

## **The complaint**

Mrs G complains that LV have declined her claim for damage due to an escape of water, which includes replacement of a tanking system.

## **What happened**

Mrs G held a buildings insurance policy with LV.

In 2019 Mrs G's cottage suffered an ingress of water following a leak from the local water authority's (LWA) water pipes that were in the road adjacent to her home. The water penetrated a retaining wall in Mrs G's living room which she understood to have a bitumen tanking system in place prior to her purchase in 2003.

The LWA repaired the burst mains and initially tried to remedy the problem in Mrs G's home but couldn't dry the wall out so Mrs G made a claim on her home insurance. The claim did not proceed as Mrs G subsequently dealt with the LWA direct and in 2020 the LWA paid her £6845.04 to cover the damage to her property.

However, after making several attempts to repair the property, Mrs G was unable to resolve the damp wall and so went back to LV in 2022 asking them to pay for a new tanking system. LV declined to pay for the tanking work to the property but have agreed to consider any costs to repair the damage caused by the burst pipe that wasn't covered by the LWA's 2020 settlement.

Mrs G was unhappy with this response and so she brought her complaint to us.

One of our investigators looked into Mrs G's complaint and she thought that LV hadn't acted unfairly in not reimbursing the costs of the tanking system, but she did ask LV to pay £1354.42 less any excess, with 8% interest – which was the difference between the LWA's settlement, and the cost of repairing the damage.

Mrs G disagreed with our investigators view, and so the case came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:

I'm intending to reach a different conclusion on this complaint to our investigator. Because of that, this decision will be provisional, and I'll give both sides a chance to comment before I make a final decision.

I have to decide whether LV have acted fairly and reasonably, and properly applied the terms of the policy when declining the claim.

## **The decision to partially decline the claim**

Mrs G's house is on a hillside, and one side of the property is against the hill and is below road level up to the roof. The living room wall and chimney breast are on a retaining wall built into the hillside.

In November 2019 there was a burst water main in the road adjacent to that wall which the LWA repaired. Mrs G subsequently noticed an extensive damp patch that appeared on the retaining wall of her living room.

Mrs G has said that there weren't any damp issues on that wall from when she purchased the property in 2003, and that there was a tanking system in place in the main house which was along the wall adjacent to the hill and was working effectively. She has provided me with a letter from the previous owner to say that there were no issues when he owned the property, and she has also provided me with evidence of the damp proofing work completed in 1988 and the tanking system that she had put in the kitchen in 2003 after she bought the property – which had a 30 year guarantee.

In addition, LV have noted in their records that there are no previous claims for the property before 2019.

Following the burst water main in late 2019, the LWA initially admitted responsibility for the damage caused by the leak and tried to rectify it but found that during the drying out process, the moisture levels were still rising – which indicated the problem was more than just the water from their leak, so they said that they would be unable to continue with any rectification works until the source of the rising moisture was found and remedied. They confirmed that there were no further water leaks identified that were their responsibility and referred Mrs G back to LV to investigate further.

LV sent out leak detection experts to assess the property. Their report concluded that there were significant moisture levels in the internal walls and “salt analysis of the wall tested positive for chlorides and nitrates indicating that the wall is contaminated with hygroscopic salts which are typically associated with a breach of ground water.” They also conducted thermal imaging and were satisfied that there were no more leaks.

Following this report LV confirmed to Mrs G that as the continuing damp was caused by an ingress of ground water this was a maintenance related issue, and they would not cover it. They advised that once damp proofing was completed, Mrs G would need to decide whether to claim for the damage caused by the leak directly from the LWA or through her home insurance. They returned her excess to her.

It seems that Mrs G then settled with the LWA for a sum of £6845.04 to complete the repair work herself and had no further contact with LV until 2022.

Throughout 2020 and 2021 Mrs G engaged a number of experts in building, damp, limestone buildings and chimneys to look at, quote, and try to resolve the damp issues. Some work was undertaken, but no one was able to resolve the issue.

I can appreciate how frustrating this must have been for Mrs G, dealing with a number of contractors, and being offered solutions that subsequently failed despite having cost her money. So Mrs G went back to LV to ask for their assistance.

LV appointed a surveyor to revisit and examine the property but at the same time Mrs G had engaged a company to install a full damp proofing system in the living room retaining wall at the considerable cost of £23770. The work involved dismantling the chimney, fully waterproofing the wall and rebuilding – providing a full tanking solution.

