

## The complaint

Mr F complains about Accredited Insurance (Europe) Ltd (Accredited) declining a claim under his home insurance policy for damage to a wall at his property from a tree in bad weather.

References to Accredited include their agents who administer the policy and assess claims.

## What happened

In December 2023 a tree in the back garden was uprooted during bad weather. The tree hit a wall in the garden with successive gusts of wind, knocking the wall down and landing in the alley behind Mr F's property. Mr F engaged a tree surgeon to cut up the tree. He also contacted Accredited to tell them about the damage and lodge a claim.

Accredited appointed a field surveyor (CS) to visit the property and assess the damage. In their report, CS concluded there was no visible storm damage to the wall, saying a large tree (the one removed by Mr F) had been applying pressure to the wall over time, combined with mortar failure, leaving the wall unstable and leaning outwards into the alley. Based on CS's report and a further review by their in-house surveyor, Accredited decline the claim, saying the collapse was due to gradual operating causes, an exclusion under the policy.

Mr F was unhappy at the decline of his claim, so he complained to Accredited.

Accredited didn't uphold the complaint. In their final response they accepted there were storm conditions on the date of the incident that met the policy definition of storm. They referred to the field surveyor's report and regional surveyor views on the cause of the wall collapsing, including the presence of the tree exerting pressure over time on the wall, causing it to lean, and the presence of vegetation affecting the wall and the mortar. They also referred to the *General Exclusions* section of the policy (and the Storm section) which excluded cover for damage from gradual causes (anything that happened gradually).

Mr F then complained to this Service. He said large amounts of the wall were still together showing the mortar hadn't failed and the wall was well looked after. The surveyor's report didn't mention the tree being uprooted. The vegetation on the wall was a climbing plant that didn't attach to the wall or mortar. He'd incurred costs of £500 for the tree surgeon and the cost of rebuilding the wall was some £15,000. As the wall fell due to the storm uprooting the tree, he thought Accredited should pay for the new wall.

Our investigator upheld the complaint, concluding Accredited hadn't acted fairly. He was more persuaded by Mr F's account of an uprooted tree colliding with the wall and the vegetation wasn't of a type to attach to the wall or mortar. Accredited hadn't provided sufficient evidence to show the wall collapsed due to gradual operating causes. While Accredited only assessed the damage under the storm section of the policy, the investigator thought the additional accidental damage cover Mr F had within his policy would cover damage from falling objects (see as trees) and the circumstances in which the wall was damaged. To put things right, Accredited should settle the claim in line with the remaining

policy terms and conditions and pay interest on the settlement sum from the date Mr F paid for repairs to the wall to the date of settlement.

Accredited disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said the photographs of the collapsed wall showed the mortar between the brickwork was in a very poor and deteriorated condition. A wall in good condition should have been more than capable of withstanding the wind speeds recorded at the time of the incident.

Accredited also said the vegetation – regardless of variety – would have drawn moisture from the mortar and brickwork in the wall, weakening the mortar further. Coupled with the pressure from the tree in very close proximity to the wall, it would have combined to gradually weaken the wall. There was also little evidence of the tree being uprooted from the photographs taken by CS. And a section of the wall immediately in front of the tree was seemingly unaffected. The wall hadn't been affected by previous high winds, indicating on the occasion of the incident the wall's ageing and deterioration due to the factors mentioned was the reason it collapsed. So, the proximate cause of the damage was the poor condition of the wall that the high winds at the time of the incident merely highlighted.

On the claim potentially falling under the accidental damage section of the policy, Accredited said the tree applying pressure to the wall contributed to its collapse, but there was no evidence the tree collapsed onto the wall, so the claim couldn't be considered under the accidental damage section of the policy.

### **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 Accredited have acted fairly towards Mr F.

The main element of Mr F's complaint is that Accredited unfairly declined his claim, on the grounds that while there were storm conditions at the time of the wall's collapse, it was due to gradual operating causes (an exclusion under the policy). Mr F says the mortar didn't fail and the wall was well kept. The wall collapsed due to the uprooted tree and the vegetation on the wall didn't attach to the wall or the mortar.

