DRN-5986402

The complaint

A club, that I will call C, has complained about the refusal of a claim under its commercial combined insurance policy with Aviva Insurance Limited.

Mr B, as a trustee of C, has brought the complaint on its behalf.

What happened

In 2023, C planned renovation work to its building. In July 2023, while the render was being removed from a gable wall of the building, the wall partially collapsed. The rest of the gable wall collapsed the next day. C made a claim under its policy with Aviva for the cost of restoring the wall.

Aviva appointed a surveyor to inspect the property. The surveyor said the damage was not the result of an event covered under the policy. Based on this, Aviva rejected the claim. C didn't agree with Aviva's decision and said that it should be covered under the accidental damage section of cover. Aviva agreed to reconsider the claim and appointed an independent structural engineer.

The independent structural engineer inspected the property in December 2023. He concluded that the collapse was the result of pre-existing damage and defects to the property. The engineer said that the gable wall had been leaning outwards before the renovation work started, which he says could be seen from the architect's drawings. He said that this was because of inadequate restraint of the gable wall, partly due to decay and damage to timber ties. The engineer said the lateral restraint at the top of the gable wall had been lost some time previously and there was a lack of any lateral restraint at second floor level, this together with penetrating dampness and long-term burning of fossil fuels (the gable wall contained five flue chimney) had caused weaking and deterioration of the bricks in the gable wall. The engineer said this damage to the lateral restraints was identified in a previous timber and damp report obtained by C.

The engineer said that given this, there should have been temporary support of the wall, while the work was being carried out. and while the collapse happened in two stages, it was all mainly caused as a result of this lack of restraint, pre-existing damage to the wall and absence of temporary support while undertaking the work. Aviva declined the claim based on these findings.

C does not accept this and made a formal complaint to Aviva about its refusal of the claim.

C says that it was the lower part of the wall that collapsed first, not the upper part that the engineer said was not tied in properly and was already leaning out. The upper part collapsed later, after the loss of support of the lower section. This sequence does not indicate the type of outward rotational failure one would expect if loss of lateral restraint was the cause of the collapse. This casts doubt on Aviva's conclusion that the damage to the wall was as a result of pre-existing damage and defects.

In April 2024, C also provided a response to Aviva's refusal of the claim from its engineer,

who had worked on the renovation project. He made a number of points. I have considered everything he said and have summarised the main points below:

- there are no drawings showing an outward lean of the gable wall.
- The damp and timber condition report of 2019 did not mention any outward lean and he carried out a visual inspection in 2021 and saw no visual evidence of an outward lean of the gable wall.
- The gable was tied by timber purlins at roof level, by a steel floor-beam at attic floor level and at first floor level by timber joists and by two steel RSJs. The decay of supporting timbers and damp in the wall was not unexpected.
- The timber report does not appear to indicate any first-floor level joists as having been opened up for inspection on the gable.
- Post collapse photos of exposed first floor joists, steel beam and RSJs should show the actual condition of these elements. The presence of fungal decay does not necessarily mean that all restraint was lost.
- Restraint offered by purlins, floor joists and floor beams is important but the dependency of a wall on lateral restraint is influenced by the wall construction; a narrow brickwork wall is more dependent on lateral restraint than a thick masonry wall, such as is the case here.
- The outward rotational failure that occurred here is typically caused by wind suction pressure caused by strong winds but even a completely unrestrained wall would have remained stable in the winds recorded on the relevant dates.
- The loss of support from below, causing the wall to drop, essentially vertically, is the more likely cause. Temporary shoring of wall would not have prevented this failure, which was due to loss of support from below the upper section of a wall.

Aviva did not change its position about the claim, so C referred the complaint to us.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied Aviva was entitled to reject the claim for the reasons it did.

C did not accept the Investigator's assessment, so the matter has been passed to me.

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.

C's policy provides cover for various events that might happen to the building, including accidental damage. As with any insurance policy, this is subject to terms and conditions. The exclusions relied on by Aviva are as follows:

"We will not indemnify You in respect of

(1) Damage to the Property Insured caused by or consisting of

(a) an existing or hidden defect

(b) gradual deterioration or wear and tear …

(2) Damage to the Property Insured caused by or consisting of

(i) corrosion, rust or rot …

(iii) dampness or dryness".

And

"*Damage to any building or structure caused by its own cracking or collapse*."

It is for a claimant to establish their claim. If the claimant can establish, on the balance of probabilities, that the damage was caused by an insured event, then the claim is covered, unless the insurer can establish, also on the balance of probabilities, that an exclusion applies.