When the surveyor attended in February 2023, he reported back to LV that the works that Mrs G was undertaking were appropriate to provide a solution to the issue, and he advised that the claim be reopened and referred to the complex claims team for review in line with

the basement and cellars tanking instructions. He recommended that based on the information available, the criteria were met for LV to meet the costs of the replacement of the damp proofing membrane in order to provide a lasting fix.

The surveyor reported that:

*“We currently have no evidence of damp on the wall, we have advice from the insured that there was no apparent damp on the wall from February 2003 through to the first event in November 2019 and we have advice from the insured that no damp was commented on in the Mortgage Valuation Report in early 2003, backed by the logic that the mortgage was granted, which is very unlikely to be the case if damp had been present.”*

The surveyor also quoted LV’s own Guidance on Basements and Cellars – Tanking, which says:

*“In particular, the FOS say that if a basement room was watertight before an insured event, but has started to let water in, generally they will say the cause of the damage is flood, not the failure of the tanking.*

*When will LV pay for a new waterproof system?*

- 1. When there is evidence that a waterproof system was installed and has been functioning adequately before the flooding event and has failed as a result of the flood/EOW*
- 2. If there is no waterproof system in place but there is evidence that there are no historical issues and a waterproof system is required to provide a permanent repair.”*

And he concludes:

*“It is my assessment that both of these criteria can be applied under this claim and that future water ingress is extremely likely to occur if the vulnerable room is not internally tanked.”*

On receipt of the report, the claims consultant raised further queries with the surveyor who responded that he considered Mrs G to be a person of integrity who had told him that there was evidence of a bitumen tanking system in the walls when they were stripped to put a membrane in place in 2020 after the first LWA leak, and that the work in 2003 showed that she was doing the relevant maintenance work. He said that both leaks occurred during the time on cover and that the EOW from the LWA pipes had a far more significant effect on the wall of the property, and that policy cover should be engaged.

In April LV’s Complex Claims Consultant noted that:

*“I agree on the face of it & in line with our WP it is likely that we will cover. Just looking at the surveyors report he advises “Various attempts were made by contractors, including specialist waterproof contractors, to undertake specialised damp proofing works, none of which were apparently successful”*

She asked for details of these to see if there were any guarantees.

Mrs G responded that work was undertaken in Sept 2020 and May 2021 neither of which had guarantees and neither worked. Both contractors had assured her that their work would vastly improve the situation but neither was full tanking - it appears that Mrs G was trying to repair the damage without addressing the underlying issue of the tanking system being breached because she had received a limited settlement from the LWA.

Despite the advice of the surveyor, LV declined the claim concluding that:

*“On reviewing this file it would appear that the underlying cause of the damp to your property is due to the lack of an effective damp proof system to prevent damp/water ingress into your property and/or failure on any such damp proofing that is in place.”*

LV pointed to the call Mrs G made when she first notified LV of her claim, in which when asked about damp, she said she had been dealing with damp issues in her home for the previous 8 years. They said that this indicated that the issue was a longstanding one, not a sudden ingress of water.

I have also listened to that call.

In the call Mrs G refers to having had a damp problem in the property for around 8 years. She says she has had it re tanked twice and has had a lot of advice off builders and roofers, who could find nothing wrong.

I have been provided with all the receipts and invoices from 2003 which relate to the maintenance of the property and dealing with any damp issues. It is clear that Mrs G is someone who is concerned with the upkeep of her property, and addresses issues as they arise. She has dealt with a number of damp related issues. However, none of these are for damp in the main living room. She has had tanking work done in the annexe in 2014 which had been converted from a shed into living space, she has had roof leaks repaired, and she has had the kitchen tanked. I consider that if there had been longstanding damp issues in the retaining wall of the living room, Mrs G would have addressed them sooner, and so I'm satisfied that, in accordance with the report of LV's own surveyor, and Mrs G's account of the property since 2003, the damp issues in the living room retaining wall have resulted from the sudden ingress of water following the burst water main which has for some reason overwhelmed the tanking system that was in place and caused it to fail.

