it between the IE and Ms M, I've found no evidence of bias. For example, I can see that the IE has been willing to engage with Ms M and Mr S to answer their queries and concerns. Further, the IE's report is, in my view, persuasive. I'm satisfied that he's taken all the relevant evidence into account and that he's considered all of the arguments from both sides. I'm satisfied that L&G should follow the recommendations set out in his report."

Ms M and Mr S state I haven't specifically mentioned the IE's recommendation that L&G continues to provide cover. My finding though is (and was) that the IE's recommendations should be followed. I'll record this in my award section too.

I continued my provisional findings:

As mentioned the IE has answered some queries raised by Ms M and Mr S. So in addition to the recommendations within his report I'd confirm that L&G will also need to take a view when arranging repairs as to whether windows and doors can merely be re-aligned or whether they actually require replacement. I'd also emphasise that whilst the IE has mentioned that settling in cash for decoration works might be an option, either in whole or in part, as that might suit the parties, that doesn't extend as far as the crack repairs and reinstatement works (including windows and doors). Those should be carried out by L&G."

Ms M and Mr S said they were still concerned because the IE hadn't accounted for the incorrect details they'd pointed out his report was, at least in part, based on.

I appreciate that the IE has just explained why he relied on certain things, rather than acknowledging Ms M and Mr S's view that these facts were wrong and advising if that changed his view or not. But I was aware of their concerns when I considered their complaint, and having looked at them against the report I didn't, and don't, think that they materially affect the findings. For example, whilst the report refers to a smaller ash tree being taken out (in addition but subsequent to the large ash tree), which they say wasn't the case, whether that small tree was there or taken out or not, the monitoring readings still showed that whilst movement continued after the large ash was taken out it was less significant than previously and ceased altogether following removal of other shrubs.

My provisional findings continued:

"Further, in the circumstances, and if he is willing to do so, I'd suggest that the service of the IE is utilised further as the claim draws to conclusion, in lieu of a loss adjuster. The IE can put the work to tender and L&G will remain responsible for the repairs carried out. The IE's continued involvement should afford Ms M and Mr S some peace of mind and provide them with some confidence that things will be done in a timely manner and with all due diligence. I'd like L&G to make enquiries in this respect of the IE before I make my final decision – that way if he is unwilling or unable to act in this way I can consider what else should be done before making any final decision."

Ms M and Mr S felt this was a good idea. However, L&G advised that the IE wasn't able to have any continued involvement. I considered the situation and didn't think it was appropriate for LA2 to resume management of the claim – not given the mistakes that had been made to date and, given those errors, how Ms M and Mr S had reasonably lost faith in it. Therefore, I told L&G that it should appoint a different loss adjusting company and it agreed to do so. I shared this information with Ms M and Mr S and they agreed this was a fair and reasonable way to move their claim forward.

So it is now my final decision that L&G should appoint the loss adjusting company it named to manage Ms M and Mr S's claim going forward. The new loss adjuster will be able to appoint contractors and specialists as appropriate to complete the work necessary to conclude the claim and decide on a cash settlement, if requested by Ms M and Mr S, for the decoration works.

My provisional findings continued:

"I fully understand that Ms M and Mr S still have some concerns about the property, the cause of the damage, and whether damage will re-occur in the future. I'm satisfied though that the IE has answered this concern. I'm also satisfied that the monitoring data, even from my lay person's point of view, does show that the property didn't move downwards significantly (compared to how it had been moving before) last summer. And that is important because the summer of 2018 saw a substantial spike within the insurance industry for subsidence claims because it was one of the hottest and driest on record across the UK.

The monitoring data shows that whilst the property continued to move downwards after the large tree was removed, it was moving less than previously. So I think that tree was likely having an impact on the property. Other smaller shrubs that were closer to the property were

then taken out in June 2018, and it was after this that no further significant movement occurred, despite the extraordinary weather. I can't fairly ignore that clear scientific data.

And whilst I'm not discounting Ms M and Mr S's theory that their house is more vulnerable because it is acting as a cantilever between the underpinned property on their left and the rest of the terrace on their right, I can't ignore the fact that the IE wasn't persuaded that this argument necessitated underpinning of their home. In this respect though, I'm also mindful again that their home didn't suffer any significant downwards movement during the summer of 2018 – which suggests that either the other homes in the terrace didn't either (and if they aren't moving there is no or little risk to Ms M and Mr S's home), or they aren't affecting Ms M and Mr S's home in the way they feared they were.

It is also important to consider that an insurer doesn't have to provide protection against any possible future damage. It has to ensure that when it repairs a property those repairs are effective and durable. So if they fail in the short-term it will have to fix them again. And if there is a known problem that is likely to affect the durability of planned repairs then the insurer will need to act to limit that before it starts work. The latter is why insurers remove trees and/or underpin in respect of some subsidence claims. The former is one reason why it's important here for L&G to carry out the repair and reinstatement works, even if not the decorating. It keeps the chain of liability clear."

