DRN-4952473

The complaint

Mr and Mrs C have complained about their property insurer Liverpool Victoria Insurance Company Limited (LV) as they feel it unreasonably delayed their claim and, when the claim was eventually paid, the settlement was insufficient.

What happened

Mr and Mrs C owned two properties. Mr C spent some time at the property LV insured and which is subject to the claim, as he was renovating it. But his, and his family's main residence, was the other property. In December 2022 Mr C left the insured property to visit extended family for Christmas and New Year. When he returned in January 2023 he found there'd been a substantial water leak from a pipe in the loft – several ceilings had come down, with damaged flooring as well as mould and moisture damage in most rooms.

A claim was made to LV. It had concerns that the property wasn't actually being lived in by Mr C – as other than a child's bed, there was no furniture or belongings in the house. The claim was placed on hold whilst LV waited for Mr C to provide it with evidence to help it determine the occupancy issue.

In June 2023 LV decided that Mr C had satisfied its concerns about occupancy and it instructed its loss adjuster to proceed to settlement on the claim. A scope of works was arranged and in September 2023 the scope was put to tender. A tender analysis in late October 2023 recommended that the lowest of three tenders, £130,465.76, excluding VAT, was reasonable.

When LV accepted the claim in June 2023 Mr C asked it to pay him a disturbance allowance as he'd had to live in his other property and that had meant he hadn't been able to rent or sell that property as intended (with the family moving to the insured property). LV's loss adjuster agreed and paid an interim settlement of £10,000. LV, reviewing Mr C's request for more to be paid, felt the £10,000 had been paid in error. It said it wouldn't ask Mr C to pay that back – but it wouldn't pay anymore unless he could show it proof that the family were going to move and that the other property would have been sold or rented. LV felt that without that, Mr C hadn't shown he'd incurred costs or lost out financially.

In the meantime Mr C had made a claim for water damaged contents items – for the policy limit of £35,000. LV didn't think there had been any significant contents at the home. It noted that didn't track with its initial concerns about unoccupancy. Mr C said he'd been told to dispose of the items and didn't think he could evidence matters further. LV placed the claim on hold again whilst it investigated its concerns about the contents being claimed for. Ultimately, towards mid-December 2023, Mr C provided some photos of some belongings scattered and set out outside the insured property. He also provided a brief list with ascribed values such as 'designer clothing, £15,000'.

On 9 January 2024 LV put an offer to Mr and Mrs C to settle the buildings and contents claim. It said it would pay £121,429.76 for the building work which was the price required to

complete the work not including VAT – or it would do the repairs, and £2,500 for contents items – with an explanation for the contents sum.

Mr C wasn't happy with the figures, especially once he asked LV what prices the tender had returned – he didn't understand why LV wasn't paying in-line with the recommended tender sum. He remained unhappy about the contents too as he felt he'd acted on instructions received from LV to dispose of items. Mr C was also unhappy that LV wouldn't pay more than £10,000 for him not being able to live in the insured property or rent/sell the other property. He felt LV had delayed the claim and he was suffering financially and emotionally as a result. He complained to the Financial Ombudsman Service.

Whilst we were considering the complaint LV paid £123,579.76 to Mr and Mrs C. This was paid on 15 March 2024.

Our Investigator felt LV should be paying an additional sum for buildings, to bring the settlement in line with the tender recommendation sum, less only a contingency sum of £3,000. She felt that if Mr C did provide it with evidence of mortgage payments, it should reimburse some of his outlay as he'd been paying for two houses. But she wasn't minded to make LV pay more for the contents. And she didn't think it had caused any unreasonable delays in handling the claim.

LV said it had deducted the contingency as well as provisional sums from the recommended tender, which it felt was fair. And it didn't think it should have to reimburse any mortgage sums as it had already given Mr C the chance to show it proof about what he'd said would have happened but for the claim, and he hadn't been able to do so. So it wasn't agreeable to paying anything more to Mr and Mrs C.

