

## **The complaint**

Mr and Mrs H complain that Zurich Insurance PLC declined their claim after their garden wall collapsed during heavy rain.

Mr and Mrs H had buildings insurance underwritten by Zurich for their holiday-let house. The policy was in joint names but, for ease of reading, I'll refer mainly to Mrs H throughout my decision. Reference to Zurich includes actions taken by its agents.

## **What happened**

In summary, Mrs H's dry stone retaining wall partially collapsed following several days of heavy rain. She claimed under her holiday-let buildings insurance for storm damage.

Zurich instructed surveyors and a loss adjuster. After some initial disagreement about the weather conditions, Zurich accepted that the rainfall met the definition of a storm in the days before the wall collapse. However, based on the expert report, Zurich declined the claim under the policy exclusion of gradually operating causes. Zurich said the wall collapsed during the heavy rainfall, but the rain wasn't the primary cause.

Mrs H complained to Zurich, but it issued its final response letter confirming its decision to decline the claim.

To begin with, our investigator didn't think Zurich had done enough. She recommended a further review of the claim. Zurich carried out another review, and the expert report supported the first assessment. Zurich remained of the view that the damage was due mainly to gradually operating causes.

Our investigator was persuaded by the second assessment, so she didn't uphold Mrs H's complaint.

Mrs H was unhappy with the outcome, and her complaint was passed to me to decide.

## **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've decided not to uphold Mrs H's complaint. I understand this will come as a disappointment to her but the evidence, as it stands, suggests that Zurich fairly declined the claim for the reasons it gave.

Firstly, I'll explain that my summary, above, is exactly that. There's a lot of information in respect of Mrs H's complaint but, as both parties are aware of the circumstances, there's little benefit in repeating it here. I'll focus on the key issues and explain why I've reached my decision not to uphold the complaint.

## **Weather conditions**

Although it disagreed at first, Zurich accepted that rainfall at the time of the wall collapse was heavier than usual and was at the lower end of the policy definition of a storm. I'm satisfied this point of dispute was settled and Zurich considered Mrs H's claim under the policy.

### **Cause of damage**

Mrs H claimed under her policy because she believed the heavy rainfall caused her wall to collapse. Zurich said the damage was caused by hydrostatic pressure and gradual deterioration.

I've thought carefully about Mrs H's comments regarding the causes of damage indicated in the expert reports. I can understand the points she's making – in particular about dry stone walls being built to allow for drainage. However, Zurich has provided two expert reports, and comments from its loss adjuster, all of which conclude that the wall collapsed *during* the period of heavy rainfall, but it wasn't *caused* by the rainfall. The two experts said hydrostatic pressure, which would've built up over a long time, caused the wall to collapse. They reported that the rainfall at that time was simply the tipping point.

I'm not an expert regarding dry stone walls, and nor am I expected to be. My role is to consider the evidence available to Zurich when it assessed Mrs H's claim, and decide whether it did so fairly based on that evidence and in line with the policy terms and conditions. Mrs H has provided her opinion on the cause of damage, but I haven't seen any other expert reports to persuade me that the two Zurich provided may be inaccurate.

So, based on the evidence available to me, I'm satisfied that Zurich fairly relied on the expert reports to determine the likely cause of damage.

### **Claim**

Zurich declined Mrs H's claim because gradually occurring causes aren't covered by the policy. As I've already said, the evidence indicates, on balance, that the wall collapsed because of a gradually occurring cause. Looking at the policy, it states:

*What is not covered:*

1. *Any loss or damage:*
  - *caused by wear and tear or any other gradually operating cause, mechanical or electrical breakdown, fault or failure.*

Therefore, based on the evidence, I'm satisfied that Zurich declined Mrs H's claim in line with the policy terms and conditions.

As I've said, I realise this will be disappointing, but it's Mr and Mrs H's responsibility to show that the damage was caused by an event covered under the policy. In the absence of any such evidence, I'm not persuaded that Zurich has done anything wrong in its assessment of the claim and its decision to decline it under the policy exclusion it relied upon. That said, should any further information or expert opinion become available as Mr and Mrs H arrange for/have the repairs done, I'd expect Zurich to consider the new evidence.

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or

reject my decision before 19 October 2023.

Debra Vaughan  
**Ombudsman**