

The complaint

Mr and Mrs H complain about the way Liverpool Victoria Insurance Company Limited trading as LV= ("LV") has handled a subsidence claim under their buildings insurance policy.

Any reference to LV includes the actions and comments of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised what has happened.

- In 2017, Mr and Mrs H made a claim on their building insurance policy when they noticed cracks appearing in their property. LV, the underwriter of the policy, accepted the claim.
- Level monitoring commenced in September 2017, with vegetation, identified as the cause of the subsidence, being removed from Mr and Mrs H's land in 2017, and from Council owned land in 2020.
- In February 2021, LV said the property had stabilised following approximately three and a half years of monitoring, but Mr and Mrs H disagreed. So, further level monitoring took place with readings being taken in November 2021, June 2022, and August 2022 – at which time LV said the property had stabilised and that it would move to superstructure repairs.
- But Mr and Mrs H say their property continued to move and that the crack damage worsened despite this. Unhappy with how their claim had been handled, Mr and Mrs H complained to LV and subsequently to this Service in 2022. But an Investigator said it had been brought too late, and so, the merits of it couldn't be considered. That complaint has long since closed.
- Mr and Mrs H's engineer ("E") and LV continued to have opposed views as to whether the property had stabilised, and the necessary remedial works required to provide a lasting and effective repair. In summary, E said LV's proposed remedial works weren't suitable and so, the property should be demolished and rebuilt with piled foundations. But LV disagrees. It says the property has now stabilised since the removal of the implicated vegetation, and so, it can move to superstructure repairs.
- Because the parties had reached an impasse – and unhappy with its decision to move to superstructure repairs - Mr and Mrs H complained to LV again.
- In response, LV suggested further monitoring take place to allay Mr and Mrs H's concerns that their property (including the garage) was still subsiding. It proposed taking readings in the spring/summer 2023. It said that it could then choose an appropriate course of action based on the results. But Mr and Mrs H didn't agree to further monitoring. Instead, with LV's agreement, E carried out further investigations which included soil and root analysis from trial pits, along with a drain survey.

- Mr and Mrs H remained unhappy and so, brought a complaint to this Service. At the time of our Investigator's view, the results of the further investigation weren't available, so he only considered the matter of whether LV's suggestion of further investigations was fair and reasonable in the circumstances. He thought it was, but said LV could have taken this action sooner, and so, said it should pay £150 compensation to recognise this.
- Mr and Mrs H didn't agree with the Investigator's view and so, the complaint was referred to me for an Ombudsman's decision. Having initially looked at things, it was apparent the claim was no further forwards following the results of the further investigations, with both sides maintaining their original positions.
- Both parties were informed that to bring some finality to the claim and decide whether LV's proposed repairs were reasonable, the scope of the complaint needed to be expanded to include the results of the most recent investigations – which both agreed to.
- This Service was provided with these results, and so, I set out my thoughts in a provisional decision. In it I said:

“What I've provisionally 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. And I've kept in mind LV's responsibility as an insurer to handle claims fairly and promptly.

I'm aware this subsidence claim has been going on for a number of years, and Mr and Mrs H have raised concerns about the handling of the claim over this time. But here, I'm only considering issues addressed in LV's most recent final response (in March 2023), along with the results from the further investigations.

Whilst Mr and Mrs H have brought other complaints to this Service, these were considered to have been made too late, and so, matters pertinent to those complaints do not form part of this one. I appreciate this will be disappointing for Mr and Mrs H, but the rules around deadlines for submitting complaints to this Service are strict. And as those complaints were deemed to have been brought too late and have long since closed, I won't comment on those matters further.

Was it reasonable for LV to propose further monitoring and agree to E carrying out further investigations?

Our Investigator's view focussed on whether it was reasonable for further investigations to have taken place – so for completeness, I'll address this before considering the results of these.

I'm aware monitoring had occurred over a period of five years prior to LV suggesting further monitoring take place in spring/summer 2023, but as Mr and Mrs H strongly considered their property to be moving and the damage to it to be worsening - despite the removal of the implicated vegetation – I consider it to have been a reasonable proposition.

