

The complaint

Mrs H and Mr H complain about Liverpool Victoria Insurance Company Limited ("LV") for declining their claim for damage to their boundary wall during storm weather. They want LV to make a contribution towards the repair costs as their neighbours' insurers have done.

What happened

Mrs H and Mr H insure their home with LV. Their home has a large established garden with a Georgian wall separating it from the next garden. The wall is a double skinned brick wall that was around 2 metres tall and continues beyond Mrs H and Mr H's property to separate other gardens.

In December 2022, during high winds, three portions of the wall collapsed, including two which were shared by Mrs H and Mr H and their neighbour's home.

Mrs H and Mr H submitted a claim to LV.

LV sent a surveyor to their home and the surveyor prepared a report. This noted observations that the wall had substantial heavy vegetation on it prior to the collapse, and that the mortar was friable and powdery.

The surveyor concluded that the storm was not the primary cause of the wall sections collapsing, and LV declined the claim.

Mrs H and Mr H complained to LV. Their neighbours' insurers had sent surveyors who had reached similar conclusions regarding the mortar being eroded and the heavy vegetation causing or contributing to the wall collapse. The neighbours' insurers had, however, offered to pay 50% contributions to the repairs of the respective wall costs for Mrs H and Mr H's neighbours. Mrs H and Mr H felt that LV was acting unfairly by not taking the same approach.

LV sent its final response to Mrs H and Mr H in September 2023. It maintained its decision to decline the claim and reiterated that the main cause of the wall collapse was wear and tear or damage which had occurred over time, rather than the storm.

Mrs H and Mr H were not happy with this and contacted us.

One of our investigators looked into this matter and did not recommend that their complaint be upheld. The investigator set out our approach to storm claims and applied the three questions, explaining that they did not think that the storm was the main cause of the damage. They therefore did not ask LV to do anything further.

Mrs H and Mr H did not accept that view and asked for an ombudsman decision.

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.

I have great sympathy with Mrs H and Mr H in this matter. It is clear from the photographs provided that they take great care in their home and garden and the garden planting has been well maintained.

I can also appreciate how it must feel unfair that their neighbours have received contributions for the repairs, and they have not, despite the walls being a shared responsibility.

Our role is not to redecide the claim, however, but instead we look at whether the insurer has done anything wrong in the way it has handled and decided the claim.

As my colleague set out, when claims concern storm damage we approach this by asking three questions: 1) was there a storm, 2) was the damage consistent with damage caused by a storm, and 3) were storm conditions the main cause of the damage.

Only if we can be satisfied that the answer to all three is yes would we conclude that a decision to decline the claim was likely unreasonable.

In this instance there is no dispute that there were storm conditions in late December 2022, when the collapse occurred.

The next question we consider is whether the damage is consistent with damage caused by a storm. LV accepted that the partial collapse was consistent with the type of damage caused by a storm.

I accept this broadly, in that the wall collapse was in a consistent direction with the storm winds. I note, however, that in later analysis of the wall collapse photographs it was noted that the bricks had substantially separated from one another as they collapsed, rather than in larger pieces. The analysis noted that this was widespread and was indicative of mortar having perished, more than the storm winds having broken a part of the otherwise complete wall off.

The next question is whether the storm was the primary reason for the wall collapse. I have borne in mind Mrs H and Mr H's comments that the wall had stood firm for a long time before this and was of good design and condition for its age.

I note, however, the substantial evidence of mortar erosion between the bricks, in particular under heavy portions of creeping foliage. The surveyor noted visible cracks and joint gaps and a significant amount of shrubbery and vines being supported by the wall. I appreciate that this will have made it harder for Mrs H and Mr H to be aware of the condition of the mortar underneath, but I do not think it an unreasonable conclusion from LV that the corroded mortar had not been adequately repaired or maintained.

LV's surveyor also considered that there was evidence of rotation of the wall and noted some large tree roots and other mature trees close to the wall.

The surveyor concluded that the combination of the weakened 'powdery and friable' mortar and the weight of extremely dense wall shrubbery added lateral loading to the wall and that the failure of the wall was caused by pre-existing weakness due to gradually operating causes, highlighted by the storm.

I agree with my colleague that the surveyor's view is supported by reasons and evidence and is not an unreasonable conclusion.

I therefore cannot say yes to all three questions and I do not think that LV acted unreasonably in its decision to decline the claim.

I understand that this seems unreasonable to Mrs H and Mr H as other insurers reached different conclusions regarding the same and other sections of the wall. Whilst this will no doubt feel inconsistent, those insurers will have carried out their own assessments of the conditions applicable to their policy holders and can reach different conclusions. The decisions reached by others on different facts and evidence does not affect this matter.

Consequently, whilst I understand this will be disappointing for Mrs H and Mr H, I agree with my colleague and I do not uphold this complaint.

My final decision

For the reasons given above I do not uphold Mrs H and Mr H's complaint and I do not ask Liverpool Victoria Insurance Company Limited to do anything further.

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 30 April 2024.

Laura Garvin-Smith
Ombudsman