I'm aware that Ms M and Mr S would like me to comment in more detail on the report they obtained. They feel this vindicated their argument that there was a hard spot created by their left-hand neighbour's home being underpinned. I haven't commented on that report in detail as it doesn't affect my findings here. I did note provisionally that the expert who wrote that referred to further tests being necessary, so in that respect I'm not convinced his findings were conclusive. That's not to say they aren't without merit but, because the property has stabilised and no movement, even as a result of the property potentially being a cantilever occurred during the exceptionally dry summer of 2018, the situation has simply moved on.

I continued provisionally to say:

"*Regarding the decorating; I think that any tender should include costings for this work. That would mean the price of that work has fairly been determined. If Ms M and Mr S want it to be done as part of L&G's repair and reinstatement work it can be. If they'd rather have any part or all of it settled in cash then L&G should do that (based on the tender price). But if it's settled in cash, L&G won't have any responsibility for proper completion of that part of the work.*

In the circumstances here I think this is fair – Ms M and Mr S have waited a long time for structural repairs to be done so they can safely move on to other major work they want to do within their home. They, understandably, may not want to have final decorative work completed right now if they are about to embark on other messy work that may spoil that finish. Doing some or all of that when the work they want to do is done may well make more sense to them. And getting the decorative work priced as part of the tender is the most likely way I can see for avoiding any other disputes that might arise about what's necessary and what the cost for that would likely be. If Ms M and Mr S opt to take cash for any or all of the decoration work L&G won't have to pay them the cost of VAT for that work unless or until a related work invoice is provided to it showing that VAT is due."

Given the necessary change to my provisional findings – that a new loss adjusting company will manage things going forwards, rather than the IE, the work will not necessarily now go to

tender. I've explained this to Ms M and Mr S and they understand this. But the decorative work can still be estimated for by the new loss adjuster and/or the contractors/specialists it chooses to appoint.

I'm satisfied that a competent contractor can consider what is needed for a whole job from start to finish, so I don't think it's necessary for the costing process for decorative work to wait until the repairs are complete. However, if as works progress variations occur and/or more mess than expected is created (perhaps if adequate protection measures aren't taken, for example), then the costing will need to be reviewed.

And whilst putting the work to tender would gain prices for the work that would reasonably be available to Ms M and Mr S, that may not automatically be the case if the new loss adjuster is using its panel contractors. Therefore, if panel contractors are used to price the work any estimate they produce that is to be the basis for any cash settlement offered to Ms M and Mr S for the decorative work, will need to take into account retail rates. In line with what I said provisionally; L&G can't fairly base any cash settlement it offers or makes for decorative works on the price it would cost it to complete the works.

Following my provisional finding I explained the position regarding VAT to Ms M and Mr S in more detail. It isn't that L&G won't have to pay them for any VAT they incur, rather it's only if they incur it and evidence it to L&G that it will have to reimburse them.

My provisional findings continued:

"how the claim was handled

I think LA1 got things wrong at the start. I've set out some key details in my background above. These have been provided by Ms M and Mr S. L&G has been unable to provide any evidence at all from this time period. I've no reason to doubt what Ms M and Mr S have told me and L&G has confirmed that a small shrub was felt to have been the cause of the problem at the time, even though no evidence of its findings has been provided. So its detail broadly correlates with what Ms M and Mr S have said happened.

I fail to see though how or why an expert loss adjuster could reasonably conclude that a small shrub with a limit root base and need for water would have been causing Ms M and Mr S's home to subside. Particularly not when there was a circa 16 foot tree nearby.

I know that when LA2 carried out investigations there were never any roots from this particular tree found in the soil samples taken from around the property. But the proof of the tree's impact is now evident. And it's completely normal for most loss adjusters, where clay soil is concerned as is the case here, to look to blame large trees in the area before anything else. So LA1's actions during the early stages of the claim make no sense to me. The tree should've been the centre of focus from the start and if it had been, the claim would've concluded sooner and the years between then and now wouldn't have been wasted.

I think also that LA2 handled the removal of the tree badly. I can see that Ms M was far more involved than she should have to have been. But more fundamentally than that LA2's approach to the council was on the basis of a report it had obtained which said the tree should be removed due to live roots being found in the soil samples. However, what neither the writer of the report nor LA2 noticed was that the live roots were said to have come from a different species of tree. I'm not surprised that, on the basis of that evidence the council

wasn't persuaded its tree was causing damage. It isn't clear why the council eventually removed the tree. I know Ms M had been speaking to it and that LA2 had been as well. Whilst the council's own loss adjuster seemed unpersuaded he agreed to attend the area himself and it was following this visit that the council acted to remove the tree.

