

The complaint

Mr and Mrs W complain that Liverpool Victoria Insurance Company Limited declined a claim they made under their home insurance policy for subsidence.

Reference to LV includes its agents and representatives.

Mr W has primarily dealt with things so, for simplicity, I'll refer to him only.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr W bought his property in 2010 and had a conservatory added later that year. He got in touch with LV in 2022 when he discovered a problem with it.
- LV appointed a loss adjuster to look into it. They carried out investigations and declined the claim. They said, in summary:
 - The conservatory had been damaged by subsidence as a result clay shrinkage due to the moisture demand of the nearby Oak tree.
 - The foundation is 500mm deep, with Oak roots found to a depth of 1,300mm.
 - The main house foundation is 1,200mm deep, with no roots below it.
 - The Oak tree was in place before the conservatory was built, so the foundation should have been designed to accommodate it.
 - The conservatory foundation is inadequate judged against the standards at the time of construction, as a minimum foundation depth of 1,000mm – without nearby vegetation – would be expected.
 - This amounts to faulty design – which isn't covered by the policy.
- Mr W didn't think this was fair and complained. In summary, he said:
 - The structure had been built by a reputable and professional conservatory company, who he had every reason to trust.
 - Until 2022, he had no way of knowing there might be a problem.
 - It's for this kind of unexpected event that he took out insurance with LV.
 - The inadequacy of the foundation hadn't been independently verified.
 - It had taken from October 2022 to May 2023 to decline the claim.
 - In December 2022, he'd asked for a full copy of his policy wording – but he hadn't received it.
- Our investigator thought LV had acted fairly. She thought it had shown why the conservatory foundation was faulty and it was therefore entitled to decline the claim.
- Mr W disagreed and asked for an Ombudsman to consider his complaint.

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.

Having done so, I'm satisfied LV has acted fairly, for broadly the same reasons as the investigator. I'll explain why.

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- The scope of this complaint is LV's decision to decline the claim, and the way it handled it, including Mr W's request for a copy of the policy wording.
- Mr W has more recently raised concerns about LV's 2023 renewal documents and its following communication. That's outside the scope of this complaint and Mr W is aware he can take the matter up separately with LV if he wishes. So I won't consider it as part of this complaint.
- All insurance policies will be made up of terms and conditions. Most home insurance policies are like Mr W's – they cover damage caused in certain ways only, such as damage by fire or theft. But it won't cover *all* damage caused in those ways. The policy will contain a number of exclusions. For example, a policy might cover theft generally – but not when the home has been unoccupied for a period of time.
- There's nothing unfair about this approach in principle because insurers are entitled to choose what they will and won't cover. But they must present those terms clearly and apply them fairly.
- Relevant to this case, the policy covers damage caused by subsidence, subject to a number of exclusions. The one LV is relying says, in summary, that damage caused by faulty design isn't covered. This is a very common policy exclusion. I think some variation of it will likely be found in most, if not all, home insurance policies. I don't find it to be a fundamentally unfair exclusion.
- LV accepts the conservatory has been damaged by subsidence. But it's declined the claim because it says this was the result of faulty design. The onus is on LV to show it would be fair to rely on that exclusion in order to decline the claim.
- The loss adjuster is a chartered structural and civil engineer. And they relied on investigations to show the foundation depths, soil types, and root identification. I haven't seen any evidence to challenge the investigation results or their professional opinion, so I have no reason to doubt it.
- When the conservatory was built in 2010, it wasn't subject to Building Regulation. But I would nonetheless expect it to be built to an appropriate standard, such that it was likely to stand the test of time. To do this, the builder should have taken into account the best practice of the time and the specific site conditions to make a judgement call about the design of the foundation.
- The loss adjuster referred to British Standards for foundation design. I'm satisfied these Standards represent independent, reputable guidance on best practice for foundation design. In summary, the relevant parts urge caution when building a foundation on shrinkable clay, particularly where vegetation is likely to influence

ground movement. It advises the builder to design the foundation to take this account, taking it deeper than the level where appreciable movement is likely.

- The Standards suggest a minimum depth of 900mm – and potentially deeper where vegetation is nearby. In this case, a mature Oak tree was nearby the conservatory at the time of construction, so it should have been recognised as a significant factor when designing the foundation. That means a depth greater than 900mm would have been reasonable, possibly a depth in line with the main house. Had that been the case, it's unlikely there would have been any subsidence movement given the depth of the Oak roots found.
- In these circumstances, I'm satisfied LV has shown the foundation design was faulty – and had it been reasonable, it's unlikely subsidence would have occurred.
- Mr W has said he trusted the builder to design the foundation to a reasonable depth, he had no way of knowing the builder hadn't done so, and it's therefore unfair to effectively hold this problem against him. I understand why he's making this point and there's no suggestion Mr W himself is at fault or has acted unreasonably whatsoever.
- However, the policy excludes faulty design – and that's what's caused the damage. And I haven't seen anything to suggest Mr W received credible reassurance that the conservatory was built to an appropriate standard, for example, Building Control approval or similar, that might make me think it would be unfair for LV to rely on the exclusion. So I'm satisfied it would be fair and reasonable for it to do so.
- Looking back over the history of the claim, it took longer to reach a conclusion than I'd usually expect – but not significantly so. And I think the loss adjuster was clear from an early stage that they had concerns about the foundation depth – and this may mean the claim wouldn't be covered by the policy.
- Whilst it would have been preferable for the claim to have progressed more promptly, overall, I don't think LV handled the claim unreasonably or unfairly.
- I think Mr W feels let down by LV's complaint process. It acknowledged his complaint but didn't provide a response. Complaint handling in isolation isn't something I have the power to consider. So I can't make a finding about it. But I can understand why Mr W would have expected LV to act in line with its regulatory obligations – and would have been disappointed when it didn't. Nonetheless, he was able to have his complaint considered by this Service.
- Part of Mr W's complaint is that he asked for a full copy of his policy from LV – and it didn't reply to him or provide what he asked for.
- I haven't seen any evidence to show LV responded to Mr W's request. So, again, I can understand why he raised his point and felt LV's communication was lacking.
- Mr W's policy is made up of the policy wording – a 19 page document – and the policy schedule – a 14 page document. Together they make up the contract of insurance and set out the terms and conditions in full. It's clear Mr W has both of these documents because he provided them to this Service when setting up his complaint. So he had access to the full contract of insurance.
- However, I doubt Mr W was aware of that, otherwise he wouldn't have asked for a full copy of his policy. And, regardless, I'd expect LV to respond to him promptly to

explain he already had the relevant documents and/or resend the documents. It's disappointing that it didn't do so. But as Mr W had the documents, and the lack of response to him had no bearing on the claim, I don't think Mr W has been disadvantaged or impacted significantly enough to warrant compensation.

My final decision

I don't uphold this complaint.

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

James Neville
Ombudsman