

The complaint

Mr M and Mrs B complain about The National Farmers' Union Mutual Insurance Society (the NFU') declining a malicious damage claim under their home insurance policy.

The NFU are the underwriters (insurers) of this policy. Some of this complaint concerns the actions of their appointed agents. As the NFU accept they are accountable for the actions of their agents, in my decision, any reference to the NFU should be interpreted as also covering the actions of their appointed agents.

What happened

As the background to this complaint is well known to Mr M, Mrs B and the NFU, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr M and Mrs B had a home insurance policy with RSA. On 13 July 2023 a wall at their property collapsed. Mr M and Mrs B say the wall collapsed as a result of a trespasser climbing on it first to cut trees and then when trying to remove evidence.

Mr M and Mrs B notified the NFU who arranged for a surveyor to visit the property. The NFU declined the claim as they said the collapsed wall occurred due to gradual causes (deterioration over time). Mr M and Mrs B raised a complaint about the declined claim and the general communication from the NFU.

The NFU didn't uphold the complaint and as Mr M and Mrs B remained unhappy, they referred their complaint to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that it be upheld. The complaint has now been referred to me for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

I've carefully considered the evidence provided in this complaint by both parties. It's important that Mr M and Mrs B understand that my remit here is to decide if, on balance, the NFU have fairly and reasonably investigated the claim, fairly considered the evidence and considered the claim in line with the policy terms. I'll also consider how the NFU have treated Mr M and Mrs B overall.

It's not my role here to speculate on the circumstances around how the damage occurred, or if it's related to the long standing dispute about trees or boundaries. Mr M and Mrs B have

referred to their evidence being accepted by the police, but that's not the test I'm applying here. If Mr M and Mrs B wish to pursue separate action against the third party they believe to be responsible for the damage, that would need to be done outside of their contract of insurance. My decision is limited to considering the actions of the NFU when responding to this claim.

The NFU declined the claim, relying on the gradual causes exclusion. Whilst I understand Mr M and Mrs B's strength of feeling, I find that the NFU have fairly investigated the claim and considered the evidence and can fairly rely on this exclusion, I'll explain why below.

The surveyor's report, on behalf of the NFU concluded that the wall collapse most likely occurred as a result of encroaching vegetation and a pre-existing lean:

"The wall collapse is most likely to have occurred as a result of encroaching vegetation and the existing lean of the wall due to previous displacement by trees. The outward rotation and subsequent collapse has happened gradually over time and clearly reached a point of no return where the outward lean and weight of the wall overcame its structural stability."

I find the surveyor's investigations on behalf of the NFU and their conclusions reasonable - based on the available evidence.

Mr M has disputed online photos of the wall from 2021, which appear to show the later collapsed section of wall leaning away from his property as 'distortion'. I've carefully considered his opinion, but don't agree. I say this because no other part of the image appears distorted. I've also considered the view from slightly further away (as Mr M has referred to), but don't find that it sufficiently undermines the images that show a lean in the wall or the surveyor's findings. Mr M also provided photos of the wall from 2019 from the opposite side of the wall (on his property) and these don't sufficiently undermine the rest of the evidence or the more recent images.

Mr M has argued that the cause of the collapse was a trespasser climbing on and interfering with the wall (dragging trees/branches over it). But proximate cause means doesn't mean the last cause, it means the dominant, effective or efficient cause of the loss/damage. In a phone call with Mr M on 19 September 2023, Mr M says he was told:

"It was a gradual state of decline and that if the wall had been in good condition, if someone had climbed over the wall it wouldn't have collapsed..."

I find that because of the other supporting evidence in this complaint, the NFU can fairly rely on the proximate cause to be gradual causes/deterioration over time, that has weakened the wall. In summary, 'but for' the gradual deterioration of the wall over time, I find it more likely than not that even with the additional weight of a trespasser on top, or when pulling tree branches across it, a normal well maintained wall of this nature should remain standing and not fall over.

It follows that Mr M's comments about only part of the wall collapsing doesn't change the opinion I've reached. It wouldn't be uncommon for a partial collapse in a wall of this nature and length. I also note that the section of the wall that has collapsed is the section that evidence shows was leaning outwards. I also note it has collapsed *after* a supporting pillar (nearest the road) and the collapse ends at the section of wall closest to a fuel tank that appears to possibly offer additional support for the wall at its' base.

Mr M has argued that his IPID document (key terms) doesn't specifically mention any cause which happens gradually in the 'what is not covered' section, but it does state: "*Damage or loss caused by lack of general maintenance, wear and tear, and loss of value over time.*" In any case, any exclusion in a policy of this nature for damage which occurs over time is not particularly unusual and I find that the NFU can fairly rely on it.

I've also considered if any other part of the policy should have responded to this claim and I'm satisfied that it shouldn't.

I find that the NFU have treated Mr M and Mrs B fairly and reasonably overall. The service provided may not have met Mr M's expectations, but I don't find it poor to the extent that compensation would be fair, reasonable or appropriate.

My decision will disappoint Mr M and Mrs B, but it brings to an end our Service's involvement in trying to informally resolve this dispute between them and the NFU.

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 M and Mrs B to accept or reject my decision before 25 April 2024.

Daniel O'Shea
Ombudsman