So I think the council's reluctance to remove the tree was likely, at least in part, to do with the poor evidence gathered by LA2. But councils are often uncooperative in this respect and most subsidence claims that involve a third-party tree become protracted to some extent. Which means that even had LA1 acted in respect of the tree at the start, and given the unexpected impact lesser shrubs were clearly having on the property, it was always going to have been a lengthy claim. But I think if this claim had been run efficiently from the start it would reasonably have unravelled something like this:

- *claim early 2010,*
- *a year (into early 2011) of evidence gathering and monitoring (the latter completely normal process where clay soils are concerned),*
- *at least six-months to have the tree removed (taking the claim into mid-summer 2011),*
- *further monitoring through the summer of 2012 (necessary as, the tree having been removed, it would have been important to see the full cyclical impact on the property),*
- *further (but much less) movement being noted would have meant further removal of lesser shrubs was required as well as a period of further monitoring to see if the property was now stable.*
- *repairs could then have started in August/September 2013 and would likely have been completed before Christmas that year (the latter is a conservative estimate).*

Ms M and Mr S would then have been able to enjoy Christmas 2013 knowing the claim could be put behind them. Instead they've endured a further five and a bit years (bringing everything up to date at this point) of trying to get their home repaired and living with, regarding one crack at least, significant damage. I know this was particularly difficult for the family in 2014 when Mr S had some health concerns. I've heard the frustration and despair first-hand from Ms M and I accept that they feel like they've been let down by L&G. I also know they've had to put their plans for extending their home on hold. The impact on them has been significant.

I also accept that the initial repairs in 2012 weren't without problem and that this, along with the other details I've set out in my background, caused further distress and inconvenience too. Ms M and Mr S may feel the background lacks detail but it's intended to be a summary of key issues.

L&G has confirmed that whilst it offered and agreed previously to pay a total of £1,500 compensation, nothing to date has been paid. Having looked at everything I'm satisfied that a total of £3,000 compensation is fairly and reasonably due to Ms M and Mr S."

L&G said it accepted it had got things wrong at times but said it felt £2,000 was fair and reasonable compensation for the upset it had caused. Ms M and Mr S said they agreed with my finding that this should have been resolved by Christmas 2013 and said they recognised that the awards made by this service are limited.

I note L&G's assessment of the situation. What it's said though hasn't persuaded me to either change my provisional findings or think that my suggested award was unfair or unreasonable. I remain of the view that, in the circumstances here, regarding the significant

distress and inconvenience I'm satisfied L&G caused Ms M and M S, beyond that which they would always likely have suffered due to a claim of this type, £3,000 compensation is fairly and reasonably due.

I know Ms M and Mr S are concerned about what will happen as the claim now resumes and repair work begins. They are worried that further things will go wrong. Whilst I have no way of knowing what might happen I can see that L&G has accepted that, to date, it's made mistakes. There's going to be a change in loss adjuster also. So I'd hope that the claim will now progress swiftly and efficiently with no further cause for concern.

However, if things do go wrong then Ms M and Mr S will be able to make a further complaint to L&G. And if they think it is acting in a way that doesn't comply with my award, assuming they accept my decision within the deadline set, they can seek to enforce my decision through the courts.

my final decision

I uphold this complaint. I require Legal & General Insurance Limited to:

- Carry out the recommendations made in the IE report.

- In respect of the works, appoint the new loss adjusting company to manage the claim moving forward, carrying out work in line with the IE's recommendations. That will include a necessary consideration of the state of the windows and doors to determine if they can be repaired or if they will need replacing. The new loss adjuster will organise and ultimately oversee the repair and reinstatement of Ms M and Mr S's home (although they may choose to carry out the decoration works themselves). Legal & General Insurance Limited will remain liable for the proper completion of those repairs organised by the loss adjuster and carried out under its authorisation (it won't be liable for any decorative works settled in cash).

- If Ms M and Mr S wish it to, make a cash settlement to them for any or all necessary decorative works. The new loss adjusting company should estimate the cost of this work but review the costs if any changes to the reinstatement work or other issues arise that mean the extent of the decorative work has likely changed from that estimated. The estimate used as the basis for any cash settlement will have to be based on the retail price for the work, not on what the contractor might charge Legal & General Insurance Limited if it were carrying out the work. Any settlement made can be less VAT unless or until Ms M and Mr S provide Legal & General Insurance Limited with a VAT invoice showing such is due. It will then need to reimburse them the VAT cost applicable on the agreed cash settlement amount.

- Pay Ms M and Mr S £3,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr S to accept or reject my decision before 13 April 2019.

Fiona Robinson
ombudsman