Mr C said that his losses had continued because the house hadn't been reinstated – cars had been vandalised and the door damaged. He said LV had directed him to dispose of contents items so it wasn't fair for it to now only pay such a small settlement amount – if the loss adjuster hadn't catalogued them properly that wasn't his fault. He said it had taken too long between LV accepting the claim and the tender being returned. Mr C said he wanted us to listen to all calls between him and LV and/or its loss adjuster. He said he wanted an Ombudsman to consider matters, with him being given time to present the complaint himself to the appointed Ombudsman.

Following further communication from our Investigator to both parties, the complaint was referred to me for an Ombudsman's consideration. I found that I wasn't minded to make LV pay anything to Mr and Mrs C regarding mortgage sums. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

"My provisional decision supersedes anything our Investigator said. If, having read my provisional findings, Mr C should wish to present any final points for me to consider, he can do so via our Investigator, as, in line with our normal complaint process, she remains the point of contact for this complaint. If Mr C should wish to make a verbal statement for me to consider, our Investigator can organise a recorded call to facilitate that.

Buildings settlement

Aviva, through a tender process, established that it would cost £130,465.76 to reinstate the property. That was excluding VAT. That did include a £3,000 contingency sum and some provisional costs. LV didn't explain to Mr C or this Service exactly how it got from £130,465.76 to its proffered settlement sum of £121,429.76. So it hasn't shown that was a fair sum.

I agree with our Investigator though that its reasonable for an insurer to settle costs like this net of VAT and any specific contingency sum. After all, with a contingency sum it's never clear whether or not such will become necessary. With the contingency sum applied here being clearly stated on the tender report as £3,000. Which leaves a shortfall of around £6,000, unaccounted for in LV's deduction, by any clear methodology or easily apparent equivalent figure in the tender report. I'm satisfied that LV needs to make an increased payment to Mr and Mrs C to 'correct' the unfair settlement.

When LV settled the buildings claim, it paid a net sum of £123,579.76. I'm satisfied that sum included the £2,500 offered for contents items. Leaving the sum it paid for buildings as £121,079.76. This then appears to be the amount LV offered initially, less the policy excess of £350. Assuming Mr C has not paid this elsewhere, I think it was reasonable that this was deducted. So, taking the excess sum into account, LV will now have to pay Mr and Mrs C £6,036.76. I've reached that figure by taking the initial settlement sum, before the excess was deducted, of £121,429.76 off of £127,465.76, which is the recommended tender sum of £130,465.76 less the £3,000 contingency. LV will have to add interest to the sum of £6,036, applied from 15 March 2024 until settlement is made.

Contents items

As I understand it, it was only after the occupancy issue was resolved that Mr C put forward the claim for contents. LV has noted that the sum claimed, for what Mr C suggests were personal items stored in the insured property with the prospect of the family moving there, equated exactly to the policy sum insured of £35,000. In the backdrop of the wider claim concerns I can see why LV was worried about the contents claim. I think it's reasonable that it wanted to investigate this reported loss further. In the circumstances I think it was reasonable that it put the claim as a whole on hold whilst it did that.

When LV did decide to settle the contents claim it gave a clear explanation to Mr and Mrs C about why it had offered the settlement sum it had. The list Mr C gave wasn't that detailed and LV matched, as far as it could, the items claimed for against photos Mr C provided. It also considered things like whether certain items would likely have suffered damage through exposure to water – such as bicycles. Setting aside for a moment the concerns Mr C has raised about being told to dispose of items, I think LV's basis for settling the contents claim, as well as the related sum it offered, were fair and reasonable.

There were some items which LV would not settle for. Largely these were items it felt would have been restorable (so didn't need to be disposed of) and/or they weren't evidenced/visible in the photos. So it is in respect of all of these items and their value that Mr C feels LV has caused him a loss because, he says, it told him to dispose of everything damaged.

