

The complaint

M has complained about U K Insurance Limited trading as NIG. They aren't happy about the way it dealt with a claim under their Commercial Residential Buildings Insurance policy.

For ease of reading any reference to UKI includes its agents and I've mainly referred to M in this decision as opposed to their representative.

What happened

M made a claim under their buildings insurance policy after a retaining wall collapsed. UKI looked into the claim for M and eventually decided that the claim wasn't covered as it thought the damage to the wall was caused by wear and tear which was excluded under the policy. As M wasn't happy about the decline of the claim and the poor service they received M complained to UKI.

UKI looked into M's complaint and agreed its service could have been better and that it delayed in dealing with M's complaint and offered £300 by way of compensation for its failings. But it maintained its position that the claim should be declined because of wear and tear, which was excluded under the policy, so M complained to this Service believing the recent heavy rainfall before the collapse had clearly affected the wall suggesting storm damage.

Our investigator looked into things for M and partly upheld their complaint. She thought UKI's offer of £300 in acknowledgement of its failings was fair. And having looked at whether the collapse of the wall had been affected by storm damage she didn't think this was the dominant cause of damage as it would be excluded under the wear and tear exclusion. But she thought, from the evidence provided by the various experts, that the damage to the retaining wall may well have been caused by flood and so should be considered by UKI.

M accepted the investigator's position, but UKI disagreed, so the matter has been passed to me for review.

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 agree with our investigator's position that there is a possibility that M's claim for the retaining wall was affected by flood and so it should consider the claim under the flood peril, and that its compensation offer (£300) seems fair. I know this will come as a disappointment to UKI, but I'll explain why.

I think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think

it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I don't propose to go over whether the claim was storm related or not as it appears to be accepted by both sides that this wasn't the predominant cause of damage to the wall. I note UKI has looked to go over this in response to the investigator's view, and whether there was a storm around the time of claim or not, but I won't rehearse the arguments here as it isn't relevant given the accepted position. Although there clearly is an argument for storm conditions and a period of heavy rain has been identified.

So, I'll focus on the key issue, the decline of M's claim for wear and tear. I can understand UKI's position, but I agree with our investigator that I think it should reconsider the claim under the flood peril.

In forming this decision I've considered the further points UKI has made in response to our investigator and of course the relevant law when reaching this decision. And I accept that UKI can decline the claim as the policy doesn't cover loss or damage caused by wear and tear. But I have to be satisfied that it acted fairly in fully considering the claim.

The initial surveyor that was appointed by UKI (who I note was appointed to consider the original claim from M's neighbour so there *could* be a conflict of interest here) suggested that the damage occurred due to landslip but as a result of the wall failing. And this was caused by a gradual deterioration of the wall over time and while there may have been a period of cold weather they didn't consider this to be storm damage. So, they argued the claim wasn't covered as there wasn't any cover for wear and tear or landslip.

M's own surveyor suggested the immediate cause of the failure of the retaining wall was unclear. But did suggest it could be that a severe frost in early January, which followed a period of heavy rain, could have been the trigger for the collapse. And goes on to say that if the cause was severe frost then this would be excluded under the policy as well.

Another report was commissioned by UKI as there was a dispute around the original engineer's position and incorrect information, including the correct policy, had been relied on so a second opinion was required. And he argued that there wasn't any evidence of subsidence or landslip.

However, he highlighted the wall was originally built around 1900 and that there wasn't any evidence of drainage or weep holes (which is to be expected given the period the wall was built). And he thought that the clearing of mature trees above the retaining wall would have had an impact on the soil dynamics and the water retention – in effect water previously removed by the trees could have moved down to the wall affecting the stability of the wall.

As such, this opens the possibility, as our investigator outlined citing the relevant caselaw, that a flood could have occurred gradually through a steady build-up of water. M's wall wouldn't be expected to have weep holes given its age and so I agree that a claim under the flood peril should be considered, and further investigation undertaken. The surveyor clearly suggested the water, which would ordinarily have been soaked up by the trees, had moved to the soil and over time affected the wall. So, there was a clear and steady build-up of water over a period of time and the surveyor also seems to agree with M that lack of maintenance didn't have a role in the wall failing.

I know there was a dispute between the findings of UKI's two surveyor's but I'm more persuaded by the second engineer here. I say this as UKI clearly had doubt themselves in appointing the second surveyor and the second report is fuller in detail and more persuasive. So, I think it is fair to rely on the second report.

I've considered UKI's further representations, and I do understand its position and that some of the consideration of the possibility of flood is retrospective and I accept that the first surveyor to attend didn't suggest flood. But UKI hasn't engaged with him for further information or opinion about this possibility. And it is clear that UKI's first surveyor could have considered the claim and the site of the retaining wall in more detail which would have helped here. His report is lacking in detail, and he only witnessed the damage to the retaining wall from a distance – although he may have seen the wall from the neighbouring side as he had also considered a claim for their insurer. Plus, M has highlighted differences in the report he provided for his neighbour in relation to the impact the collapsing wall had on their side.

Overall, I think there is a distinct possibility that the retaining wall's collapse *could* have been affected by flood. So, I think it is only fair and reasonable to reconsider the claim under the flood peril now.

Finally, I agree the service UKI has provided hasn't been up to the required standard. UKI could've ensured it kept M up to date and the frustration and difficulty caused by looking to rely on incorrect policy documentation clearly caused inconvenience, delay and impacted the claim handling. But I agree with our investigator that UKI's offer of £300 compensation for this seems fair.

My final decision

It follows, for the reasons given above, that I uphold this complaint. I require U K Insurance Limited trading as NIG to reconsider the claim under the flood peril and pay £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 19 January 2024.

Colin Keegan
Ombudsman