

The complaint

Mr and Mrs C are unhappy AA Underwriting Insurance Company Limited (AAUICL) declined a claim made under their home insurance policy.

What happened

In January 2024, Mr and Mrs C noticed water pooling in their garden, and on their patio, alongside their garden boundary wall which adjoined a neighbour's driveway. And they discovered their garden boundary wall had become saturated and had areas of cracking. So, Mr and Mrs C reported this to their neighbour.

The neighbour arranged, via their insurer, for their driveway to be excavated. A mains water supply pipe was discovered to be leaking and was repaired.

Mr and Mrs C liaised with their neighbour's insurer about the damage to their wall. However, that insurer directed Mr and Mrs C to their own home insurer, AAUICL, so they approached them to make a claim. Following an inspection of the wall by AAUICL, the claim was declined. AAUICL ultimately said an insured event under Mr and Mrs C's policy hadn't occurred.

Mr and Mrs C complained to AAUICL about the claim decision. Whilst AAUICL maintained the claim decline decision, they recognised there had been confusion about whether the claim would be covered, and cancellation of a survey visit without notification. AAUICL paid £50 compensation for this.

As Mr and Mrs C remained unhappy, they approached the Financial Ombudsman Service.

Since the complaint had been brought to this service, whilst AAUICL said their claim decline decision remained, they'd made an increased offer to pay a further £50 compensation taking the total amount to £100.

One of our investigators looked into things and thought the increased offer of compensation was fair. She didn't think AAUICL had unreasonably declined the claim as she agreed there wasn't an insured event. So, the investigator didn't recommend AAUICL do anything further beyond what they'd already offered.

Mr and Mrs C didn't agree and asked for a final decision from an ombudsman.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties the opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I'm issuing a provisional decision. I'm minded to reach a different outcome to our investigator, so I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings, before I reach my final decision.

I recognise Mr and Mrs C are unhappy that their neighbour's insurer hasn't covered the damage to their wall (and later, that AAUICL didn't either). But my remit and consideration here is limited to AAUICL, this is because they are Mr and Mrs C's insurer. I can't consider whether Mr and Mrs C's neighbour's insurer has treated them fairly as they aren't policyholders or customers of that insurer, so they aren't eligible complainants to bring a complaint to this service about them.

Having considered everything, I don't think AAUICL has fairly declined Mr and Mrs C's claim at this stage. I'll explain why below.

In my view, AAUICL's final response to Mr and Mrs C's complaint is unclear in the full reasons why they've actually declined the claim. Amongst other things, it says:

"The surveyor's report has confirmed that the damage is not due to an insurable incident and is due to the leak from your neighbour's external underground water pipe, in addition to the destabilising effect of the large HGV traffic on your neighbour's property and the wear and tear of the wall due to its age."

So, this seems to say there is no insured event because it's the neighbour's pipe leaking causing damage, destabilisation caused by HGV's and wear and tear. But AAUICL didn't go into any more explanation as to why it wouldn't be covered, such as referring to exclusions, or explaining why damage caused by escapes of water from neighbouring properties aren't covered.

AAUICL has sought to clarify in their submissions to this service the reason for the claim decline:

"Our case notes evidence within the timeline, that we (initially and correctly) advised the consumer accidental damage (which was the suggested claim incident reason), wasn't covered as they didn't hold that level of cover on the policy however, thereafter, in trying to aid the consumer, our Claims team changed the claim to 'Escape of water' however, again, upon receiving the surveyor report, wear and tear was identified which drove the correct decision to decline.

.... we are unable to consider overturning the claim decision as wear and tear has been identified."

So, from this, it seems that AAUICL is declining the claim on the basis of two reasons, firstly that neighbour's pipe leaks and HGV damage would need to be claimed for as accidental damage, but Mr and Mrs C don't have that cover. But also, if considered under escape of water, wear and tear was identified to the wall.

However, having reviewed all the information provided, I don't think AAUICL has fairly declined the claim. I'll explain why.

When AAUICL's surveyor attended, they concluded the following:

"The side aspect garden boundary single skin brick wall has what appears recent cracking along horizontal and diagonal crack runs, these are on either side of the repair point of the mains supply to the neighbour to a length of 13m, where the concrete repair can now be seen, directly beside the PH wall. It is plausible that the water loss from this mains supply has caused wash out from the sub surface, and the cracks to the wall are the result of this then further movement, there is other existing W&T to the wall top and brick faces, which are not as a result of this one off EOW, and they would not contribute tot he (sic) cracking now evident. I would propose that the volume of HGV traffic on this driveway could also destabilise the wall?? The neighbour now intends to completely remove and replace the current driveway."