Whilst I don't doubt Mr C's recollection in this respect, I have to say I don't think that is most likely what he was told to do. Such an instruction, from a claim specialist/agent of an insurer, would be highly irregular and reckless. For me to conclude that was most likely what happened, I'd have to see strong proof indicating that occurred. I haven't seen that here.

I haven't, for example, been presented with any call to listen to during which this instruction was given, or where Mr C was given to understand, by something misleading being said for example, that is what he should do. I know Mr C would like me to obtain and listen to all calls he and LV and the loss adjuster had. But that would equate to me looking for evidence through which to uphold Mr C's case. This is an informal Service and we are independent from either party. My role is to assess the evidence presented, or ask for specific evidence where it seems likely related to an issue at hand within the complaint, and which I feel I'll need to see to make a fair and reasonable decision.

On the note of whether I need to hear all of the calls with LV to determine this factor of Mr C's complaint, I don't think I do. Most recently Mr C has indicated that it was likely a loss adjuster he was speaking to. So listening to calls Mr C had with LV won't help, and calls with loss adjusters are usually not recorded. I note that here, towards the end of the claim, Mr C told LV he didn't want to speak to the loss adjuster anymore because those calls couldn't be recorded. So I don't think it's likely that any discussions Mr C had with the loss adjuster about his contents items were recorded. Which means I have to decide this based on what I think is most likely to have occurred. As I noted above, I think it's unlikely that Mr C was told to dispose of his damaged contents.

As I'm satisfied that LV didn't prejudice Mr C's position by giving him poor advice, I think it's reasonable that it didn't settle for items that weren't evidenced or which it felt were likely restorable. In respect of the latter, I know Mr C says that clothing, for example, was likely not restorable because it was mouldy – but clothing items can usually be professional cleaned and restored. I haven't seen any evidence here – such as an expert assessment of items – that makes me think any items were not restorable.

Having considered everything regarding the contents settlement, I'm satisfied LV acted fairly and reasonably. I'm not minded to make it pay or do anything more.

<u>Disturbance allowance/alternative accommodation/lost rent or sale opportunity</u>

Mr C has said that, but for the claim, the family were to move into the insured property in the New Year. He's said that he had tenants lined up to let the home where the family had been living. He's said it was a six-month let so the property could then be sold. But that LV's failure to provide him and his family with alternative accommodation following the claim prevented any of that from happening. However, whilst LV considered this, Mr C wasn't able to provide it with any proof to support his plans, such as details of the tenants. Mr C said that sharing the tenants' details would breach data regulations and/or that he lost their details when his phone broke.

The policy Mr C has with LV is for the insured property. Not the home which was the family's main residence at the time of the leak. The policy offered cover for the policyholders – Mr and Mrs C, and any family member normally living at the property. Mr C was the only person who stayed regularly in the insured property. This is important because the policy for the insured property would require LV to provide alternative accommodation where the insured property is not habitable – but this can only reasonably extend to the persons covered by the policy – family members that normally live in the insured property. And, being reasonable, it would only need to be provided where those persons had nowhere else to stay. Mr C had his other home to stay in and LV was not responsible for re-housing the family which didn't usually live in the uninhabitable property it insured.

If Mr C could though have shown that he and Mrs C couldn't or shouldn't have continued living in their other home, because to do so would cause them to lose rental income, for example, I'd expect LV to consider that. Which I can see that it did. It noted that Mr C wouldn't or couldn't provide the tenants' details. It bore in mind that, for around two years, Mr C had owned both houses, paying mortgages on both, whilst living in only one of them, with the other not let or otherwise generating an income. It also noted that the insured property was mid-renovation when the claim occurred in December 2022 – and it wasn't clear, but for the leak, when that work would have progressed to a position where the home was habitable.

I think those are all relevant concerns noted by LV. From what I have seen, I'm not persuaded that Mr C, but for the leak, would have been in any different position in 2023 than in the years before. So I'm not persuaded that it's most likely that Mr C has suffered a financial loss, by having to continue to pay two mortgages, without either house generating an income, because of any failure by LV to re-house him.

