

The complaint

Mrs H and Mr H complain about how EUi Limited trading as Admiral (Admiral) declined a claim under their home insurance policy for damage to a wall at their property in bad weather.

Admiral use agents to administer the policy and to assess claims. Reference to Admiral includes these agents.

What happened

In January 2023 a boundary wall at Mrs H and Mr H's property collapsed during bad weather. They contacted Admiral to tell them about the damage and lodge a claim. Admiral arranged for a surveyor (B) to visit the property and assess the damage.

B concluded there was 'no insured cause' for the damage, saying to Mrs H and Mr H the collapse was due to wear and tear. Based on B's conclusions, Admiral declined the claim, saying the collapse was due to 'gradually operating cause' (an exclusion under the policy).

Mrs H and Mr H challenged the decline and disputed B's conclusions. They said the wall had collapsed during a violent storm and that they'd met their obligations (under the policy) to maintain the wall. They also provided a video showing the wall to be in a good state of repair five weeks before the collapse. They thought Admiral had focused on the 'gradually operating cause' exclusion to mitigate their responsibility to accept the claim without proper consideration of what had caused the wall to collapse.

Admiral considered Mrs H and Mr H's challenge as a complaint, but they didn't uphold it. In their final response, they said B had confirmed the collapse of the wall related more to wear and tear than a storm event. This meant the damage had been occurring for some time due to gradual wear on the life of the materials in the wall. They referred to the 'General Conditions' section of the policy and the obligation to take care of the property, as well as to the exclusion for damage from 'Gradual causes'. So, they didn't consider storm as the cause of the collapse, confirming their decline of the claim as an insurable event hadn't occurred.

Mrs H and Mr H then complained to this service. They disagreed with Admiral's view the collapse of the wall was due to 'gradually operating cause' reiterating their view the wall had collapsed due to the violent storm - they said that on the evening of the incident the wall was subject to persistent rain and winds of up to 64mph (force 11 on the Beaufort Scale). They also thought the wall had been properly maintained and in a good state of repair before the incident, with no visible deterioration or lean. Admiral's decline of the claim meant they were left with a significant bill to have the wall reinstated. They wanted Admiral to reconsider their decision to decline the claim and to settle the claim in full (or to make a reasonable offer to have the wall reinstated).

Our investigator upheld the complaint, concluding the storm caused the damage to the wall, rather than wear and tear. She noted comments from Admiral's in-house surveyor acknowledging Mrs H and Mr H had maintained the wall by replacing the mortar. To put things right, she thought Admiral should settle the claim in line with the [remaining] policy

terms and conditions and either reinstate the wall or offer a cash settlement (if Mrs H and Mr H had already had the wall reinstated).

Admiral disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said images of the wall indicated it was in a poor condition prior to the storm. Also, even at windspeeds of the magnitude at the time of the collapse, they wouldn't expect them to cause a boundary wall to collapse (boundary walls should be strong enough to resist wind speeds of that magnitude, if in a suitable condition). They also referred to further view from their in-house surveyor, saying the wall wasn't wide enough for the height it had been constructed and so not built using best practice. The surveyor accepted Mrs H and Mr H had re-pointed the outer edges of the joints – but that wouldn't introduce any additional stability (and it wouldn't take long to crack and fall away through frost action).

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.

My role here is to decide whether Admiral has acted fairly towards Mrs H and Mr H.

The main element of Mrs H and Mr H's complaint is that Admiral unfairly declined their claim, on the grounds that the bad weather at the time of the incident wasn't the main cause of the damage. Rather, it was due to wear and tear (gradual operating causes) with the wall. Mrs H and Mr H disagree with Admiral's view the collapse of the wall was due to 'gradually operating cause' saying the wall collapsed due to the storm and it was properly maintained and in a good state of repair before the incident, with no visible deterioration or lean.

In considering this issue, whether the damage resulted from a storm or from a pre-existing issue (wear and tear), there are three key issues we consider:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage claimed for consistent with damage that a storm typically causes?
- Were the storm conditions the main (or dominant) cause of the damage?

On the first question, in Admiral's case notes for the claim, there's reference to '64mph violent storm force gusts, approx. 8.30pm' and 'storm valid – 64 mph'. The notes also indicate (when the damage was first notified to them) Admiral advised Mrs H and Mr H the criteria for storm was met (but that they would instruct B to validate the damage in full). Mrs H and Mr H refer to the same point about being advised storm conditions were present at the time of the collapse.

So, as both parties accept there were storm conditions (and the wind speed would indicate storm conditions as this service would see them) I've concluded the evidence available indicates storm conditions were present at the time of the incident.

On the second question, I've considered the description of the damage provided by Mrs H and Mr H (and in B's report and photographs of the collapsed section of wall). The wall has clearly collapsed. This kind of damage is consistent with what we'd expect to see in storm conditions, particularly those involving high winds.

So, I've concluded the damage is consistent with damage a storm typically causes.