So, firstly, whilst Mr and Mrs C's policy excludes wear and tear, the cause of damage wasn't concluded by the surveyor to be wear and tear as AAUICL says. Instead, the surveyor noted there was some wear and tear to the top of the brick wall and brick faces, but they said that was unconnected to the escape of water (EOW) and the cracking that is evident and being claimed for:

"...there is other existing W&T to the wall top and brick faces, which are not as a result of this one off EOW, and they would not contribute tot he (sic) cracking now evident"

They also further explained this in the report:

"Any pre-existing or ongoing external buildings defects/issues that are not peril related?

Yes

Please provide a further explanation

General W&T (wear and tear) to brick faces due to age, does not relate to the one off EOW."

So, the surveyor didn't conclude the cause of damage was wear and tear, and instead confirmed any wear and tear was unconnected to the escape of water damage and cracking to the wall which was being claimed for. And the images in my view also don't support that the damage to the wall being claimed for was a result of wear and tear either. So, I don't think AAUICL can fairly decline the claim on the basis wear and tear was the cause of damage as the surveyor report and images don't demonstrate or support that.

The surveyor also said the volume of HGV traffic could destabilise the wall. But those findings don't appear conclusive. Instead, they appear to simply be a possible cause without any degree of certainty or reasoning to support that, especially considering they've closed this sentence with "??". So, although Mr and Mrs C don't have accidental damage under their policy which might cover damage caused by this type of issue, I don't think that's been shown to be the cause of damage in any event.

In my view, the surveyor's conclusion as follows is the most likely cause of damage:

"It is plausible that the water loss from this mains supply has caused wash out from the sub surface, and the cracks to the wall are the result of this then further movement"

I think the images support this as most likely the cause of damage. I say this because there was a damaged pipe which was leaking under the neighbour's driveway, this was in very close proximity to Mr and Mrs C's wall (around 10cm's from it), the garden in Mr and Mrs C's property was flooding, the wall was saturated, and this was no longer the case after the broken pipe was excavated and repaired by Mr and Mrs C's neighbours insurer. So, I'm persuaded, on balance, that this is the most likely cause of damage to the wall.

As I say, Mr and Mrs C don't have accidental damage cover under their policy, so a claim couldn't be made for that. But they do have cover for damage caused to the buildings by an escape of water.

"We will pay for loss or damage to the building caused by the following:

3. Water or oil as a result of a burst, leaking or overflowing domestic water or heating installation, appliance or piping. This includes damage to any water installation caused by freezing or bursting.

....

BUT NOT loss or damage if your home was unfurnished or unoccupied at the time of the loss or damage. OR loss or damage caused by subsidence, heave or landslip."

And Building is defined as:

"Your home as shown in the Statement of Insurance and, if they form part of the property:

(a) ... boundary and garden walls....;"

So, cover for an escape of water causing damage to the building includes damage to the boundary wall, which is what is damaged and being claimed for here. And I think, on balance, based on all the information provided to date, escape of water is the most likely cause of damage at this stage. So, as a starting point, that is an insured event under the policy. So, AAUICL should have considered whether the damage is covered under this peril, but they didn't get as far as that as they partly, incorrectly as outlined above, relied on unconnected wear and tear to decline the claim.

I do recognise it was a neighbour's pipe, rather than Mr and Mrs C's pipe that was leaking. But the escape of water damage to buildings cover under the policy doesn't require damage to have been caused by a pipe which Mr and Mrs C are responsible for. Instead, damage caused by an escape of water from a domestic pipe is what is covered. And the broken pipe was the responsibility of Mr and Mrs C's neighbour, so I'm satisfied it was a domestic water installation.

I should also add here that our investigator said that as the pipe was Mr and Mrs C's neighbours, rather than their own, it wouldn't be considered domestic. But it's unclear how they reached that conclusion, and I don't agree. The term domestic would mean a pipe, on, or supplying a, domestic property - which is the case here. In the context of the policy cover, I don't agree with the investigator that the term domestic would solely mean a pipe owned by, or the responsibility of, the policyholder themselves.

