

The complaint

Mrs S complains about Covea Insurance plc (Covea), declining a claim under her home insurance policy for damage to a wall at her property during bad weather.

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

What happened

In February 2022, around the time of Storms Dudley, Eunice and Franklin, a retaining wall at the end of the rear garden at Mrs S's property collapsed. She contacted Covea to tell them about the collapse and lodge a claim.

Covea arranged for a surveyor (B) to visit the property and assess the damage. B's report, concluded there was no evidence of storm damage and the wall collapsed because of water ingress (saturation of the earth behind the wall, leading to increased pressure and collapse). As such, there was no insured peril. Following B's report, Covea declined Mrs S's claim on the grounds that the damage was due to the water ingress – not storm damage.

Mrs S challenged Covea's decision, saying there were no signs of water ingress before the collapse. She also said the construction of the wall – despite not having weep holes – meant water was able to drain through effectively. She also referred to the opinion of a structural engineer and a geotechnical specialist who (having inspected the site of the wall) concluded the collapse was due to the volume of rain before the collapse. This led to the ground to become saturated, which caused hydrostatic pressure on the wall and its collapse.

Covea treated Mrs S's challenge as a complaint, but they didn't uphold it. In their final response Covea confirmed the decision to decline the claim, referring to B's report. But they said they'd reconsider if Mrs S could provide reports or other evidence from specialists.

Mrs S then complained to this service. Based on her challenge to Covea (including the views from the specialists) she thought Covea unfairly declined her claim. She said the collapse was a result of the heavy rain in the storms. She wanted Covea to settle the claim and cover the cost of rebuilding the wall.

Our investigator initially didn't uphold the complaint. He noted B's conclusion about the collapse due to rainwater ingress over a period, not storm damage. As the policy excluded damage caused by gradual deterioration, he thought it fair for Covea to decline the claim. In response to the investigator's initial view, Mrs S provided a report from a geotechnical consultant (M). M inspected the wall and, in his report, concluded it had been in good condition prior to the incident, having stood for many years. The report noted the collapse happened directly after Storms Dudley, Eunice and Franklin. The report also noted gaps in the mortar to allow dissipation of rainwater under normal circumstances. It concluded the trigger for the collapse was excess rainfall and surface water run-off in the lead-up to the collapse, causing the build-up of hydrostatic pressure. The water didn't have time to dissipate as would normally have happened.

Our investigator provided a copy of M's report to Covea, who agreed to send an engineer (G) to inspect the wall again. G's report found the wall had been built up over time, including when Mrs S's property was constructed (2017). At that time the level of the rear garden was raised, and additional height was added to the wall (including an additional retaining wall behind the existing wall).

The report concluded the build-up of water (from the rainfall leading up to the collapse) was rapid during the period of the storms and was a contributory factor in the collapse. But it also concluded the form of construction of the wall, including the additional stages that increased the overall height, was a factor. But the report also stated there was no evidence the wall was gradually failing, or that it was bulging (from photographs before the collapse). The overall conclusion was the collapse was caused by a combination of rainwater build-up in the soil behind the wall and defective wall construction, combined with the additional weight from the build-up of the wall.

Following G's report, Covea reconsidered the claim but again declined it. They said the weather reports for the area of Mrs S's property indicated heavy rains, but none of a sufficient level to meet the definition of a storm under the terms and conditions of the policy. So, the claim couldn't be considered under storm peril in the policy. They also considered the claim against the accidental damage section of the policy, but because of G's findings about the construction of the wall, they concluded the proximate cause of the collapse was the defective construction of the wall. They referred to a specific exclusion in the accidental damage section for faulty or defective design and workmanship.

Our investigator reconsidered the complaint to take account of the reports from M and G, as well as Covea's reconsideration of the claim. He noted Covea changed their reason for declining the claim from 'gradual damage' to faulty workmanship and the level of rainfall didn't meet the policy definition of storm damage. On the faulty workmanship issue, he noted B and M didn't comment on there being any signs of poor workmanship, and G hadn't provided sufficient evidence to support his conclusion of defective construction of the wall. So, Covea unfairly declined the claim. On the storm conditions he thought it was unfair to use the policy definition of hourly rainfall, when weather data recorded rainfall over a 24-hour period. And both M and G had commented on the heavy rainfall in their reports, concluding it was the direct cause (M) or contributory cause (G). Based on this, he thought it was unfair for Covea to decline the claim on the grounds there weren't storm conditions.

Having concluded Covea unfairly declined the claim, the investigator thought they should approve the claim and repair the wall (allowing for the wall being part-owned by Mrs S and the neighbouring property). He also thought Covea should reimburse Mrs S for the cost of M's report (together with interest). He thought Covea should pay Mrs S £250 compensation for the distress and inconvenience she'd suffered from what had happened.