As Accredited considered the damage under the storm section of the policy, I've looked at this aspect. In considering this issue, whether the damage resulted from a storm, there are three key issues we consider:

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

On the first question, Accredited refer in their final response to weather conditions on the date of the incident and the following policy definition of a storm:

*“Storm*

*A period of violent weather defined as:*

- a. A gale of Force 10 or above (as defined under the internationally recognised Beaufort Scale) reaching wind speeds of at least 55 mph; or*

- b. *torrential rain that falls at a rate of at least 25mm per hour, or*
- c. *snow that falls to a depth of at least 30cm in 24 hours; or*
- d. *hail so severe that it causes damage to hard surfaces or breaks glass.”*

Accredited's final response refers to a highest wind speed in the days around the incident of 59 mph, so were satisfied the policy definition for a storm event was met. They've provided the weather report supporting this conclusion, which mentions the 59 mph figure and refers to 'storm force gusts' and 'severe gale force gusts' at various times on the date of the incident. Data from the weather source used by this Service shows a slightly lower maximum gust (56 mph) on the date of the incident and conditions described as a 'dry storm'/ So, I've concluded there were storm conditions at the time of the incident.

Moving on to the second question, damage to walls would be something that could happen in a storm, particularly one involving – as is the case here – high winds. So, I think the answer to the second question would be 'yes'.

That leaves the third question as key, what was the cause of the wall's collapse.

On the issue of the direct cause of the damage, Accredited refer to the report from CS and the following statement:

*“External inspection of the rear boundary wall revealed no visible storm damage, the wall is 22m long x 1 brick x 2m high and has collapsed to the level of the rear garden, the customer had a large tree removed on the 22-12-23 and it was evident the tree had been applying pressure on the wall over time, combined with mortar failure of the wall bricks this left the wall unstable over time leaving it leaning outwards into the rear alley, this has resulted in the wall collapsing into the alley therefore we have declined the claim in full.”*

Accredited also refer to the views of their regional surveyor:

*“Following review, I agree with the decision. There is evidence of vegetation growing through the mortar joints, due to the moisture demands of the vegetation this has weakened the integrity of the mortar which the recent weather has highlighted. Furthermore, there is evidence that the vegetation was pushing up against the wall shown by the remaining stump leaning towards the wall, as the surveyor says, this would have been adding further pressure which has led to its collapse.”*

In declining the claim, Accredited refer in their final response to the following term in the *General Exclusions* section of the policy:

***“12. Any gradual or maintenance-related loss or damage***

*Loss or damage as a result of gradual operating causes including:*

- *Wear and tear...*
- *Gradual deterioration (whether you were aware of it or not)...*”

A similar exclusion for 'anything that happens gradually' is contained in the Storm section of the policy and (for wear and tear) in the Insurance Product Information Document (IPID).

When bringing his complaint to this Service, Mr F referred to the tree next to the wall being 'uprooted'. However, the photographs I've seen don't obviously show a tree that has been fully uprooted – there's a stump next to the wall which shows evidence of the trunk being cut off horizontally a couple of feet or so above ground level. I asked Mr F to clarify the precise

circumstances of what happened. He said the tree was cut down during the storm to prevent it completely uprooting and toppling over, which could have damaged properties to the rear of his property.

