

The complaint

Mr and Mrs L complain that UIA (Insurance) Limited unfairly declined a claim they made under their home insurance (buildings) policy.

References to UIA include their agents.

What happened

In early 2021, Mr and Mrs L made a claim under their home insurance policy after noticing movement and cracks in the retaining wall supporting their front garden. Mr L provided photographs showing the damage. He said he believed the issue had been caused by extreme weather, with heavy rainfall followed by a week of freezing. Mr L also mentioned that a telegraph pole had recently been erected in front of the wall and said he wasn't sure if this was linked to the damage too.

UIA appointed loss adjusters who arranged for the wall to be inspected. Following this, UIA declined Mr and Mrs L's claim. It said it couldn't consider the claim under the storm peril as it had determined that the movement and damage to the wall was due to the build-up of water in the ground behind it. As the ground became saturated, the increased weight of the water put increased pressure on the wall, causing it to move. It said it was likely the build-up of pressure was gradually operating over time, rather than due to a one-off event of storm.

Mr and Mrs L complained to UIA, but it maintained its position. It said the damage to the wall had not been caused by any of the specified perils insured under the policy. It acknowledged there had been some delays in responding to Mr L and made an offer of £250 compensation for distress and inconvenience.

Mr and Mrs L remained unhappy, so they asked our service to consider their complaint. Our investigator looked into their concerns and thought UIA's offer was fair. She was satisfied that UIA had acted in line with the terms of the policy in declining the claim.

Mr and Mrs L disagreed with our investigator's view. Mr L said he believed that the installation of the telegraph pole was the initial trigger for the damage, which was facilitated by the storm peril. He also felt he and Mrs L were being penalised because the wall was of older construction. So, the complaint has been 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 reached broadly the same conclusions as our investigator. I'll explain why.

The relevant industry rules say that an insurer should handle claims promptly and fairly and it shouldn't unreasonably reject a claim.

When a policyholder makes a claim, the onus is on them to show that an insured event most likely caused the damage. UIA says Mr and Mrs L's claim isn't covered by an insured event. It's referred to the "*storm damage*" and "*accidental damage*" sections of the policy. So, I've reviewed Mr and Mrs L's policy to see what cover it provided. The policy provides cover for loss or damage, caused by an event listed in it. So, for Mr and Mrs L's loss to be covered, it would need to fall under one of those events. If it doesn't – then the claim isn't covered and won't be settled. As UIA has mentioned, the only events possibly relevant to what happened here are the storm and accidental damage events.

So, I've needed to consider whether Mr and Mrs L have shown, on the balance of probabilities, that one of these events caused the damage.

Storm damage

UIA says the damage to Mr and Mrs L's wall isn't covered by the "*storm damage*" peril in the policy. It's referred to the following policy wording:

"We consider a storm to be one incident of very strong winds, sometimes accompanied by rain, hail or snow. Heavy or persistent rain alone should not cause damage to a property in sound condition and does not constitute storm, unless there is a torrential downpour concentrated into a short period of time. It is important to remember that you are responsible for maintaining your property in a good state of repair; a property in a sound condition will withstand all but the most extreme weather."

Given the above, for the storm peril to apply in this incidence, there would need to be a one-off event of the above weather conditions. Mr L says there was bad weather in January and February 2021, so I've checked the weather reports from around that time, to see if there was a one-off storm event. The reports show there were some strong winds on a couple of occasions which were considered to be a "*dry storm*". So, I'm satisfied there was a storm around the time of the loss. But it's important to add that, while there was also rainfall around that time, the weather reports don't suggest that there were any torrential downpours, or rainfall significant enough to be a storm event.

As there was a dry storm surrounding the loss, I've gone on to consider whether the damage to the wall is consistent with the type of damage you'd seen from a storm. It is at least possible for a wall to move during a storm, for example in heavy winds. So, I think that it's possible at least some of the damage was consistent with what I'd expect to see from a storm.

However, for the storm peril to apply, the main cause of that damage would need to be the storm. And based on what I've seen, I don't think it is.

When Mr L notified UIA of the claim, he referred to "*the recent extreme weather, over the past month we have seen dry and warm turn to heavy rain and then a week of freezing.*" This suggests a longer period may have caused the damage, rather than a one-off event. And, while there were some strong winds around that time, Mr L didn't suggest these might have caused the damage. In addition, I haven't seen anything else to suggest that the damage was caused by the one-off event of high winds.

