

The complaint

Mrs C complains that Accredited Insurance (Europe) Ltd declined a claim on her home buildings insurance policy.

What happened

Mrs C made a claim on her policy after a retaining wall collapsed. She says this happened due to five or six weeks of constant rain.

Accredited arranged for a surveyor to inspect the property. It then declined the claim, saying the damage was due to wear and tear, which is excluded under the policy terms.

Accredited did agree to cover a claim for damage to the sewage drain, which it said was covered as accidental damage.

Mrs C complained but Accredited didn't change its decision, so she referred the complaint to this Service.

Our investigator said

- The claim would not be covered under the section of cover for subsidence, landslip or heave, which is how Accredited had considered the claim – though not because it was due to wear and tear.
- But it would potentially be covered under the cover for storm and flood, or accidental damage, so Accredited should consider the claim under these insured perils.
- Accredited had originally said the excess under the accidental damage claim to the sewage pipe was £1,000. Mrs C had disputed that and Accredited had now confirmed it was in fact £250.
- It had not shown the exclusion for wear and tear applied, so should not rely on this exclusion when reviewing the claims.

Accredited did not agree and said it had considered the claim against all insured perils, but they all had an exclusion for anything that happened gradually and the damage was gradual, due to the wall failing over a period of time.

The investigator considered Accredited's comments. She said Accredited accepted there was cover under the storm and flood or accidental damage perils, but said these were excluded as wear and tear. But it hadn't provided evidence to show this was the case, so it would not be fair to rely on that exclusion.

She said Accredited should accept and deal with the claim as either storm, flood or accidental damage to buildings.

Accredited disagrees and says

- The exclusion for anything that happens gradually applies to each peril. It's satisfied the wall was failing and has been finished off by the elements, so this is not covered.

- It has offered to cover the damage to the pipe under the accidental damage to mains services peril.

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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly and not unreasonably reject a claim.

The policy provides cover for damage caused by a number of insured perils including flood, storm, subsidence heave and landslip, and accidental damage.

In its decision on the claim and the final response to Mrs C's complaint, Accredited said it had considered the claim under the subsidence section of cover. This would not be relevant to Mrs C's claim, as it only covers boundary walls where there has also been damage to the buildings. That isn't the case here. So I agree the claim wouldn't be covered under this peril, though not for the reasons Accredited has given.

The insured perils that would be relevant are flood, storm or accidental damage to buildings. Accredited says it considered these but it didn't refer to them at the time, so it's not clear how they were considered. In any event, it says these perils all have an exclusion for things that happen gradually or through wear and tear. And it says that applies here.

Accredited has referred to previous repairs which it says indicate the wall was falling down over a period of time, and relies on this to say the exclusion for gradual damage applies whichever peril is considered. Mrs C disputes having carried out anything other than minor repairs.

If repairs were done, that indicates the wall was being maintained. Accredited hasn't provided a persuasive explanation of how carrying out repairs means the damage was due to wear and tear. The fact that some repairs had been done doesn't in itself prove the wall was failing.

Accredited has also said the damage could have been due to poor drainage or soil pressure, but saying something might have happened doesn't mean it has happened. There's no evidence this did happen or of this causing the wall to collapse.

If it is relying on an exclusion to decline a claim, the onus is on Accredited to show the exclusion applies and that it's fair to rely on it. It has had the opportunity to do this and the evidence provided is not persuasive. So it would not be fair to rely on the exclusion for wear and tear or something that happens gradually.

Accredited did accept the claim for accidental damage to the sewage pipe. There was some confusion about the amount of the excess payable for this but it has confirmed the excess is £250.

Mrs C has explained the frustration caused by the way Accredited handled the claim and the decision it reached. The wall has been left in a collapsed state and this has been worrying for her. It's fair that Accredited recognise this by paying compensation.

Putting things right

To put things right, Accredited needs to accept and deal with:

- the claim for damage to the wall either as a storm, flood or accidental damage to buildings claim; and
- the separate claim for accidental damage to the mains services.

In both cases, without relying on the exclusion for wear and tear or gradual deterioration to decline the claim, but in line with the remaining terms and the applicable excess for each claim.

Accredited should also pay £250 compensation for distress and inconvenience.

My final decision

I uphold the complaint and direct Accredited Insurance (Europe) Ltd to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 October 2024.

Peter Whiteley
Ombudsman