

## The complaint

Mr and Mrs S are complaining Accredited Insurance (Europe) Ltd (Accredited) has declined a claim they made on their buildings insurance policy.

References to Accredited include the actions of any business acting on their behalf.

## What happened

In March 2024 Mr and Mrs S contacted Accredited to claim for damage to an outside wall. They said rain had built up behind the wall due to significant high levels of rainfall causing it to crack.

Accredited arranged for a surveyor to visit the property who provided photos of the damage. One of Accredited's inhouse engineers reviewed the photos provided but thought the damage had happened gradually and was down to a design flaw of the wall. They also said there wasn't anything to show a storm had happened in the preceding weeks. As a result of this, Accredited declined Mr and Mrs S's claim.

Mr and Mrs S didn't think Accredited was being fair. They said they had looked to claim for the damage as a result of "flood damage"; it was Accredited who changed it to a "storm claim". But they said the amount of rain that had occurred over the preceding months, would be considered a storm. Finally they thought it was unfair for Accredited to say the wall had failed due to poor workmanship given it had been in situ for around 40 years.

I issued a provisional decision upholding this complaint and I said the following:

*"Accredited has considered this claim under both storm damage and accidental damage. It doesn't believe there was a storm under the terms of the policy. And it doesn't believe the damage occurred suddenly and unexpectedly as it says it was down to a long term build up of water. But it said, even if it did, its surveyor has said the failing was down to a design defect, which isn't covered under the policy."*

*Firstly, I should say I agree with Accredited that there isn't evidence to show a storm has caused the damage. Mr and Mrs S have said that there was significant rainfall over two months. But that wouldn't mean there was a storm. The policy provides a definition of a storm and I haven't seen anything there was a specific event that would be considered a storm under these terms. So I can't say it was unreasonable for Accredited to say the damage to the wall was owing to a storm."*

*However, I'm minded to conclude that it wasn't fair for Accredited to decline the claim under Accident Damage cover. The policy defines Accidental Damage as:*

*"Sudden, unexpected and physical damage which*

- i. happens at a specific time; and*
- ii. was not deliberate; and*
- iii. was caused by something external and identifiable."*

*I'm satisfied the damage to the wall would satisfy these criteria. While it's recognised the wall was damaged because of a build up of water over time, it seems the damage itself occurred suddenly and unexpectedly. And I haven't seen anything to show that wasn't the case.*

*However, Accredited has also said that the policy doesn't cover damage that occurs gradually or is down to defective workmanship. I've thought about whether that's fair.*

*Firstly, while I recognise the water built up over time, I can't agree that the damage itself has occurred gradually. But, more importantly, I'm conscious the surveyor who inspected the property has said:*

*"There are several retaining walls at the back of the property, which have been maintained and are showing no signs of dilapidation."*

*So the surveyor has said there was no evidence of gradual damage to the property. And I've not seen anything to conclude that was unreasonable. So I don't think it's fair for Accredited to say the damage occurred gradually.*

*Accredited's inhouse surveyor has also said the following:*

*"From review of the photos, the wall seems to have cracked as a result of hydrostatic pressure. It is unknown if there is a layer of free drainage granular material directly below the wall to distribute any built up water to weep hole positions, however, there is no evidence to suggest that there is. The wall itself is constructed with 4" block with no evidence of reinforcement.*

*It is in our opinion that the damage to the wall is a result of a latent defect due to poor design."*

*While I note the surveyor's comments, I'm conscious the wall has stood for 40 years and, as I said, the surveyor who inspected the property said it continued to show no evidence of dilapidation. And the manufacture of the wall has to be considered against building regulations from the time the wall was built – not current regulations. But, irrespective of this, I don't think it's unreasonable to say that it's likely the wall would have suffered significant damage early into its existence if there was a latent defect within it. But, in this case, it has remained standing for around 40 with no discernible apparent issues. While I don't dispute the surveyor's comments, I'm not persuaded there's sufficient evidence to substantiate its assertion the damage is down to poor workmanship.*

