

## complaint

Mr R is unhappy with the offer made by Liverpool Victoria Insurance Company Limited ("LV") concerning the repair costs for his conservatory following the collapse of a garden wall onto it. He is also unhappy that LV will not pay any part of the cost of rebuilding the wall, and with its general handling of his claim.

## background

In January 2012 Mr R returned from holiday to find that the rear boundary wall between his and his neighbour's property had collapsed and damaged part of his conservatory. After unsuccessfully attempting to claim against his neighbour, Mr R made a claim to LV for both the damage to the wall and to the conservatory. LV accepted the claim for the conservatory. It offered £600 net of the policy excess of £250, having estimated the cost of the damage at £2,000. It made a deduction under the policy terms for wear and tear. It declined the claim for the wall on the basis that it was due to a "*gradually operating cause*" and therefore not covered under the policy.

Mr R was also unhappy with the way the claim was dealt with, pointing out that he had to write several times to the loss adjusters, with no response. He referred his complaints to this service.

Our adjudicator assessed the case and ultimately found that LV's offer was fair and reasonable. She thought it should pay £100 for the inconvenience caused to Mr R by its loss adjusters' failure to respond to his letters.

LV accepted this. Mr R was not happy as he did not think that LV had properly assessed the damage to his conservatory. He had to pay over £19,000 to have it rebuilt and felt that LV should pay him 25% of that. He also felt that he had made every effort to maintain the wall, but that ultimately it was his neighbour's fault that it collapsed. That neighbour has moved and he is no longer able to pursue a legal claim.

## my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

### *conservatory*

The conservatory was assessed as being in a very poor state of repair. From the photographs I can see that the woodwork was in a very poor condition and there was a lot of internal overgrown vegetation. The loss adjuster said that the anticipated repair costs were £2,000. I know that Mr R disputes this figure but I have seen no costed figure from him in respect of the repair of the small part of the conservatory that was damaged. I know and fully appreciate that the whole structure had to be rebuilt. However I attribute that to the fact that the whole building was in a very poor state of repair and would most likely have had to be rebuilt in any event. Because of that I do believe that the figure of £2,000 is reasonable. As far as a deduction is concerned the following policy term applies:

*"If the damage to the buildings is not rebuilt or repaired, or the buildings were not in a good state of repair when damaged, we will pay....the cost of repair or replacement less an amount for wear and tear."*

LV was therefore entitled to make a deduction. Because of the very poor state of the building I do think its deduction was fair and reasonable. I understand that it has already paid the £600.

*wall*

Mr R would like to claim for this as accidental damage. He feels it is not his fault that the wall collapsed and that he had made every effort to keep it in repair including repointing. It was his neighbour's trees that caused the damage and he had made numerous attempts to approach him about the damage but was unsuccessful.

Under the policy accidental damage is defined as:

*"damage caused suddenly by external means which is not expected and not deliberate."*

From my assessment of the papers the damage to the wall was not "*sudden*". My understanding of it is that it was caused by the neighbour's trees, which is something that happens over a period of time and is therefore a "*gradually operating cause*". There is an exclusion under the policy which says:

*"We will not pay for:*

- *Any claim arising from ....Anything which happens gradually including deterioration or wear and tear, settlement or shrinkage."*

I do sympathise with Mr R and fully accept that it was not his fault that the wall collapsed, and that he had done what he could to keep the wall repaired. However LV does not have to pay under the policy if it is able to cite an exclusion which applies and that it is fair to apply that exclusion. I do think that the exclusion does apply and I would only regard it as unfair if it was an unusual exclusion that had not been drawn to the consumer's attention, or the wording of it was not sufficiently clear. However exclusions for wear and tear or gradually operating cause are not unusual and apply in most household policies. Also the cause of the damage does in my view come under "*gradually operating cause*" which I think is clear from the wording of the exclusion which I have quoted above. It was not therefore unfair for LV to apply that exclusion.

*claim handling*

I accept that, after reopening his claim once his conservatory had been rebuilt, the loss adjusters failed to reply to several of Mr R's letters, causing him to make a formal complaint. I think this would have caused him some irritation and inconvenience. I do believe that the amount proposed of £100 is appropriate to compensate him for that.

Overall therefore I think that the amount already paid to compensate Mr R for the damage to his conservatory is reasonable, that the damage to the wall is unfortunately not covered under the policy and that a payment of £100 is appropriate to compensate him for the inconvenience he faced in chasing the matter up.

**my final decision**

My final decision is that I uphold the complaint in part. I direct Liverpool Victoria Insurance Company Limited to pay to Mr R £100 for the inconvenience caused to him in the way his claim was handled.

Ray Lawley  
**ombudsman**