Mr and Mrs H didn't agree to this, and other investigations took place instead, but given E and LV's proposed remedial works differ greatly in scope and cost, it's reasonable LV would want to obtain an accurate picture of where things were at before proceeding with whichever remedial work was deemed appropriate following level monitoring.

Even though Mr and Mrs H weren't agreeable to further monitoring, I agree with our Investigator that this could have been initiated sooner by LV – because had it done so, it's likely the further investigations which did take place would have commenced sooner. And so, I consider £150 compensation to reasonably reflect the avoidable delay not doing so caused.

Has the property stabilised?

Before I comment on the monitoring results, it's worth explaining that where subsidence has occurred, this Service expects insurers to stop the current movement. We don't expect the insurer to make sure the property never moves again. But any repairs the insurer carries out need to be lasting and effective.

What this means in the context of Mr and Mrs H's claim, is that I wouldn't expect to see movement soon after the removal of the implicated vegetation - with the exception of there being some normal movement while the ground recovers. So, I've looked at the monitoring results to see whether this support LV's position that the property has stabilised, or E's position that it continues to move.

I note monitoring readings commenced in September 2017 with LV deeming the property stable in February 2021 – three and half years later. Having looked at the readings for this period, it's apparent that in summer 2018 and 2019 there was significant downward movement to points 4, 5 and 6 (the left-hand side of the property) with ground recovery in the winter months. LV says this confirms the subsidence was localised to the left-hand elevation of the property and that cracking towards the right of the property is stress cracking as the left-hand elevation has pulled away. LV adds that the monitoring doesn't highlight subsidence movement to the garage or right-hand side of the house. And from the monitoring results, this appears to be a reasonable position to take as I can see the readings taken from points on the right-hand side and garage have remained level.

Mr and Mrs H didn't consider the property to have stabilised in February 2021 and so, further monitoring for a period of approximately 18 months was carried out until August 2022. I note the readings from points 3, 4, 5 and 6 show readings with very minimal movement during this period, which on the face of it, supports LV's position that the property had stabilised.

When I consider the results along with LV's comments that the summer of 2022 was the hottest on record, and there was no significant movement during this time, I'm satisfied LV has reasonably demonstrated why it considers the property to have stabilised. I appreciate Mr and Mrs H – together with E – dispute this, but the monitoring readings don't support their position that the property is still moving.

And whilst I appreciate E's position is that the crack damage alone shows the property is moving, LV has put forward a plausible explanation for why this crack damage to other parts of the property has occurred – namely, that it's stress cracking from the movement on the left-hand side of the property, which has now stabilised. When I balance this, with the facts of the monitoring report, I'm persuaded LV's position that the property has stabilised is reasonable.

Heave and soil analysis

Mr and Mrs H's expert has concerns about the risk of heave, saying in a letter dated November 2023:

“The insurers [...] suggest the magnitude of heave estimated is an acceptable risk. We do not concur with this view, as even should minor heave occur, that will result in further crack damage and would prevent you [Mr and Mrs H] realising a sale of the

property at full market value, besides the stress and inconvenience of further movement affecting the serviceability of your property.”

“With regards to the foundations to the main dwelling, the soil analysis confirms medium heave potential at the left-hand end, such that, at some point in years to come, foundations are likely to be affected by heave rather than subsidence, which if only superstructure repairs are carried out to the property, would clearly cause further superstructure damage.”

I note this is about heave being a potential, future, problem - not that it is one currently. LV has said the level of heave is within a tolerable range, and so, it's satisfied it can proceed with the superstructure repairs. So, I've looked at the monitoring results to see if this is a reasonable position for LV to have taken.

As I've said above, I'm satisfied the monitoring readings show the property has stabilised. Whilst I appreciate Mr and Mrs H's concerns are about the risk of future heave, on its face the evidence doesn't show heave has occurred – or that it's a significant risk – and so, I'm not persuaded LV's position is unreasonable. However, it's worth adding that if heave does transpire in the future, LV understands it will be responsible for putting this right and any associated damage if this shows the repair was not effective and lasting.

Root analysis

I've looked at the botanical laboratory report which details the condition of the roots in the trial pits. The trial pit report refers to “live roots” having been identified in trial pit 3. However, the analysis of these roots show they were “alive recently” – which put another way, means are now dead, and so are no longer a live risk.

