

The complaint

Mr and Mrs S complain about the decision by Liverpool Victoria Insurance Company Limited ('LV') to turn down a subsidence claim made under their buildings insurance policy.

What happened

Mr and Mrs S hold buildings insurance with LV. Within a year of moving into their property, they noticed their retaining garden wall had started to move outwards, which affected the adjoining patio. They also noticed some cracks to the mortar joints of the outer wall of the house, and some bricks were starting to fracture. They made a subsidence claim under the policy.

LV arranged for two loss adjusters to carry out inspections. They both concluded there was no subsidence damage to the house, and so LV turned down the claim. Unhappy with this, Mr and Mrs S brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. She thought the available reports didn't show that the home had suffered subsidence damage, so concluded that it had been reasonable for LV to turn down the claim.

Mr and Mrs S didn't accept our investigator's findings, and so the matter has been passed to me for a decision.

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've summarised the complaint above in far less detail than the parties have done. I recognise Mr and Mrs S have gone to great lengths to explain why they think their claim is payable, though I'm not going to respond to every point that's been made. That's not meant as a discourtesy, it simply reflects the informal nature of this Service.

The policy says:

'We will provide the following cover for any loss or damage to the building up to the limit of cover shown in your schedule:

...

5. Subsidence or heave of the site on which the building stands or landslip, but not:

- *If the main structure of your home or domestic outbuildings is not damaged at the same time, by the same cause...*

Words in bold are specifically defined within the policy.

'Subsidence' is defined as *'downward movement of ground other than by settlement.'*

'Heave' is defined as *'upward movement of ground'.*

'Landslip' is defined as '*movement of ground down a slope*'.

The report provided by the first loss adjuster appointed by LV said there was some minor cracking noted to the rear corner of the building. They said this wasn't consistent with subsidence and was more likely the result of wrongly placed wall ties. They accepted that the garden retaining wall had moved and resulted in displacement to the patio. They thought this was because the wall had no substantial foundation. But they pointed out that a claim would only be covered if the home was also damaged by the same cause.

Mr and Mrs S were unhappy with this report (as I understand there were no wall ties used in that part of the wall). LV therefore appointed another loss adjuster who carried out their own inspection.

The second loss adjuster said there was no evidence of any recent or progressive foundation movement affecting the house, and therefore a valid subsidence claim did not arise. They thought the cracks to the brickwork were the result of thermal movement, with some possibly related to the twisting of the wall. They confirmed the cracks had not been caused by any foundation movement. The loss adjuster said it was clear the garden wall had no formal foundations, and was therefore subject to the effects of seasonal movement of the sub-soil. They also said the movement of the wall was clearly affecting the patio, which was settling and moving as the wall moved. They said complete failure of the garden wall would continue to affect the patio and would have no effect on the main house.

Mr and Mrs S have provided reports from two building firms.

One report said there were cracks to the corner of the property, and in the surrounding areas a retaining wall was leaning outwards, and a patio had significantly dropped causing cracks to appear. They said that meant there was evidence of the ground heaving away from the property. They noted the retaining wall had been built with shallow foundations, and said it needed to be rebuilt, and the patio should be excavated to see if there was any damage to drainage pipes.

The second report said one end of the retaining wall was showing strong signs of heave as it was moving outwards, and that where it had rotated, a gap between the wall and patio had opened significantly. They said that as the wall moves, it was removing support for the patio. They also said there was some visible signs of cracking in the vertical mortar joints of the external wall to the house and fracturing of some of the bricks. They thought this would suggest this corner of the property was subject to some movement/stress. They noted there were two rainwater downpipes near the corner of the building, and thought these needed to be investigated to rule out a cracked drain leading to erosion of the soil under the foundation.

The policy is clear that a claim for subsidence can only be accepted if there is damage to the main house at the same time, by the same cause. Whilst it's apparent that the retaining garden wall was moving, both loss adjusters agreed that there was no evidence of subsidence to the main house. Although one of the builders thought the main house may have been subject to some movement/stress, there's no evidence to support that this was caused by subsidence. As one of the loss adjuster's pointed out in their report, damage due to subsidence or heave is usually shown by diagonal cracks. That's not the case here.

Mr S has his own expertise in this area. He says that as the retaining wall is moving outwards, it is a primary cause of landslip between the wall and the house. He describes landslip as 'sideways slippage'. But the policy defines landslip as '*movement of ground down a slope*'. There's no independent evidence to support his view that the house has been affected by this.

I've read Mr S's correspondence with one of the loss adjuster's where he says there is sideways movement to the brickwork. The loss adjuster didn't agree, but even if this were the case, this wouldn't fall under the policy definitions of subsidence, heave or landslip.

I recognise my decision will disappoint Mr and Mrs S as I know they're really concerned about the damage, but I'm satisfied it was reasonable for LV to turn down this claim as the evidence doesn't support that the damage is covered by the policy.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 15 January 2024.

Chantelle Hurn-Ryan
Ombudsman