Covea disagreed with the investigator's conclusions and requested an ombudsman review the complaint. They provided further information on the construction of the wall, which they said showed faulty workmanship (and, for the most recent build up, not in accordance with the architect's specification). They also said G's report was significantly more detailed about, - and gave more consideration to - the construction of the wall. Given the build-up of the wall over time (including when Mrs S's property was built) this showed defective design and faulty workmanship. Covea also provided further weather data they said showed the hourly rainfall was significantly below the hourly level set out in the policy definition.

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 Covea has acted fairly towards Mrs S.

The main issue in Mrs S's complaint is Covea's decline of her claim for the collapse of the wall. She says the wall was in good condition prior to its collapse, which she says (drawing on the views of specialists) was due to the build-up of hydrostatic pressure in the soil behind the wall, caused by heavy rain leading up to the collapse. Covea say they declined the claim fairly. Initially (based on B's report) that the damage was due to water ingress (not storms). Following G's report, Covea reconsidered the claim, but rejected it on different grounds. Firstly, there weren't storm conditions in the area at the time of the incident that met the policy definition of storm (so there was no insured peril). And, secondly, the proximate cause of the collapse was the defective design and faulty workmanship in the wall's construction. Which was an exclusion to the accidental damage section of the policy.

I've considered both these elements in turn.

In considering the first element, whether the damage resulted from a storm, there are three key issues we consider:

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

On the first question, in their second decline issued after reconsideration of the claim, Covea say there weren't storm conditions around Mrs S's property at the time of the incident that meet the definition of a storm. They refer to the following definition of storm in the policy:

"STORM

We consider storm to be a period of violent weather defined as:

- *Wind Speeds with gusts of at least 48 knots (55 mph); or*
- *Torrential rainfall at a rate of at least 25mm per hour; or*
- *Snow to a depth of at least one foot (30cms) in 24 hours..."*

Covea also referred to weather reports for the area of Mrs S's property (from the nearest weather station). These indicated heavy rains in the days leading up to the collapse (consistent with the dates of Storms Desmond, Eunice and Franklin). However, none of these reports included rainfall exceeding 25mm per hour (although the rainfall over a 24-hour period exceeded 25mm on one of the days). Based on this, Covea concluded the levels of rainfall didn't meet the criteria in the policy for a storm, so they concluded they couldn't consider the collapse of the wall under the storm damage section.

I've considered this issue carefully, but I'm not persuaded Covea's view is fair or reasonable. I've come to that conclusion for several reasons. Firstly, the reason cited in all three of the reports from B, M and G for the collapse of the wall (either the cause, or a contributory cause) was saturation of the soil behind the wall, leading to hydrostatic pressure that triggered the collapse. The reports also indicate this saturation was the result of heavy rainfall in the days leading up to the collapse. This suggests the issue wasn't the level of rainfall in any one hour (the policy definition) but the accumulation before the collapse. The weather reports provided by Covea show heavy rains (or very heavy rains) over several days, which would be consistent with the various report findings about heavy rain leading to soil saturation. So, in the specific circumstances of this case, I don't think it's reasonable to assess what happened against the single criteria of 25mm per hour set out in the policy.

I've also considered the policy definition itself. While snow isn't an issue, I've considered the first element, wind speeds. Looking at the wind speeds in the area from the weather firm this service uses (which includes the same weather station cited by Covea in their reports) the data indicates a maximum gust of 77mph on the day before the collapse, which is described as a 'dry storm'. This significantly exceeds the wind speed level in the policy definition. While Covea have only considered rainfall against the policy definition, the wording of the definition is such that weather conditions meeting *any* of the individual elements would constitute a storm under the policy definition wording (because the wording includes 'or' after each element – not 'and').

Taking these points together, I've concluded storm conditions were present at the time of the collapse. So, I've concluded Covea haven't acted fairly and reasonably in declining the claim on the grounds storm conditions weren't present.

Having concluded storm conditions were present, I've then considered the second question. What's clear from the photographs and from the various expert reports, is that hydrostatic pressure was the cause (either sole or contributory) of the collapse. Hydrostatic pressure is the result of soil becoming saturated and thereby exerting pressure on (in this case) the adjoining wall. This was the result of the cumulative heavy rainfall in the days leading up to the collapse. Given my conclusion about storm conditions being present (including the impact of heavy rainfall in the days before the collapse) I think it's reasonable to conclude the damage is consistent with that we'd expect in a storm.

I've then gone on to consider the third question, whether the storm conditions were the main (or dominant) cause of the damage. This question is also key to the second reason for Covea declining the claim, that the proximate cause of the collapse was the defective design and poor workmanship of the wall. G's report concludes that while the hydrostatic pressure was the immediate cause of the collapse, the defective design and faulty workmanship of the wall was the proximate (and so main or dominant) cause of the collapse. It's also a specific exclusion under the accidental damage section of the policy.

I've considered this issue carefully. But, on the balance of probabilities, I've concluded the main (dominant) cause of the collapse was the effect of the hydrostatic pressure on the wall, from the heavy rains. I'll set out why I've come to this conclusion.

