DRN-5469670

The complaint

Ms H complains that Royal & Sun Alliance Insurance Limited ('RSA') turned down her building insurance claim.

What happened

Ms H holds building insurance cover with RSA. At the rear of her garden there's a retaining wall which runs alongside a river/brook. The wall is shared with her neighbours, with each neighbour responsible for their own section of the wall.

On 9/10 February 2024, part of the wall collapsed. Ms H's section of the wall showed crack damage. She therefore made a claim to RSA.

RSA's loss adjuster considered a claim for subsidence initially, but turned this down as they said Ms H's home wasn't impacted at the same time. Ms H appealed against this decision as she thought the damage had been caused by a storm. RSA therefore arranged for a second loss adjuster to carry out an inspection. They concluded there was no insured cause of damage, as they thought the damage had happened due to a natural breakdown of materials. Ms H complained to RSA about the claim decision.

RSA issued a final response to the complaint on 5 August 2024. It said it would arrange for a structural engineer (that I'll call E) to carry out an inspection.

After E carried out an inspection, RSA turned down the claim by relying on a policy exclusion for faulty workmanship and defective design. It noted there had been damage to Ms H's decking at the same time. Although it also said this would fall under the same exclusion, it offered to pay her a cash settlement for the cost of the decking repairs. Unhappy with RSA's decision to turn down her claim for the damage to the wall, Ms H brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for RSA to turn down the claim.

Ms H didn't accept our investigator's findings and so the matter has been passed to me for a 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 appreciate two loss adjuster firms carried out inspections and concluded the claim wasn't covered. However, I've placed greater weight on E's opinion as they are a structural engineer, so an expert in their field of construction methods. Although E's report (and RSA's decision to maintain its rejection of the claim) was provided after the date of RSA's final response to Ms H's complaint, our investigator relied upon it and RSA didn't object to her doing so. I've therefore done the same.

E made the following observations and conclusions:

- The retaining wall to the rear of Ms H’s property was cracked and showing signs of structural distress. The wall owned by some of her neighbours had partially or totally collapsed. The decking now slopes and deflects significantly.
- The top of the wall is a masonry wall and had been built on top of an older stone wall.
- When the house was built, the existing wall was raised in height by adding around two metres of unreinforced masonry on top of it. If mass concrete had been added behind the retaining wall, this could have worked structurally (though a considerable amount of concrete would have been needed). There were no signs of this having been done.
- The newer section of wall is structurally inadequate, and the original stone wall is clearly inadequate for the increased pressure from the new wall.
- While the retaining wall behind Ms H’s house hasn’t yet collapsed, it’s showing signs of distress, and they would anticipate it collapsing in the next few months.

I’ve seen an email from the Environment Agency which says they routinely carry out visual inspections of watercourses, and in doing so, often inspect privately owned structures such as walls. And where their inspections note damage to privately owned elements, such as the boundary wall here, they will endeavour to write to the landowners. They then confirmed the river behind the property is inspected on an annual basis, and whilst there are records of two collapses that have taken place, no defects or damage was noted before those events. However, they also said they were limited to what they could access and visually inspect.

Whilst I appreciate the Environment Agency hadn’t noticed any damage to the wall during their annual inspections of the river/brook, their email doesn’t persuade me that E’s conclusions were wrong. Presumably the build up of earth pressure from the newer modern wall on the older wall below wouldn’t be visible. Therefore, even if we knew for certain that the Environment Agency had visually inspected this retaining wall in the year before the collapse, they likely couldn’t have predicted the wall would fail.

I’ve therefore considered what the policy covers. When RSA assessed the claim, it considered it against the storm peril, subsidence peril and accidental damage cover. I’ve therefore considered each of these sections of cover, as well as the exclusion that RSA has relied upon.

