

## **complaint**

Mr A is unhappy with Aviva Insurance Limited's decision to reject his claim for a collapsed wall under his landlord's buildings insurance policy. He would like Aviva to meet the claim.

## **background**

In January 2011 Mr A submitted a claim to Aviva for damage sustained to a wall in the rear garden of his tenanted property. It is not known precisely when the wall collapsed as Mr A's tenants were away from the property when it occurred. Aviva appointed its loss adjusters to report on the cause of damage. They conducted an inspection and concluded that the wall had collapsed due to its general condition which had deteriorated over time. Mr A was informed that no insured event (or, peril) had operated and that Aviva would not be meeting the claim.

Our adjudicator rejected Mr A's complaint; he did not consider that Mr A had demonstrated an insured event had occurred. He identified three possible perils under which the claim could be brought. The first and second of these were malicious damage and storm damage, however, our adjudicator concluded that there was insufficient evidence to substantiate a claim under either peril. The third potential event which could give rise to a successful claim was that of accidental damage. Our adjudicator noted that both Aviva's and Mr A's appointed experts had stated the wall was in a poor state of repair, consequently he concluded this to be the dominant and effective cause of the wall's collapse. As the policy terms and conditions exclude cover for accidental damage where that damage has been caused by '*gradual deterioration or wear and tear*', our adjudicator was unable to conclude that Aviva had acted unreasonably in applying that exclusion to defeat Mr A's claim.

Mr A's brokers disagreed with our adjudicator. They stated that a lateral force, likely applied to the wall, was the "*active, direct and efficient cause of loss*". It was their view that the claim should be met under the accidental damage section of the policy.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Buildings insurance policies insure the policyholder against damage caused to their buildings by certain specifically defined events (or, perils). Policyholders are not insured for every type of damage that their building sustains. In order to make a successful claim under a buildings insurance policy it is necessary for the policyholder to first show that his building has sustained damage and secondly, that that damage was caused by one of the perils listed in his policy. Perils commonly included in buildings policies include damage caused to buildings by storm, by fire, by flood, by subsidence, by theft or by escape of water.

All buildings policies also contain exclusion clauses. These cite the particular circumstances in which an insurance company can decline to meet a claim for damage caused by one of the perils. Such exclusions would include damage caused by poor workmanship, wear and tear, or that which happened gradually. If an insurer can successfully demonstrate that a particular exclusion applies to a claim then it is entitled to reject it.

I agree with our adjudicator that there is no evidence to support a claim for malicious damage. I note that Mr A's brokers have, in any event, confirmed that they would not be able

to submit any evidence of malicious damage. It would not be reasonable of me to conclude that a claim under this peril should succeed.

I have considered whether Mr A's claim could be successfully made under the storm peril. Whilst there is no definition of the word 'storm' in the policy booklet it does have a specific meaning in respect of insurance contracts. Having reviewed the weather records for around the time the damage was sustained, I am not satisfied that storm conditions can reasonably be said to have prevailed thus it would be unreasonable of me to conclude that Aviva should meet the claim under this peril.

The only other possible peril under which Mr A's claim could be successful is that of accidental damage. If I were to accept that the wall had collapsed accidentally I must then consider whether Aviva has acted unfairly by invoking the '*gradual deterioration or wear and tear*' policy exclusion in order to defeat the claim. In order to decide this I must have regard to the available evidence.

Unfortunately for Mr A I am unable to ignore the fact that his own expert described the wall as being of "*very poor unmaintained condition with marked eccentric lean and perished mortar*". Aviva's loss adjuster concluded that the general condition of the wall was the reason why it collapsed.

I have noted that Mr A's expert mentioned the possibility of a '*small lateral force*' being applied to the wall so as to cause its collapse, however, it is my view that this was only to give the insured the benefit of doubt. Even if it were possible to demonstrate that a small force had been applied, I do not consider it predominantly caused the collapse.

There is clear evidence from both experts that the wall was not in a good condition. In these circumstances, it would be unreasonable of me to ignore this fact and go on to conclude that Aviva had acted unfairly in relying on the exclusion cited in order to defeat the claim.

I do appreciate that this decision will be a disappointment for Mr A, however, it is simply the case that the damage his wall sustained is not covered by his policy.

### **my final decision**

My final decision is that I do not uphold this complaint and I make no award against Aviva.

Claire Woollerson  
**ombudsman**