This is consistent with a further e mail from LV's surveyor dated 23 June 2023 in response to further queries from LV, in which he said:

*“It seems clear that both LWA leaks occurred during policy cover, and in both cases. That the escape of water from their system had a far more significant effect on the wall of the risk property, at low level, nearest the road. It is my assessment that on the balance of probability, policy cover should be engaged this being based on a balanced view of what I have been advised”*

In view of that I don't think that LV have fairly declined to cover Mrs G's claim, and I agree with the surveyor that new tanking is required to provide a lasting solution, and that in line with LV's own guidance, this should be covered.

Mrs G also told the surveyor about additional rectification costs following the leak, including some replacement floorboards, a replacement lintel, carpets and retiling. The surveyor didn't assess these and so made no comment on them.

Mrs G received £6845.04 from the LWA as settlement for restoration of the property following the leak. It isn't clear what exactly this was intended to cover, but it wasn't to cover the tanking, only repair works that the LWA were unable to complete due to not being able to dry the property out. I wouldn't therefore expect LV to duplicate these costs and so I agree with the investigator that these should be deducted from the cost of the restoration work, and LV should meet the remaining balance.

## **Water leak October 2022**

In October 2022 Mrs G reported that there was a further leak from an external stop cock in the road adjacent to her property which caused further damage.

The stop cock was repaired by the LWA and Mrs G contacted the LWA and advised that her property had been affected. They advised her to contact her own insurer, who would in turn claim from them.

After raising a complaint with the LWA about the leak and the way in which the leak was addressed by the LWA's workmen, the LWA offered Mrs G £50 for inconvenience. The LWA advised Mrs G to make a claim directly with their claims managers.

LV's loss adjuster agreed to have a surveyor attend and attempt to identify the cause. However, the evidence which I have seen in respect of this leak indicates that it was minor, and not the main cause of the issues experienced.

## **Service issues**

In February 2023 at renewal, Mrs G told LV she was still waiting for a decision about her claim in August 2022 which she was then told had been declined. After complaining, LV offered Mrs G £500 for the inconvenience caused by the delay in response.

Although claims can take some time to be determined, especially when they involve complex issues, I do think that LV could have done more to progress the claim and update Mrs G during the period August to February and so I think that their offer of £500 is fair for the delay here.

However, I also recognise that there was also delay before this, resulting from LV's failure to undertake a proper survey and properly consider whether it was appropriate for them to cover the cost of new tanking in line with their own guidance. It seems from the notes that the fact that the LWA was involved seemed to influence this process, and responsibility was pushed back onto Mrs G.

To recognise this error and the delay that followed before Mrs G went back to LV in August 2022, I propose to award a further £700, bringing the total compensation for distress and inconvenience to £1200.

## **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.

Both LV and Mrs G has responded.

LV have accepted my provisional decision, but Mrs G has asked some questions, which I will answer here.

Mrs G has queried whether the leak detection experts report overrides the LV guidelines, and notes that originally the loss adjuster and leak detection expert appear not to have applied LV's own guidance on tanking – so she thinks they should pay for her failed attempts to resolve the issue.

I have already agreed that LV originally failed to undertake proper investigations and awarded increased compensation for this.

Whilst I can appreciate that Mrs G feels she wasted money from her LWA payment on remedies that didn't work, LV had no part in the negotiation of the that settlement, nor in the decisions Mrs G made about how to spend it and so I don't consider it is fair to ask them to take responsibility for this. It was clear that the settlement was for restoration, not for damp proofing, and I haven't seen any evidence that Mrs G went back to LV on receipt of the settlement to query the damp proofing element again.

I have awarded Mrs G the cost of the damp proofing, and if following that work, further restoration work has been done or is required to bring the property back to pre loss condition which exceeds the amount of the settlement this will also be met by LV under the direction below, which I consider is fair

And so for the above reasons, I am making my final decision in line with my provisional decision.

### **Putting things right**

In order to put things right I think that LV should:

- Reimburse Mrs G £23770 for the cost of the tanking she had installed in her living room in February 2023.
- Pay Mrs G 8% interest on the above sum from the date it was incurred until the date of settlement
- Pay Mrs G the difference between the £6845.04 settlement paid by the LWA and the cost of additional rectification work resulting from the water damage upon receipt of invoices for the work which are provided by Mrs G
- Pay 8% interest on the above sum from the date it was incurred until the date of settlement.
- Pay Mrs G a total of £1200 for the delay in dealing with her claim, deducting any sum already paid.

### **My final decision**

My decision is that I'm upholding Mrs G's complaint about LV and directing them to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 December 2024.

Joanne Ward  
**Ombudsman**