*It seems to me that the wall has suffered damage precisely for the reason the inspecting surveyor has said – a significant build up of water owing to significant rainfall over a two month period (130mm of rain). And, so, I'm inclined to say it was unfair for Accredited to decline Mr and Mrs S's claim."*

*Accredited didn't agree with my provisional decision. It arranged for a new surveyor report which it said showed the damage wasn't sudden and unexpected. It also maintains that the damage was down to poor workmanship.*

*I then issued a second provisional decision where I said I was now minded to not uphold this complaint and I said the following:*

*"I've reviewed the new surveyor report and having done so, I now don't think it was unreasonable for Accredited to have declined the claim. I'll explain why.*

*The surveyor has reviewed the photographs provided and made several conclusions*

*regarding the damage. But, in particular, I note the report made the following comments:*

- *Looking at some of the photographs it can be seen that the walls particularly in the lower sections is saturated in places having vertical cracks and signs of obvious repair. This would suggest ineffective/blocked drainage.*
- *In addition, photograph 3651 shows where part of the wall has in fact sheared vertically and moved forward projecting substantially out for at least half the thickness of a block. Within that photograph there is clear vegetation growing through. It would seem unlikely that such vegetation only just appeared in the period between the date of incident of the 2nd March 2024 and the visit to site.*
- *There are clear signs of previous repair as photograph 3622.*
- *The nature and type of damage to the policyholder's wall has to my eye all the hallmarks of a matter occurring over a long period of time, to walls which constructed in three different types with no obvious engineering design.*
- *In conclusion I would suggest that the wall is and always has been under designed. Possibly under drained. Leaving it/them to achieve the intended function. As a consequence it has failed over a period of time due to cyclic changes in the hydraulic load as the earth behind the wall takes up moisture and dries out, probably in concert with the seasons.*

*I've found this report to be a very detailed and persuasive analysis of the construction and resulting damage to the wall. The surveyor's report is supported by the photographic evidence which shows that the wall has been experiencing cracking over a period of time.*

*While some of the more pronounced cracks may have appeared suddenly, it's actually as a result of a long-term build up of hydrostatic pressure which has caused several cracks to gradually appear in the wall over time. And I've seen no reason to conclude the report analysis of the damage is unreasonable.*

*I recognise it will be disappointing for Mr and Mrs S for me to change my conclusion. But, given the contents of this report I can't now fairly conclude that the damage to the wall is sudden and unexpected. Given I also don't think there's evidence of a storm or flood, I can't say Mr and Mrs S have shown an insured event has incurred. So I now intend to say it wasn't unreasonable for Accredited to say the damage isn't covered under the terms of the insurance policy."*

Mr and Mrs S didn't agree with my provisional decision and raised the following:

- They don't believe my second provisional decision adequately considered the clear evidence that the proximate cause of the damage was the extreme and prolonged rainfall that recently occurred up to March 2024, rather than any inherent structural weakness or pre-existing condition of the wall.
- They highlighted that the surveyor didn't inspect the property, unlike the original surveyor. They said it seems this surveyor is now contradicting previous points made by other surveyors in order to create a case to support an argument based on assumptions.
- The retaining wall in question has stood for four decades without any significant damage, deformation, or structural failure, and no evidence to the contrary has been presented. Had the wall been structurally unsound, it would have shown clear signs of deterioration long before the recent heavy rainfall events. They said the wall has shown no signs of any issues from when they acquired the property in 2044 until the sudden and unexpected failure of the wall after prolonged and excessive rainfall.
- They said the surveyor report made reference to timber frames supporting the walls. But they said these timber frames were installed to provide a framework for a wooden covering to prevent their daughter (then 18 months old) from accidentally falling into this

space. They said they'd explained to the original surveyor that they weren't installed to provide a form of rudimentary support.