But even when the root was alive, I'm not persuaded it was causing movement because the monitoring report shows a period of stability from February 2021 to August 2022. And as the root is now dead – and the tree from which it likely emanated has been removed – it seems it no longer poses a problem. So, I'm not persuaded the results of the root analysis sufficiently challenge the rationality of LV's position which is that the implicated vegetation has been removed and the property has stabilised.

I note E has mentioned that a Willow tree approximately 13 meters from the front of the garage poses a risk of future subsidence - saying the foundations aren't deep enough to cater for the proximate location of the tree. Whilst this might be a future risk, I haven't been provided with sufficient evidence to persuade me LV needs to ask the Local Council to take action in respect of it. I say this because its roots have not been identified in the trial pits, nor did the arborist didn't implicate it as a factor in the current subsidence. And with the property having stabilised since the removal of other vegetation, it seems more likely than not that the willow tree – which is on the other side of the property to where the subsidence damage occurred - wasn't a cause of the current damage.

Drain survey

The drain survey didn't reveal any structural defects. In the report there's reference to “normal wear and tear” - but the only recommendation is for the drain to be descaled. So, the evidence doesn't suggest the drains are implicated as a risk to the stability of Mr and Mrs H's property. And from what I've seen, E is in agreement with this.

Summary

In summary, I'm satisfied that it was reasonable for LV to propose further monitoring and

agree to E carrying out further investigations to understand the current picture – though it could have initiated this sooner.

From the evidence I've seen, the picture is that the property has stabilised, and this is supported by the monitoring results. Whilst I acknowledge a risk of heave has been pointed out by E, this is a potential concern of the future and within LV's tolerable range. That's not to diminish Mr and Mrs H's concerns about future problems and the impact this might have on them - but based on the evidence, I'm not persuaded the level monitoring readings show heave has materialised to such an extent that it would be unreasonable for LV to move forward with the repairs. And it's worth reiterating that LV only has to stop the current movement, not stop the property from ever moving again and complete potential preventative works.

Furthermore, in the absence of the 2023 investigations revealing a live issue with the drains or other vegetation, I'm satisfied LV's decision to proceed with superstructure repairs on the basis of the property having stabilised following the removal of the implicated vegetation to be fair and reasonable in the circumstances.

I know my decision will be disappointing for Mr and Mrs H – their strength of feeling about the claim is very clear to me. I appreciate this is their home and is understandably, of great importance to them. But I have to reach a decision based on the evidence, and having done that, I'm not persuaded they've shown the property is currently moving, or that LV's proposed course of action is unfair in the circumstances.

If LV carries out the repairs, I'd expect these to be lasting and effective. If it later transpires that the property isn't stable, then I'd expect LV to continue the claim and consider matters further. I hope this accountability on LV's part provides Mr and Mrs H some reassurance. So, the next step is for LV to scope out the schedule of repairs and share this with Mr and Mrs H.

My provisional decision

My provisional decision is I uphold this complaint and direct Liverpool Victoria Insurance Company Limited trading as LV= to:

- pay Mr and Mrs H £150 compensation.*
- provide Mr and Mrs H with a schedule of repairs.”*

Responses to the provisional decision

LV responded to say it had no further comments to make. Mr and Mrs H's MP forwarded us an email they'd received from Mrs H which said LV's contractor had told her it wouldn't touch the repair.

Our Investigator replied and explained LV hadn't told this Service its contractor was unwilling to carry out the repair – or that it wouldn't be completing the repairs. He said, generally speaking, where an insurer is unable to appoint a contractor to carry out the repair, it would be required to provide a settlement which allows the consumer to appoint their own contractor to complete the work. But the settlement may be less if the consumer refuses to allow the insurer to carry out the work.

Mr and Mrs H didn't provide a further response.

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.

Because the parties didn't provide further information for me to consider, my decision remains that as outlined in my provisional decision.

My final decision

My final decision is I uphold this complaint and direct Liverpool Victoria Insurance Company Limited trading as LV= to:

- pay Mr and Mrs H £150 compensation.
- provide Mr and Mrs H with a schedule of repairs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 1 April 2024.

Nicola Beakhust
Ombudsman