

complaint

Mr and Mrs R complain that Legal & General Insurance Limited has turned down their claim for property damage caused by a storm.

background

Mr and Mrs R asked their insurer, Legal & General, to pay for damage to part of a garden wall. They said that the wall fell down in a storm.

Legal & General said that the storm wasn't the cause of the wall falling down. It said that the survey it paid for showed that the wall was in a poor state of repair, and that was why it had fallen over. The storm wasn't the real cause of the collapse. Although it said that it would be happy to consider any further information if Mr and Mrs R got their own report done.

Mr and Mrs R said that they hadn't got an independent report, because that would have cost almost as much as having the wall repaired. So rebuilding the wall had taken priority.

my provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. I concluded, in summary:

- Mr and Mrs R have a buildings and contents insurance policy on their home with Legal & General. They are insured for damage to the buildings caused by storm or flood. Damage to fences, gates or hedges caused by storm is excluded from the policy, but damage to a boundary wall isn't excluded. Legal & General says that it will pay for any necessary replacement and repair work, provided that the buildings were in good repair before the damage was done.
- Our adjudicator also noted that Mr and Mrs R have cover for accidental damage, but I didn't think that was relevant to this case.
- There was no dispute that there was a storm in the area the day before Mr and Mrs R told their insurance company about the claim. And there was no dispute that storms can cause walls to fall down. The key issue in this case was whether the main reason this wall fell down was because of a storm, or because of its condition at this time. If the storm was just "*the straw that broke the camel's back*" and the wall would have been able to resist the storm winds if it was in a better state of repair, then Legal & General doesn't have to pay for the repairs.
- Legal & General sent us a report that their surveyor supplied, which says that the wall was in a poor state of repair. That report makes two points. One is that there was vegetation growing within the mortar joints of the wall. The other is that the mortar was in a poor state of repair generally and that there were large sections of the wall where the mortar was missing.
- Mr and Mrs R say that the vegetation showing in the picture was within the garden, not in the wall itself. I couldn't see, from the pictures I had, whether there was vegetation growing in the mortar joints or not. For reasons I explained, I didn't think that mattered. I thought it is the condition of the mortar that is the most important point.

- Mr and Mrs R say that their brickwork wasn't in need of repair. They say that other walls were fine, but the surveyor chose only to look at the damaged wall. And the damage there was caused by the storm. I could see that the pictures focussed on the area of wall which had been damaged. I didn't think it was unreasonable for the surveyor to have done this, and it was always possible that this wall was in a worse state of repair than the other boundary walls, so even if Mr and Mrs R were right that the other walls were ok, that didn't mean this one was too.
- I could see that the report was done relatively quickly after the storm, so I thought that it was unlikely that the wall got much worse in the time between the storm and the pictures being taken. On the pictures I had, I could certainly see damage where the bricks have fallen down. But I could also see other parts of the wall where the mortar did appear to be missing. These patches were not close to the areas where the wall has collapsed. The surveyor said that they were not caused by the storm, and nothing I had seen had made me doubt that conclusion.
- It seemed more likely to me that the wall was in need of repair when it was hit by the storm, because patches of mortar were missing. In order to require Legal & General to deal with Mr and Mrs R's claim, I would need to decide that the main reason the wall fell down was the storm. In this case, my view was that the main reason for the wall's collapse was in fact its condition, rather than the storm. I did think that the storm was a factor, but it wasn't the main cause. It was just the last straw. So I didn't think it was unfair for Legal & General to refuse Mr and Mrs R's claim.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Legal & General didn't respond. Mr and Mrs R sent a detailed response, questioning the conclusion I'd reached, and sent in a letter from a neighbour.

Mr and Mrs R said that both sides agreed there were storm conditions when the wall fell down. They said that they'd contacted their insurance company immediately the damage happened. They also said that both sides agreed that this sort of damage is consistent with storm damage. They said, though, that the storm conditions were definitely the main cause of the damage. They said that their wall wouldn't have fallen over without the storm.

Mr and Mrs R pointed out that they'd bought the property in 2012 and no issues showed up on any survey since then, and that they'd told Legal & General that the wall was in good repair each time they renewed. They also said that pictures available online showed the wall was in good condition, and their neighbour had written to say that the wall wasn't in a poor state of repair. They enclosed a short letter from their neighbour. They thought that there was no mortar missing from the part of the wall that fell. And they also said even if there was mortar missing in the section that fell, the fact that the rest of the wall was missing mortar in sections but was still standing meant that the section of wall that fell would have stayed up if it wasn't for the storm.

Mr and Mrs R said that they thought they'd lost out because they couldn't afford to have a survey done when the wall fell down, but Legal & General could. They didn't think that was fair.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs R said that if I didn't uphold their complaint, that must be because I thought that the wall would have fallen down anyway. They said that there were a number of pieces of evidence that pointed the other way. Of these, I think the strongest evidence is the pictures of their street available online, and the letter from their neighbour.

I have reviewed the pictures of their street available online again. There are three sets of photos available. Those from 2008 were taken before Mr and Mrs R bought the property, and they show the length of wall and the corner which later collapsed. That corner is covered in greenery. This seems to be an overgrown tree or shrub in the rear garden of what is now Mr and Mrs R's house. And this picture seems to me to show a number of areas where the light-coloured mortar in the wall is not visible. Additionally, there is an area about level with the shed in the rear garden, where the bricks are noticeably discoloured.

The pictures of this wall in 2012 show that this tree or shrub has been cut back. They still seem to me to show areas of the wall where the light-coloured mortar is not visible. These pictures are taken from a slightly different angle, but I can still see an area of discoloured brickwork level with the shed.

There are also pictures from 2014 which show a wall in excellent condition, taken after the repairs were done.

The photos from 2012 aren't clear, but the limited amount of detail I can see seems more consistent with my original decision.

I also reviewed the letter that Mr and Mrs R have sent, written by their neighbour. This letter says "I and other residents ... would certainly not park a car near a wall that would look unstable." I do think that it is reasonable to assume that if the wall had been very obviously unstable, then other local people wouldn't have parked near it. But the letter also says "My neighbour's wall was not in a poor state it was sturdy and stable with no appearance of wear and tear or gradual deterioration to the wall..." That doesn't seem to me to be consistent with what I can see in the online photos.

And Mr and Mrs R haven't been consistent about the state of the wall. When the expert provided his report, Mr and Mrs R wrote to Legal & General and said "The mortar of the wall was not in a poor state of repair...". Their most recent letter to us says "We do not dispute that there are patches of the other walls where mortar is missing." These two statements seem to me to be rather contradictory. That makes it difficult for me to give a great deal of weight to what Mr and Mrs R say about the state of their wall.

Legal & General has provided an expert's report which says that the wall was in a poor state of repair. Legal & General decided it didn't have to pay for this claim, because the damage to the wall was a result of wear and tear, and not a storm or other insured event. I have carefully reviewed the evidence again, and I can't see anything to make me think that Legal & General were wrong about this.

Mr and Mrs R say that if I don't uphold their claim then I must think that their wall would have fallen down anyway. Considering the evidence I have, on balance, I think it probably would have done. I don't think that the pictures show a well-maintained wall which was in no danger of falling over.

I know Mr and Mrs R will be very disappointed, but I don't uphold their claim.

my final decision

I don't uphold this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 16 November 2015.

Esther Absalom-Gough
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