- They maintained the winter preceding the damage was marked by an exceptional level of rainfall, leading to significant water runoff from the adjacent field. And they said this heavy saturation of soil directly contributed to increased hydrostatic pressure behind the retaining wall. And they highlighted the surveyor's own report acknowledges that "large cracks have appeared on several walls and walls are now leaning due to a build-up of water pressure."
- They maintain the property was not structurally unsound before the significant rainfall. They acknowledged that, while the photographs show some minor past repairs, this doesn't equate to a fundamental structural flaw. They acknowledged that there was some vegetation growth, but they said that plants can grow quickly in damp conditions. And they said there was no plant growth before the incident or anything to suggest otherwise.

Ultimately, Mr and Mrs S said that, given that the proximate cause of the damage was excessive rainfall and subsequent hydrostatic pressure, they urged me to reconsider their complaint.

Accredited didn't respond to my provisional 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've come to the same conclusion as I did in my second provisional decision. Mr and Mrs S have set out that the surveyor's report is based upon assumptions, which they feel is unfair. And they have also commented that the surveyor didn't inspect the property. But this isn't necessarily unreasonable and I'm satisfied the surveyor was able to make an informed analysis of the cause of the damage from the photographs provided.

Mr and Mrs S has provided detailed submissions surrounding whether there was a structural failing to wall. But the first thing I need to consider is whether Mr and Mrs S have shown the damage arose from an insured event.

Mr and Mrs S have set out that the damage was caused by a prolonged period of high levels of rain. But this in itself isn't an insured event. As I set out in my first provisional decision, the relevant insured events are: storm, flood or accidental damage. I've considered each point separately:

#### ***Storm***

The terms of the policy define a storm as:

*"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 55mph; 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."*

I recognise that there was a large amount of rain over a prolonged period of time. But this doesn't equate to a storm. And I've reviewed the weather radar for the weeks preceding the

claim and I haven't seen anything to show weather that would fit within Accredited's definition of a storm.

I recognise Mr and Mrs S has said that there was a lot of rain over a long period of time. But this wouldn't be considered a storm under the terms of the policy and I don't think that's unfair either.

### *Flood*

The policy defines a flood as *"a substantial and abnormal build-up of water from an external source."*

Mr and Mrs S has said that water has built up behind the wall, which has caused the increased hydrostatic pressure behind the retaining wall. Mr and Mrs S says this surmounts to a flood. But I don't agree. While it may be that it's not usual for water to build up behind a retaining wall – as they should be designed for water to escape through weep holes etc – I've not seen anything to show the build up is "substantial". In fact it seems to be the consensus of experts that it's actually the build up of pressure as opposed to a substantial amount of water building up and causing the wall to break.

I do not dispute that there had been a long-term and prolonged period of rainfall. But this doesn't mean there's been a substantial build up of water. But if there was, I can't ignore that retaining walls are meant to be designed to ensure that doesn't happen through the use of weep holes etc. So if water had built up behind the wall as Mr and Mrs S aver, I think this could only be because of a design defect in the wall. But, ultimately, I don't think I've seen enough to show that a flood occurred behind the wall.

### *Accidental damage*

As I set out in my second provisional decision, I'm persuaded by the latest surveyor report that there seems to be a history of damage and repairs occurring to the wall. Mr and Mrs S have said this doesn't mean the wall wasn't structurally sound. But that's not the question I have to ask at this point. For me to say the policy covers the damage under "Accidental Damage" cover I have to be satisfied the damage was *"sudden and unexpected"*. I set out in my provisional decision why I'm satisfied the damage wasn't unexpected. And Mr and Mrs S hasn't said anything in their response to make me conclude otherwise.

The surveyor's report sets out that there would have been evidence of issues with the wall before the cracks Mr and Mrs S have claimed for. And I'm persuaded by what he's said. So I still don't think I can fairly say the damage was *"sudden and unexpected"*. And it follows, therefore, that I don't think it can be considered to be "Accidental Damage".

### *Summary*

Ultimately, while I recognise the upset this will cause Mr and Mrs S, I still don't think I've seen anything to show an insured event has occurred. And for this reason I can't say it was unfair for Accredited to decline Mr and Mrs S's claim.

### **My final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 21 April 2025.

Guy Mitchell

**Ombudsman**