So, unless anything changes as a result of the responses to my provisional decision, I'll be directing AAUICL to reconsider the claim in line with the remaining terms and conditions of the policy.

However, I should also add here if my final decision remains the same as my provisional decision, when reconsidering the claim in line with the remaining terms, AAUICL may find it is another insured peril which actually needs to be claimed against instead of escape of water. If that's the case, the claim would then need to be considered against that peril and policy cover and terms instead. And this could still mean the claim isn't covered.

I highlight this because, for example, if the escape of water caused subsidence which then caused the wall to crack, then it would need to be claimed for under the subsidence peril rather than the escape of water peril (as outlined above – the escape of water peril excludes subsidence). And under the subsidence peril, for damage to boundary walls to be covered, the policy requires there to be damage caused to the home (as defined) at the same time, so that, and the remaining policy terms would need to be considered too.

But to be clear, I'm not making a finding on the other perils under the policy, instead it is to manage expectations of all the parties that the damage still may not be covered even after AAUICL reconsider things based on the remainder of the policy perils and terms. But of course, Mr and Mrs C would be able to raise a separate new complaint with AAUICL if they maintained the claim decline decision relying on other reasons and Mr and Mrs C were unhappy with this.

As outlined above, AAUICL has offered (including the amount offered after the case came to us) £100 compensation. But I don't think that's sufficient here. As outlined, along with the confusion in the claim initially and the cancelled surveyor visit, I think AAUICL has also then incorrectly interpreted their surveyors report, and unfairly declined the claim for the reasons they have. This has caused Mr and Mrs C additional distress and inconvenience beyond the initial service issues. So, unless anything changes as a result of the responses to my provisional decision, I'll also be directing AAUICL to pay Mr and Mrs C a total of £300 compensation (including the £100 already offered)."

So, I was minded to uphold the complaint and to direct AAUICL to:

- Reconsider the claim in line with the remaining policy terms
- Pay Mr and Mrs C a total of £300 compensation (including the £100 already offered)

The responses to my provisional decision

AAUICL responded agreeing with the provisional decision. They said they agreed it was more likely moisture related damage than wear and tear, further investigation should've been carried out at the time, and feedback has been given internally.

AAUICL also recognised I'd said in the provisional decision that it is also possible that the claim might need to be considered under a different peril, such as subsidence (which has its own exclusions), and when reconsidering the claim in line with the remaining policy terms, they'd look to appoint a Chartered Surveyor.

Mr and Mrs C responded to the provisional decision and said they were pleased with it. They also said they didn't say to AAUICL that they thought it was accidental damage, and instead that it was damage caused by water from the neighbouring property. Mr and Mrs C also said they don't think there is subsidence as other areas of the wall don't have signs of that, so they think it is solely escape of water damage.

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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision, and for the same reasons.

I acknowledge what Mr and Mrs C have said, that in their view it isn't subsidence related damage. However, at this stage I'm unable to conclude that with any certainty. There may be another peril which the claim actually needs to be considered against, but at this stage that's unknown. So, this is why I'm directing AAUICL to reconsider the claim in line with the remaining policy terms. But as I said in my provisional decision, after reconsidering the claim in line with the remaining policy terms, if Mr and Mrs C are unhappy with the decision reached by AAUICL, they would be able to raise a new complaint with AAUICL about that new claim decision.

I also note AAUICL have said they would look to appoint a Chartered Surveyor. Whilst I'm directing AAUICL to reconsider the claim in line with the remaining policy terms, I'm not going to direct AAUICL who specifically they need to appoint, as ultimately it is for them to decide in the first instance who is best placed to determine the cause of damage on their behalf.

I also note Mr and Mrs C have said they didn't make a claim for accidental damage as in their view what had happened didn't fit with the examples AAUICL gave of accidental damage that would be covered under the policy. I recognise that, I was instead outlining AAUICL's reasons for declining the claim based on what they'd told this service.

Having reconsidered everything, including the responses to my provisional decision, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

It's my final decision that I uphold this complaint and direct AA Underwriting Insurance Company Limited to:

- Reconsider the claim in line with the remaining policy terms
- Pay Mr and Mrs C a total of £300 compensation (including the £100 already offered)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 29 May 2025.

Callum Milne
Ombudsman