UIA says it believes the movement to the wall was due to the build-up of water in the ground behind the wall. It says that the increased weight of the water put increased pressure on the wall, causing it to move. It says this build-up of pressure was gradually operating over a period of time as the ground became further and further saturated before cracks developed in the wall.

UIA says the damage could be attributed to a gradually operating cause or general maintenance issue which is specifically excluded under the terms of the policy. And based on the information provided, I'm persuaded that's the case.

I say this because the building contractor who inspected the wall described the cause of damage as follows:

"The cause of damage is a little tricky to fully understand as I suspect the wall has always had a forward lean, [sic] The insured claims the cracks have only been evident [sic] for around 6 months. If this is the case then this would suggest possibly a build up of storm water behind the wall has caused the wall to fail and become further out of plumb, [sic] The brand new pylon [sic] now has the top section of the wall leaning against it which would support the insured claim as I can't imagine BT would have been able to install the new pylon [sic] so close against the wall else. I did not [sic] the wall doesn't [sic] have any drainage pipework passing through it, which supports the theory [sic] of increase [sic] ground pressure from behind causing a forward movement and subsequent failure."

This highlights an issue that was building up over a period of time, rather than any one-off storm event. And Mr L's own information, that the damage was noticed over a period of weeks or months, and following a contrast in weather, suggest it's likely the loss wasn't due to a one-off storm event, but rather a build up over time, leading to deterioration of the wall.

While the issue may have been at least exacerbated by bad weather, I'm not persuaded that a storm was the main cause of damage. Rather this may have highlighted an already present issue with the wall. So, based on what I've seen, I think it was reasonable for UIA to have concluded that the damage to the wall wasn't covered under the "storm" peril of the policy.

Accidental damage

UIA says it also considered whether Mr and Mrs L's claim might be covered under "accidental damage" which is defined in the policy as:

"Any damage caused suddenly and unexpectedly by external means, which is not deliberate and is not specifically excluded under the terms of this policy."

UIA says the damage was caused by a gradually operating cause which is specifically excluded under the accidental damage peril. It says the exclusion "wet or dry rot or any gradually operating process" applies.

Mr L says he believes that the damage to the wall was caused by the installation of the telegraph pole in around September / October 2020. He says the "storm peril" did not cause the damage but instead facilitated it. Mr L says that during the inspection it was mentioned that the installation and particular vibrations when installing the pole could have caused a chain of events that damaged the wall.

Mr L says he arranged for the electricity company to come and look at the wall. They told him the cracks were clean and fresh, so had happened recently and were not a long term issue. They had occurred at some point since the installation of the post. Mr L has provided a photograph he obtained from the electricity company as evidence that the wall was upright with no lean in September 2020.

I don't doubt the damage to the wall occurred after the new telegraph pole was installed. But it doesn't automatically follow that the pole installation caused the damage. I haven't seen

any significant or firm evidence to point to vibrations from the installation causing the damage to the wall. Rather, it's a theory Mr L has put forward, but isn't evidenced. So, I'm satisfied that Mr and Mrs L haven't shown that the damage was caused accidentally. I'm more persuaded it happened not as a result of an insured event, but gradually over time. And so, I don't think UIA acted unfairly in declining the claim.

Mr L feels he's being penalised because the wall is of older construction, with no weep-holes. He's referred to wording on our website which says: *"we wouldn't say a customer was at fault for not adding weep-holes to a wall that had originally been built without them"*.

UIA has commented that the *"defective design, faulty workmanship or defective materials"* exclusion is relevant because the wall was built without the required *"weep holes"*. But this isn't the *only* reason it's declined Mr and Mrs L's claim. So, even if I was to conclude that it was unfair for UIA to decline the claim for that reason, it wouldn't make a difference to the outcome of Mr and Mrs L's complaint.

I appreciate my answer will be disappointing for Mr and Mrs L, but I don't think they've shown that the damage to the wall was caused by an event that was covered by the terms of their insurance policy. So, I'm satisfied that it was fair and reasonable for UIA to have declined their claim.

Customer service

UIA has acknowledged that it delayed responding to an email Mr L sent in March 2021. I can see it took UIA just over a month to respond. But UIA has offered Mr and Mrs L £250 for distress and inconvenience. And I think this is reasonable, as I think it fairly recognises the trouble and upset they experienced due to the delay.

Putting things right

UIA should pay Mr and Mrs L £250 if they accept my decision.

My final decision

UIA (Insurance) Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that UIA (Insurance) Limited should pay Mr and Mrs L £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 25 April 2022.

Anne Muscroft
Ombudsman