Mr F also provided a copy of the invoice from the tree surgeon who cut down the tree. The invoice, dated 22 December 2023, states:

*“Job Description: to attend an Emergency call out...of an up rooted Eucalyptus tree of approximately 18 metres that had failed due to the current storm conditions.*

*The tree’s root plate had lifted considerably causing the tree to sway back [and] forth resulting in the collapse of the garden wall.*

*We supported the tree using 3 rigging strap under tension...positioned in opposite directions to enable us to dismantle the tree safely down to ground level.”*

Looking at this description, it is consistent with the photograph of the tree stump, being cut horizontally just above ground level. I’ve also noted the comment about the root plate lifting considerably and the tree swaying back and forth against the wall. Given the tree surgeon’s estimate of the height of the tree, I think that would – when combined with the proximity of the tree – have been likely to exert pressure on the wall, causing it to fail. The reference to the lifting of the root plate would also be consistent with the observed lean of the tree [stump] towards the wall, and any lean in the portion of the wall that remained standing.

I’ve also considered the other comments from CS and Accredited’s regional surveyor. They say the presence of the tree would have caused pressure on the wall over time. While this may have been the case, the photographs show a section of the wall immediately next to the cut down tree still upright and not obviously leaning. Had the tree exerted pressure sufficient to topple the wall in bad weather, I wouldn’t have expected the wall to have remained standing at the level shown in the photographs (and there appears to be a second tree nest to the wall with the same section standing).

On the issue of the condition of the mortar, the photographs don’t show obvious deterioration, also given there is a significant length of wall (from ground level up to a height of a few feet). The fallen section of wall isn’t uniformly in discrete sections, but I’ve noted the path immediately behind the wall is made of cobble stones, so it may have been the force of the impact of the wall onto a hard surface caused the bricks to separate (and the bricks are quite close together on the path).

On the vegetation point, Mr F says the climbing plant on the wall (jasmine) wasn’t of a type that attached itself to the wall or the mortar. Looking at the photographs, the vegetation visible isn’t attached to the fallen wall, it appears to be hanging loosely. Which suggests it wasn’t growing into the mortar to the extent it would have remained attached to the fallen section of wall.

Taking all these points together, on balance, I’m more persuaded by Mr F’s version of what happened to cause the collapse of the wall, also taking account of the statement from the tree surgeon who attended. So, I’ve concluded the storm was likely to have been the main, or dominant cause of the damage and the wall’s collapse. It follows that Accredited acted unfairly in using the gradual operating cause exclusion to decline the claim.

While I’ve reached this conclusion, I’ve also considered the accidental damage cause of the policy would have covered the damage even if the storm section didn’t operate. The definition of accidental damage in the policy is:

*“Sudden, unexpected and physical damage which happens at a specific time, and was not deliberate, and was caused by something external and identifiable.”*

Given the events and what I think more likely to have happened with the tree causing the wall to collapse, I think the above definition of accidental damage would also be met by what happened and the damage to the wall.

I've also considered the 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, and the damage is more likely to have been the result of the storm conditions (not gradual operating cause) 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 Accredited have done) then the onus is on them to show the exclusion applies. Looking at the available information and evidence and my conclusions above I don't think Accredited have done so in the circumstances of this case.

Taking all these conclusions into account, I've concluded Accredited haven't acted fairly and reasonably towards Mr F and in declining the claim.

Given my conclusions, I've considered what I think Accredited should do to put things right. As they haven't acted fairly in declining the claim by using the gradual operating cause exclusion, they should settle the claim in line with the remaining terms and conditions of the policy. On the understanding Mr F has already paid to have the wall rebuilt, they should also pay interest on any cash settlement they may make to settle the claim, from the date Mr F paid for the rebuilt wall, to the date they settle the claim.

### **My final decision**

For the reasons set out above, it's my final decision to uphold Mr F's complaint. I require Accredited Insurance (Europe) Ltd to:

- Settle the claim in line with the remaining terms and conditions of the policy.

On the understanding Mr F has already paid to have the wall rebuilt, Accredited Insurance (Europe) Ltd should also pay interest, at a rate of 8% simple, on any cash settlement they may make to settle the claim, from the date Mr F paid for the rebuilt wall, to the date they settle the claim.

If Accredited Insurance (Europe) Ltd consider they're required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much they've taken off. They should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 November 2024.

Paul King  
**Ombudsman**