The policy doesn’t define what’s meant by a storm. As our investigator has explained, we usually say a storm generally involves violent winds, usually accompanied by rain, hail or snow. And when considering a claim for storm damage, we will ask three questions. If the answer to any of these questions is no, it’s unlikely we’d expect an insurer to accept a claim for storm damage. The questions are:

1 – were there storm conditions on or around the date the damage happened?
2 – is the damage consistent with damage a storm typically causes?
3 – were storm conditions the main cause of the damage?

Ms H notified RSA of the claim after her neighbour’s section of the wall collapsed. There was a significant crack on her section of the wall, and it had caused her decking to slope and deflect in places.

I've looked at the weather reports for February 2024, and I see there were storm conditions (storm force gusts) for a few days at the beginning of this month. So, the answer to question one is potentially yes, though this wasn't immediately before the damage was discovered.

Moving onto point two. The damage to Ms H's section of the wall is crack damage and structural distress (seemingly from the nearby collapse of another section of the same wall). I think storm force gusts of wind could cause a freestanding wall to collapse but this is much less likely for a retaining wall. Nonetheless, the answer to question two is potentially yes.

Turning to point three. E has explained the newer section of the wall was structurally inadequate, and the original wall below it wasn't adequate for the increased pressure from the new wall. E didn't say a storm contributed to or caused the damage. So, the answer to question three is no.

As the answer to one of the three questions is 'no', I'm satisfied that Ms H doesn't have a valid claim under the storm section of cover.

The policy also covers subsidence and/or heave of the site. Subsidence is the downward movement of the site on which the property stands. However, the policy excludes damage to walls unless the home is damaged by the same cause and at the same time. Ms H's home wasn't affected at the time. I understand she later couldn't open two windows, though even if this had been the case from the date of the incident, the subsidence section of cover excludes faulty workmanship or the use of defective materials. So, if the collapsed wall did cause downward movement of the site underneath the property and led to the problems with the windows, it would fall under this exclusion anyway, given E's findings.

Finally, Ms H's policy includes accidental damage. The policy terms say this means *'Sudden, unexpected and visible damage which has not been caused on purpose.'*

On the face of it, the claim could be covered under accidental damage as the damage meets the above definition.

However, RSA has relied on an exclusion within the accidental damage section of cover. This says the following under 'what is not covered':

'Faulty workmanship, defective design, the use of defective materials or damage caused by any of these.'

Ms H says RSA has no evidence of poor workmanship, as the wall was approved and signed off by building control.

The older drystone wall is believed to be over 100 years old, and the modern wall was built on top of it over 20 years ago by the developer of the housing estate. I appreciate there have been no issues with the modern wall since it was built, but it was E's opinion that the wall didn't have sufficient structural support for the addition of the modern wall that was built, and that this led to its collapse.

In the absence of any evidence showing that E's conclusions were wrong here, I think it was reasonable for RSA to rely on this information and say there was defective design and/or faulty workmanship.

Overall, I'm satisfied it was reasonable for RSA to refuse the claim under the accidental damage section of cover too.

Ms H hasn't complained about RSA's decision to pay a cash settlement for the damage to her decking, so I haven't considered this.

Ms H advised this service that her insurer has since taken the decision not to offer her renewal of her policy. RSA has advised us that this brand of policy is underwritten by another insurer now, and therefore any offer or refusal of renewal would come from them. Therefore, if Ms H is unhappy with that insurer's decision not to offer her renewal, she should complain to them in the first instance.

Ms H has also complained about RSA's handling of her claim and the time it took for RSA to deal with it. It's apparent the claim was delayed because RSA arranged for two loss adjusters to carry out inspections and make claim decisions. Arguably, it should have arranged for a structural engineer to carry out an inspection after the initial loss adjuster had inspected the site (as they would have realised the complexity of the matter), but once Ms H complained about the claim being turned down initially, RSA did address her concerns by then arranging for a structural engineer to carry out an inspection. I think that was reasonable.

I recognise my decision will disappoint Ms H, but I don't require RSA to accept the claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 20 August 2025.

Chantelle Hurn-Ryan
Ombudsman