So, the third question is key. Admiral declined the claim on the grounds the cause of the damage was wear and tear. In other words, the storm only highlighted existing issues with

the wall's condition, which was the result of wear and tear. So, the bad weather wasn't the main or dominant cause of the damage (it was the pre-existing condition of the wall).

I've considered this issue carefully, including the points made by Mrs H and Mr H and by Admiral, including the report from B (including photographs of the collapsed wall and of the other boundary walls) and the views of their in-house surveyor. Taking all these things into account, I've concluded Admiral haven't acted fairly in declining Mrs H and Mr H's claim. I'll set out why I've come to this conclusion.

Firstly, as a general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given my conclusions there were storm conditions at the time of the incident, and the damage is consistent with that we'd expect to see in a storm, I think it's reasonable to conclude there was an insured event (storm) that caused damage.

But where an insurer relies on an exclusion in the policy to decline a claim (as Admiral have done by citing gradual causes/wear and tear) then the onus is on them to show the exclusion applies. Looking at the available information and evidence, I'm not persuaded Admiral have done so in the specific circumstances of this case. I'll explain why I've come to this view.

In their final response, Admiral refer to the following policy wording, where there's the following exclusion under the heading *What is not covered*:

"10. Gradual causes

Any loss or damage caused by anything that happens gradually, including wear and tear, wet and dry rot, or damage due to exposure to sunlight or atmospheric conditions, settlement, mildew, rust or corrosion."

Similar wording appears in the Insurance Product Information Document (IPID) which sets out the more important features of the policy.

I've also considered B's report from their inspection, which concludes there was no insured cause and states the cause of the damage as 'Natural breakdown of materials'. And there's a statement that:

"When the surveyor inspected the garden/boundary wall he observed that the damage was caused by natural breakdown of materials."

I've also looked at the images of the wall taken by B after the collapse. B concluded the damage was caused by natural breakdown of materials. However, looking at the images, I'm not persuaded that's clearly the case. The wall has collapsed mainly in large sections, with some separation (though that may have occurred when the wall impacted the ground). There's no clear separation of the bricks as might be expected had there been a natural breakdown of materials. And photographs of those other sections of boundary wall that remained intact don't show any obvious signs of deterioration or being in a poor condition. So, I've concluded, on the balance of probabilities, the storm was the main (dominant) cause of the damage – not wear and tear or gradual causes.

In forming this conclusion, I've also considered the issue of whether Mrs H and Mr H had met the obligation under the policy to maintain their property (to a good state of repair). In their final response, Admiral also refer to the *General Conditions to your home insurance cover* section of the policy booklet, which includes the following term:

"Care of your property – You and your family must maintain your Buildings and Contents in a good state of repair taking reasonable care to avoid any accident and

to prevent loss or damage to everything covered by this insurance...Failure to comply with the above could result in you not being able to claim under this policy and your policy being cancelled.”

As mentioned above, it's acknowledged Mrs H and Mr H carried out some re-pointing of the wall, which I think is reasonable for them to have carried out. In bringing their complaint, Mrs H and Mr H refer to a video provided to Admiral taken shortly before the incident. They maintain this shows the wall had been maintained and wasn't in a poor condition. Admiral's case notes suggest they weren't able to view the video (and I've not seen it within the evidence and information provided) but looking at photographs of the wall (both the section that collapsed and the sections that didn't) they don't obviously show walls that haven't been maintained. And while Admiral's in-house surveyor has cast doubt on the effectiveness of re-pointing, I don't think it means Mrs H and Mr H haven't maintained the wall (given that the indications are they'd only been at the property for two years at the time of the incident).

I've also considered Admiral's in-house surveyor's view that the wall wasn't sufficiently wide for its height. The implication is that it wasn't constructed properly (and or there was defective workmanship). But this wasn't the grounds for the decline of the claim given by Admiral either initially nor in their final response. And I don't think it reasonable to hold Mrs H and Mr H responsible for this, given they had only been at the property for two years and weren't responsible for the wall's construction. And as noted above, other sections of the wall appear to have been constructed in the same way – but remained intact. Which doesn't suggest an inherent weakness of the walls more generally.

Taking these points into account, then I've concluded Admiral haven't done enough (given the onus being on them to show the exclusion applies) to have applied the exclusion for wear and tear fairly and reasonably to decline the claim for damage to the wall, in the specific circumstances of this case.

Having reached these conclusions, I've thought about what Admiral should do to put things right. As I don't think they can fairly and reasonably rely of the exclusion for gradual causes (wear and tear) to decline the claim, then they should settle the claim in accordance with the remaining terms and conditions of the policy (including any policy excess as appropriate).

My final decision

For the reasons set out above, it's my final decision to uphold Mrs H and Mr H's complaint. I require EUi Limited trading as Admiral to:

- Settle the claim in accordance with the remaining terms and conditions of the policy (including any policy excess as appropriate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 31 July 2023.

Paul King
Ombudsman