

The complaint

Mr and Mrs B have complained about their property insurer Liverpool Victoria Insurance Company Limited (LV) because it has declined their subsidence claim.

What happened

Mr and Mrs B noted cracking in their terraced garden. They noted the shed had moved and twisted. They made a claim to LV. LV sent an engineering company (G) to assess the property.

G noted no damage to the main house. G recorded cracks in the garden's retaining walls and uneven/cracked paving slabs. G said that as the house was not damaged, there could not be a successful claim for subsidence due to a policy exclusion.

Mr and Mrs B were not happy with that. They felt the garden walls were part of their buildings, so there should be cover. They later obtained a report from an engineer (S).

In a final response LV accepted there had been a delay in G attending, and paid £300 compensation. But said that G had found no damage to the shed or the home. So it felt it could fairly rely upon the exclusion to cover for subsidence damage, when the house or outbuildings were not damaged at the same time by the same event, to decline the claim.

When Mr and Mrs B complained to the Financial Ombudsman Service, our Investigator did not uphold the complaint. Mr and Mrs B asked for an Ombudsman's consideration and their complaint was referred to me.

I felt the complaint should be upheld. I thought LV had acted unfairly and unreasonably in declining the claim as it did based on the policy exclusion. I felt it should be considering the claim in line with the remaining terms of the cover and paying a further £200 compensation.

My provisional findings

The claim

Mr and Mrs B claimed for subsidence damage caused to their garden and shed (an outbuilding). Their policy does offer cover for damage caused by subsidence but like many policies, it contains exclusions to that cover. LV has sought to rely on an exclusion to cover here to decline the claim. If an insurer wants to rely on an exclusion to cover to decline the claim it is up to the insurer to show that exclusion reasonably applies.

The exclusion in question here is for damage "if the main structure of the home or outbuildings are not damaged at the same time, by the same cause". So for LV to rely on this exclusion to decline liability for the damage in the garden it is up to it to show that neither the main house nor the outbuilding (shed) were damaged at the "same time, by the same cause" as that which affected the garden.

In my view, so far LV has not shown that. G's report shows that when it attended the property, it did not assess the shed in any way. The report gives no consideration to the shed at all. It does appear in two photos – but the caption on those indicates the tree suspected of causing the damage was the focus of the shot. The shed itself receives no comment – even for G to say it is not damaged. But G noted the house is not damaged and then relied on an exclusion to cover for damage where the house is not affected. However that is not the exclusion, or the entirety of the exclusion, relevant to Mr and Mrs B's cover.

I note that prior to issuing its FRL, LV went back to G for comment about whether or not the shed was damaged. A representative of G, not an engineer, seems to have reviewed the report and confirmed there was no damage to the shed. I don't find that response particularly compelling as it comes from a claim handler (not an engineer), who didn't view the property in person and where even the attending engineer – based on their report content – hadn't considered the state of the shed.

Nothing LV has said persuades me that the shed is either not damaged at all, or has not been damaged by the same cause at the same time as that affecting the garden. So I'm satisfied that LV has not shown it's fair and reasonable for it to rely on the exclusion to cover for subsidence damage. It will now have to consider the claim in light of the remaining terms of the policy.

Unfairness of terms

For completeness, I note Mr and Mrs B have argued that the exclusion discussed above is unfair. Exclusions like this are quite common to most home insurance policies. They are designed to protect the insurer against claims where only land at the property is affected, as opposed to structures like the house itself. Generally speaking, this term is not considered to be unfair.

Financial loss

To challenge LV, Mr and Mrs B obtained legal advice and an engineer's report. I appreciate there was likely a cost to them in obtaining these. However, this service generally doesn't award legal fees, and will only award expert costs if the expert opinion was material in changing the outcome. That isn't the case here. So I don't intend to make LV reimburse any costs Mr and Mrs B incurred for the legal advice and expert report.

Claim handling and compensation

LV has acknowledged a delay at the outset in getting an engineer to assess the damage. It's paid £300 for the upset that delay caused. But considering my findings set out above, the engineer failed to complete an adequate assessment of the reported damage at the property, which was then compounded by applying an incorrect or incomplete exclusion. Both of which LV failed to pick up on. I'm satisfied this all caused Mr and Mrs B a lot of frustration and that they spent time trying to challenge LV. I think £500 in total, a further £200, is fair and reasonable compensation.

