

The complaint

Mr and Mrs M have complained about their home insurer Lloyds Bank General Insurance Limited in respect of a claim for subsidence damage at their home.

What happened

Mr and Mrs M noted cracks in their home, including a cracked window pane. In November 2022 they contacted Lloyds to make a subsidence claim. It sent an agent to assess the property. It accepted there was subsidence – felt to be being caused by an ornamental pear tree. It felt, having obtained an arborist's report, that the pear tree would need removing but also, in February 2023, it began monitoring the cracks at the property.

The reports Lloyds had obtained were shared with Mr and Mrs M – but only after they'd made several requests. They didn't feel Lloyds had done enough investigations into the cause of the subsidence and argued that, in respect of some damage, also felt to be subsidence related, the pear tree was too far away. Mr and Mrs M said they wanted the property underpinned.

Lloyds issued final response letters (FRLs) in respect of Mr and Mrs M's concerns in June, July and August 2023. Lloyds accepted there had been some poor service. It offered and paid £250 compensation for the upset it accepted it had caused. But it didn't think it was handling the claim investigations unfairly. It noted that monitoring of the damage was continuing to ascertain if the property was currently moving. It also agreed to arrange for a visit from a senior engineer to discuss Mr and Mrs M's claim concerns in more detail. Lloyds agreed to consider any expert report Mr and Mrs M chose to obtain and, if it changed the claim, reimburse any cost for this.

Mr and Mrs M's concerns were not assuaged by Lloyds' replies. They pursued a complaint via the Financial Ombudsman Service.

Our investigator noted that Mr and Mrs M seemed to want us to direct Lloyds on settling the claim. She explained that as its claim investigations were on-going, with crack monitoring in progress, at the point Lloyds issued its FRLs, this was not something we would do. She felt there had been several weeks of delay in monitoring starting and some effort required by Mr and Mrs M to obtain reports. She was satisfied that Lloyds' payment of £250 was fair and reasonable compensation in the circumstances. So she did not uphold the complaint.

Mr and Mrs M were disappointed. They felt our Investigator hadn't investigated enough or taken proper account of (what they view as) the unsuitable qualifications of Lloyds' experts. Mr and Mrs M said it was not up to them to have to prove the pear tree was not the cause of subsidence and it was unfair to expect them to pay for reports to do so. They said it is clear the property needs underpinning. Mr and Mrs M noted that, as of October 2023 the claim was nearly twelve months old, with it being unresolved and monitoring on-going. So they didn't think it was fair to say Lloyds had delayed things by a matter of weeks.

In further correspondence our Investigator assured Mr and Mrs M that their health had been taken into account by her when reaching her view. She explained why she wasn't minded to

reach a different outcome. As Mr and Mrs M remained unhappy their complaint was referred for an Ombudsman's 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.

Having done so, with regret for the upset I know this will cause Mr and Mrs M, I find I'm not persuaded that, at this stage, Lloyds has acted unfairly regarding the claim. Whilst I think it could have provided a better service at times, I think its offer, and subsequent payment, of £250, is fair and reasonable compensation.

I understand that Mr and Mrs M are unhappy with how Lloyds has investigated their claim. They feel it hasn't used appropriate experts or gathered enough evidence to support its finding that the pear tree is causing the damage. I know they've said an engineer has told them the pear tree can't be the cause. But that they haven't obtained an official report due to costs.

At the point of Lloyds' FRLs, which is where my consideration extends until, whilst stating the pear tree was the cause, it had not attempted to remove it, or directed Mr and Mrs M to have it immediately removed. Often if trees are thought to be the cause of subsidence, an insurer will check things like the soil type – with trees being a most common cause of subsidence where the underlying soil is shrinkable clay. But often the most important part of any subsidence claim is monitoring of the property to see whether or not it is still moving. And only if it is found to still be moving would an insurer look at remediating the cause of the damage – as opposed to just repairing cracks.

Once monitoring has completed that might result in a finding that an engineering solution is needed to achieve stability for the property, such as underpinning. Although underpinning is not the only engineering solution. Or the monitoring, having shown a tree/trees are likely still causing movement, might result in the tree/trees being removed or something like a root barrier being installed.

If a tree is to be removed an insurer would usually also want to satisfy itself, by various tests and/or expert considerations, that removing it is not going to affect the ground conditions – which in some soil conditions it could, because removing a tree will mean less water is taken from the soil. Essentially, how Lloyds is likely to settle the claim will not be known until the monitoring phase has completed – and it's not uncommon for movement to be monitored over the course of a year. At the point Mr and Mrs M complained to us, monitoring had been in-place for around five months and was on-going.

Lloyds' FRL confirmed monitoring was on-going. It also offered to have a senior engineer visit with Mr and Mrs M to discuss their concerns in more detail. It further agreed to consider any report they had on the likely cause of the subsidence. I think these were all reasonable responses from Lloyds at that time. Lloyds had used subsidence experts to reach its initial conclusions and, importantly, it had begun to monitor the property. If Mr and Mrs M wanted to challenge those findings or make it do more without continuing monitoring, they needed to present strong evidence to do so. And Lloyds agreed to reimburse any cost outlay they had for this if any evidence presented changed its view. Further, it seems to me that talking things through, at their home, with Lloyds' senior engineer, might well have been a good way for the parties to fully understand the other's position about the various cracks and whether or not it was reasonable to think the pear tree is a likely influencing factor.

Overall, I'm not persuaded that Lloyds did anything wrong by not moving to underpin the property. I think it acted reasonably by appointing the initial assessor and then the arborist. I think it was reasonable for it to commence monitoring, with that being ongoing in summer 2023 – although it should have started that before the end of 2022, rather than only in February 2023. Even if it had started earlier – I think movement data over the summer months of 2023, around the time the FRLs were issued, would still have been important for Lloyds to capture. And, as I've said, until the monitoring phase has completed, the definitive likely outcome for the claim can't reasonably be known. Taking all of that into account, I won't be directing Lloyds to settle the claim such as by underpinning the property.

As I've noted, I think Lloyds should have started monitoring earlier than it did. I'm also satisfied that it could and should have shared its reports and relevant data more readily with Mr and Mrs M. I can see they, understandably, were, and are, very worried about their property and I can see it was frustrating as well as inconvenient for them to have to chase Lloyds. The communication from Lloyds could have been better. I also know that Mr and Mrs M have been dealing with all of this whilst Mr M is in poor health. But I am satisfied that £250 is fair and reasonable compensation for the upset caused by Lloyds' service failings.

My final decision

I don't uphold this complaint. I don't make any award against Lloyds Bank General Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 2 February 2024.

Fiona Robinson
Ombudsman