I note LV's loss adjuster paid Mr C £10,000 as a disturbance allowance. Which LV then felt was a mistake and shouldn't have been paid. I'm pleased to note that whilst LV felt this sum had been paid in error, it didn't try to re-coup it or offset it against other claim settlements. I think that was fair of it. I know Mr C feels it's unfair that it won't pay more, but given the details I've set out in this section, I think that was a fair and reasonable decision. I'm not minded to make it pay or do anything more – including in respect of further consideration and/or reimbursement of any mortgage payments.

Claim handling

I can see this has been a difficult time for Mr and Mrs C. But it is unfortunately inevitable that experiencing an incident like this, which leads to a claim, will cause difficulty, upset and distress. Of course an insurer shouldn't add to that by handling a claim poorly and/or causing delays. But I don't think LV did that here.

Here LV began dealing with the claim, as I'd expect it too. When it became concerned about whether the house was lived in, the claim was put on hold whilst it completed further investigation. I think that was reasonable. Once Mr C had provided the evidence LV had asked for it decided to accept the claim and directed the loss adjuster to move to settlement.

That was in June. Given the scale of the damage LV wanted to put the work to tender. To do that the loss adjuster had to compile a scope of works. Once the scope was completed and put to tender, the bids from contractors had to be assessed. It was October when that was completed and the recommendation was made to LV for the lowest of the three bids. Considering the scale of the damage, the expertise and time that had to go into each stage of this process, I think that this step of the claim was completed in a reasonably timely manner. I haven't seen that LV caused avoidable delays during this time.

The claim didn't progress once the tender recommendation was returned until January 2024. That was because of the concerns that had arisen about the contents claim. As I said above, I think it was reasonable that LV wanted to investigate those issues. I think the claim progressed reasonably and without any avoidable delays caused by LV in the period October 2023 to January 2024, when settlement was offered by LV."

LV said it accepted my findings. Mr C said he was very unhappy with everything.

Mr C said he felt there'd been a flaw in understanding by this Service from the outset, and so any decision issued will be flawed too. He said the whole point is that he had properties which he was entitled to use as he wished, but LV had prevented that, and he shouldn't then have to prove what he would otherwise have done. He said he didn't agree with anything and he'd put the matter before the courts because the stress and financial loss caused had been immense.

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 note LV has accepted my provisional decision. Also that Mr and Mrs C are unhappy with it.

I absolutely understand that this has been a very difficult time for Mr and Mrs C. I can assure them I have taken into account everything they've presented. I'm aware that having to provide proof to support their losses feels unequitable to them in this instance where LV has, from their point of view, failed them so badly. However, as an Ombudsman of an independent dispute resolution service, if I am to make an award against an insurer, I have to see a reasonable level of proof to satisfy me that a loss most likely occurred. In this case, whilst I accept it is frustrating for Mr and Mrs C to hear this, their testimony about what they intended to do with their properties in 2023 does not sufficiently satisfy me that LV's failures most likely caused them a loss.

Mr and Mrs C's response to my provisional decision has not changed my views on the complaint, or what I think is its fair and reasonable outcome. As such my provisional findings, along with my comments here, are now those of this my final decision.

If Mr and Mrs C, as they've indicated, aren't minded to accept my findings, then LV will not be bound to comply with my award set out below. If they do consider accepting my findings, they should be aware that it's unlikely they'll be able to accept them and then still take a claim through the courts for any part of my findings they disagree with. They may wish to obtain legal advice before deciding whether or not to accept my findings.

Putting things right

I require LV to pay Mr and Mrs C £6,036.76, plus interest applied on this sum from 15 March 2024 until settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require LV to take off tax from this interest. If asked, it must give Mr and Mrs C a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint in part. 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 Mr C and Mrs C to accept or reject my decision before 10 September 2024.

Fiona Robinson
Ombudsman