I realise that Mr and Mrs B have been very worried about the state of the garden in the meantime, and that their use of it has likely been affected. But I can't be sure, at this stage, but for LV's failure in unfairly relying on an exclusion to cover, whether the claim would otherwise have been accepted and, if so, to what extent LV would be liable for damage in the garden. So I can't fairly award compensation for their worry over the garden or their not being able to use it.

In response to my provisional findings LV provided some comments from its in-house surveyor. It also asked for leave to hold the complaint process so it could have an engineer attend and assess the shed.

I considered LV's request. I advised I wasn't minded to place the complaint on hold. I explained that my provisional findings were based on what LV had done and the decision it had made as set out in its final response letter – it acting now to consider the state of the shed wouldn't speak, in my view, to the fairness of the decision it had previously made.

Mr and Mrs B replied to say they were pleased with my provisional findings. But they asked a number of questions, particularly about what my direction, for LV to consider the claim, would mean for them moving forwards.

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.

I see LV's in-house surveyor has now offered further comment on photos of the shed. The surveyor says he thinks these photos don't seem to show damage. He does note that the shed has never been the focus of a formal assessment. The surveyor's comments don't persuade me that LV made a fair and reasonable decision when it declined the claim.

As noted above, I considered LV's request to hold the complaint whilst it sent an engineer to formally assess the shed. I'm of the view it would not be fair or reasonable to do so. LV as an insurer is meant to carefully consider claims. Then, if it wants to move to declining the claim based on an exclusion to cover, it should be able to evidence that that decision is being fairly and reasonably made. As I set out provisionally, LV had the opportunity to do that here. But it did not do so. I've found its final position on the shed was flawed, meaning its decline of the claim was unfair and unreasonable.

Mr and Mrs B asked if my direction for LV to consider the claim meant that it could look at everything again. I can understand they might be concerned in that respect. But my direction is given because I don't know what is needed at this time to progress or settle the claim, or if other terms of the policy – other than those used by LV already – might exist to prevent or limit any settlement. I appreciate that this further consideration might cause further delay and/or disruption for the parties, but I am satisfied that it is the reasonable remedy for the situation at hand.

I know Mr and Mrs B would have liked me to rely on their expert report, which they feel shows the shed was damaged at the same time and by the same cause. They feel that would more definitively show that LV must now settle the claim. But LV, by its own hand, has not shown that its reliance on the policy exclusion in this respect was fair or reasonable – so it isn't necessary to consider what Mr and Mrs B's report, obtained after the date of LV's final response, says in this respect. The effect of my final decision, if Mr and Mrs B accept it, is that the exclusion falls away – LV won't be able to rely upon it further to either limit its liability for the claim or to decline it.

I understand that Mr and Mrs B want to know what the timeline will be now for the claim to be progressed. Unfortunately that is not something I can answer in any specific way. LV, as any insurer considering a claim, is expected to do so fairly and reasonably, including in a reasonably timely manner. What I can say is that LV will only be bound to acting in line with my final decision if Mr and Mrs B accept it within the deadline given. Once we receive that acceptance, we'll communicate it to LV. It will then be up to the parties to progress the claim

as normal. Whilst I hope things will go smoothly, if Mr and Mrs B do have further concerns, they would be able to make a further complaint.

I can see that Mr and Mrs B feel the £500 total compensation is not sufficient, given costs they've incurred. But as I explained provisionally, the £500 is awarded to recognise distress and inconvenience suffered. I explained provisionally why I wasn't awarding reimbursement of costs incurred by Mr and Mrs B. I appreciate the open and on-going claim is affecting their cover and option to move insurers, but a claim even once resolved will likely impact future cover. I remain satisfied that £500 total compensation makes up for the distress and inconvenience caused by LV's unfair and unreasonable actions.

Having reviewed everything, my view on the complaint as set out provisionally has not changed. As such, my provisional findings, along with my additional comments set out here, are now the findings of this, my final decision.

Putting things right

I require LV to:

- Consider the claim in line with the remaining terms and conditions of the policy.
- Pay Mr and Mrs B a further £200 compensation, where my total award is £500, £300 of which has already been paid.

My final decision

I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 10 April 2024.

Fiona Robinson
Ombudsman