In this case that means it is for C to establish, on the balance of probabilities, that the cause of the collapse was an insured event. There is no evidence that the damage was caused by storm or any other such peril. It is agreed by the parties that the only event that might be relevant here is accidental damage.

We would usually consider accidental damage to be damage that was unforeseen and unintentional.

In this case the render was being removed from the external face of the gable wall when the first collapse happened. There is no evidence to suggest that equipment slipped, or any other event happened during that work that would be considered to be an accident.

Although the collapse of the wall was clearly unintended, Aviva's engineer seems to suggest it was not, however, unforeseen, as it would have been a reasonable precaution to shore up the wall while the work was being carried out.

I think there is some doubt as to whether this could be considered to be accidental damage. However, I will proceed on the basis that it was and will consider whether the exclusions can fairly be applied to the claim.

The building was in a poor state of repair and the club had received a grant to restore it. As part of that restoration the internal render had already been removed from the gable wall and a large amount of the external render had also been removed when it collapsed.

The engineer appointed by Aviva said it would have been preferable to have only removed the render from one side at a time. He said the removal of the render meant there were voids in the brickwork. The engineer also said he'd have expected the gable wall to have been temporarily shored up while the works were ongoing to prevent collapse.

I have looked at the photos and can see a lot of mortar missing, and large gaps, between many bricks. I think it is reasonable to accept this would have weakened the integrity of the wall.

I have also considered the damp and timber report obtained by C in advance of the planned restoration works. The report is dated February 2022. The surveyor opened up some areas to access timber supports embedded in the masonry. The timbers embedded in the gable wall were significantly affected by damp and fungal decay.

The report said there were several roof defects allowing ingress of water and the render on the gable had several cracks and that there was substantial penetrating dampness evident internally.

The report also said: "*the existing bricks of the chimneys will be of poor quality due to original long-term use of fossil burning material*" and that the chimneys are a major contributory factor in the damp problems in the building. The report recommended they be

removed and rebuilt.

I note Aviva's engineer also said the gable wall was already leaning outward before the restoration work started. He said:

> *"The architect did note the requirement on the drawings for remedial work to the ends of these two purlins but, importantly, two things do not appear to have been grasped as significant by the design team i.e. a) the decayed purlin ends meant that the top of the gable wall has lost lateral restraint quite some time ago, and b) there was no lateral restraint provided to the gable wall at second (attic) floor level because the timber joists ran parallel with the gable wall. The top of the gable wall had probably been progressively leaning out because of freeze-thaw action in sub-zero weather and even possibly contributed to by thermal expansion-contraction caused by afternoon/evening solar gain."*

C disputes this. I cannot see a pre-existing lean in the architect's drawings I have looked at. However, photos taken after the collapse show the remaining parts of the wall leaning and separated from the roof. It seems likely this is the condition it was in before the collapse.

However, even if the wall was not already leaning out, I think the evidence is that the gable wall had lost a significant amount of its lateral restraint. I say this because of the extent of the decay of the timbers identified by the timber report and Aviva's engineer and from the photos provided.

C's engineer says lateral restraint may not have been that important given the construction of the wall and also that decay of the timber supports was not unexpected. However, I do not think this establishes that this gable wall was stable and that it was unnecessary to shore it up because it was considered it would remain stable during the works. No evidence has bene provided, as far as I can see, that this was assessed as part of the plan for the restoration works.

I have also considered the comments from C's engineer that it cannot be the compromised lateral restraints that caused the collapse because the upper part of the wall (which is where the restraints were most compromised) stayed in place and only collapsed after the lower section. C's engineer also said that shoring up the wall would not have prevented the second collapse, which occurred because of loss of support provided by the lower part of the wall. C's engineer has not, however, suggested a reason for the first collapse.

If the second stage of the collapse was the result of loss of support from the lower section of wall, then this would be excluded as well, as the policy excludes damage caused by the buildings own collapse.

Aviva's engineer said that not only were the lateral restraints compromised but the brickwork was damaged by the long-term use of fossil fuels, several voids had been created in the brickwork from removal of the render internally and externally and all this together with the decay of the timber supports, such as they were, led to the first and the second collapse. He said shoring up the wall would have prevented the collapse. I am satisfied that if the wall had been shored up it would likely have prevented or reduced the initial collapse.

Having considered everything carefully, I think Aviva has provided enough evidence that the collapse of the wall was likely due to the compromised restraints, the pre-existing condition of the brickwork and failure to shore up the wall during the work. The compromised restraints and condition of the brickwork were the result of gradual deterioration, damp and hidden defects. I therefore consider Aviva has acted fairly and reasonably and in line with the policy terms in rejecting the claim.

My final decision

I don't uphold this complaint.

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

Harriet McCarthy
Ombudsman