First, I've considered the condition of the wall before the collapse. Mrs S says the wall was in good condition before the collapse, with no signs of water ingress, or bulging of the wall. Looking at the photograph taken of the wall before the collapse, this supports that view. B's report doesn't comment on the condition of the wall, but M's report includes a statement that:

"Small sections of...the wall remain, and these show the wall to have been in very good condition for its age. I was shown a photograph taken shortly prior to collapse and it is evident that the wall was originally in same good condition throughout... There is no obvious bulging... nor missing stonework indicative of ongoing deterioration of the wall."

G's report comments on the construction of the wall (which I'll come onto) but also includes the statement:

"...there is little evidence of any bulging prior to the failure occurring. There was no evidence the wall was gradually failing. The only photograph...did not show any evidence of imminent failure."

Based on these points, I've concluded there was no evidence of any issues with the wall, of any deterioration prior to the collapse, with no obvious weaknesses or indications of likely failure.

I've then considered the likely cause of the wall's collapse. I've looked carefully at the three expert reports. In turn, B's report concludes:

"...ground saturation prolong rainfall over a period of time has destabilised the wall causing it to collapse. There is also a large volume of earth behind the wall, pressure has been built [up] to cause the collapse..."

M's report states:

"...The trigger for the collapse was the excess rainfall and surface water run-off, which caused excess pressures on the wall. The water did not have sufficient time to dissipate as would normally have been the case. Pressure would be greatest at the base of the wall, and its here that I believe the collapse began, and which accounts for the full height of the failure. In conclusion, I am of the opinion that the wall collapsed as a direct result of exceptional rainfall causing pressures to build-up directly behind the wall. This was sufficiently intense and rapid to prevent normal dissipation, thus causing the collapse."

G's report concludes:

"...the cause [of the collapse] is due to a combination of the build-up of rainwater behind the wall, and a defective wall construction combined with the extra weight put on the wall at the time of the development [of Mrs S's property]. This will have weakened the top of the wall which should have been properly assessed by the builder and his advisors."

Thinking about these conclusions, they all agree the hydrostatic pressure from the heavy rains was either the cause (or contributory cause) of the collapse. But G's report considers the construction of the wall, and the extra weight on the wall from it being built-up over time. It concludes this to be the proximate (main or dominant) cause of the collapse. However, I'm not persuaded by this. Partly, because there were no prior indications of weakness (such as bulging, which would have indicated extra weight weakening the wall). But I'm also more persuaded by G's report where it refers to the hydrostatic pressure being greatest at the base of the wall, where G believes the collapse began (and accounts for the full height of the failure). That's consistent with photographs of the collapsed section of the wall. If (as G says) the wall was weakened at the top, that's where I'd expect the damage to have happened. On the balance of probabilities, I think G's conclusion is more persuasive.

So, I've concluded the main, or dominant cause of the collapse was the hydrostatic pressure.

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; the damage is consistent with that we'd expect to see in a storm; and the storm (through the build-up of saturated soil) was the main, or dominant cause of the damage, I think it's reasonable to conclude there was an insured event (storm) that caused damage.

Where an insurer relies on an exclusion in the policy to decline a claim (as Covea have done when referring to the exclusion for defective design or poor workmanship) then the onus is

on them to show the exclusion applies. Given my conclusion about the main, or dominant cause of damage, I don't think Covea have shown it was fair to apply the exclusion.

As I've concluded Covea haven't acted fairly in saying there weren't storm conditions as the time of the incident, nor applying the exclusion for defective design or poor workmanship from the accidental damage section of the policy, then I've concluded they've acted unfairly and unreasonably in declining Mrs S's claim.

Having reached this conclusion, I've thought about what Covea need to do to put things right. As they've unfairly declined the claim, I think they should settle the claim in accordance with the remaining terms and conditions of the policy (including any excess under the policy, as appropriate). In settling the claim, they should also take account of the shared ownership of the wall between Mrs S and the neighbouring property (on the assumption it wouldn't be practicable or sensible to rebuild only that part of the wall to the boundary of Mrs S's property).

Covea should also reimburse Mrs S for the cost of M's report, on production of an appropriate invoice. Covea should also add interest at a rate of 8% simple from the date Mrs S paid the invoice to the date they settle the claim. Given the impact of what's happened, Covea should also pay £250 compensation for distress and inconvenience.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs S's complaint. I require Covea Insurance plc to:

- Settle the claim in line with the remaining terms and conditions of the policy (including any excess under the policy, as appropriate). In settling the claim, they should also take account of the shared ownership of the wall between Mrs S and the neighbouring property (on the assumption it wouldn't be practicable or sensible to rebuild only that part of the wall to the boundary of Mrs S's property).
- Reimburse Mrs S for the cost of M's report, on production of an appropriate invoice. Covea should also add interest at a rate of 8% simple from the date Mrs S paid the invoice to the date they settle the claim*.
- Pay £250 compensation for distress and inconvenience.

Covea Insurance plc must pay the compensation within 28 days of the date on which we tell them Mrs S accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

*If Covea Insurance plc consider that they're required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S how much they've taken off. They should also give Mrs S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 2 November 2022.

Paul King
Ombudsman