

The complaint

Miss T complained that her claim was unfairly declined under her home insurance policy with Admiral Insurance (Gibraltar) Limited (“Admiral”). Miss T was represented by a relative during the complaint, but for ease and to keep my decision clear, I will only refer to Miss T.

What happened

Miss T said there was a sudden and unexpected collapse / landslip of part of her garden wall. Miss T said it was a high retaining wall and a substantial amount of wall stones and soil slipped into the roadway, partially blocking it. Miss T said she liaised with Admiral and commissioned a local contractor, who after speaking to the local authority, carried out some initial work to safeguard the highway. Miss T said this cost was over £7,000 for temporary reinforcement works and for traffic management, and an ongoing weekly cost of £200 + VAT. Miss T said she didn’t receive the full policy document when taking it out or at the subsequent renewal dates.

Miss T made a claim on her policy and Admiral sent out an engineer to visually inspect the damage. In addition, Admiral appointed a structural engineer to inspect the property to provide a second opinion. Based on their reports, Admiral decided to decline the claim as it said the wall had deteriorated gradually over time, so was not covered by the policy. It said there were no adverse weather conditions at the time of the loss.

Our investigator decided not to uphold the complaint. He thought Admiral had been fair in declining the claim as he didn’t think what Miss T was claiming for was covered by the policy. Miss T disagreed, so the complaint has been referred to an ombudsman.

My provisional decision

I issued a provisional decision on this on 14 February 2022. I said:

“I considered what Miss T said about not receiving the full policy document. She said she didn’t have internet access, or a computer so was unable to review the policy online. She said if she’d had this opportunity it’s likely she would’ve realised the policy wasn’t suitable for her. I’ve reviewed the notes that Admiral made, and it shows the policy was sent to Miss T by post when she first took out the policy and subsequent updates were sent out on the policy renewals. I don’t have any evidence of Miss T not receiving the policy, so I can’t say Admiral has been unreasonable. I think if Miss T hadn’t received the policy and this had been important to her, I think she would’ve raised this with Admiral earlier. So, I’m not persuaded that Miss T didn’t have opportunity to review the policy terms.

Admiral reviewed the claim and concluded a storm hadn’t caused the damage to the wall in Miss T’s garden, so I have first considered the complaint on this basis. When our service looks at a storm claim complaint, there are three questions to consider:

- 1. Do I agree that storm conditions occurred on or around the date the damage is said to have happened?*
- 2. Was the damage claimed for consistent with damage a storm typically causes?*

3. Were the storm conditions the main cause of the damage?

I will use this structure to work through the complaint. I'm likely to uphold the complaint if the answer to all three is 'yes'. If the answer to one of the questions is 'no', I'm unlikely to uphold the complaint.

Do I agree that storm conditions occurred?

Admiral provided its policy definition of a storm. It states:

"Wind speeds with gusts of at least 48 knots (55mph), or heavy rainfall at a rate of at least 25mm per hour, or snow to a depth of at least 30cm in 24 hours, or hail of such severity that it causes damage to hard surfaces or breaks glass"

Admiral said "[It] contacted our meteorological supplier, who provides information specific to the postcode using remote data, and they have confirmed there were no storm conditions in the 2 weeks prior to your loss. The following is the highest wind speeds and rainfall amounts recorded in the 2 weeks prior to the incident.

Maximum wind speeds, gust 45mph on 20/01/2021

Maximum rainfall, 23.9mm

Maximum rainfall per hour, 6.5mm between 20.00 and 21.00 all on 20/01/2021".

Our service has access to our own weather reports and resources, so I've checked to see if I agree what Admiral has concluded is reasonable. I think it is. Our resources support what Admiral has said. Storm conditions weren't reported in the area Miss T lives in the weeks leading up to the incident.

Mrs T said there was heavy rain leading up to the incident. She had her own structural engineer's report carried out, which included one conclusion that the collapse of the wall was due to ground water saturation over the recent period of prolonged rainfall. However, for Miss T to be able to claim on her policy, the rainfall needs to meet the definition of a storm in the policy. As it hasn't, I think Admiral has been fair in declining her storm claim. As storm conditions weren't present, I won't be considering the final two questions.

I've also considered the rest of Miss T's policy to understand if there were other relevant areas of the policy she could claim under for her collapsed wall and subsequent costs she incurred for damage to the highway. I have considered flooding, but as I haven't seen any evidence of flooding I don't think Admiral hasn't been unreasonable by not considering it.

Miss T has indicated she thinks the claim should be covered under the policy section titled property owners liability. The clause states "sums you or your family legally have to pay as owners of your home, for accidental loss of or damage to property". In other words, this would cover any third party costs that are incurred where as an owner of her property Miss T has caused damage to someone else's property – in this case, the public highway and surrounding area.

Miss T said "in the circumstances the collapse of the wall impacted the public highway to a significant extent by blocking it with debris and making use of the highway unsafe for vehicles and pedestrians due to the risk of further collapse. When the engineers [I] appointed contacted and liaised with the local authority they advised [I] was liable for the costs of managing the highway, they required traffic management in the form of single file traffic controlled by traffic lights while the construction work took place and while the collapsed section was made safe".

Admiral were asked to consider the claim in respect to the property owner's liability. However, Admiral said the professional structural engineer it commissioned concluded the "wall has deteriorated gradually over time", which meant the claim wasn't covered by the policy.

I have checked the terms and conditions and there is a general exclusion to the policy which means it applies to the whole policy. Therefore, if Admiral showed there was gradual deterioration then the general exclusion would apply, which means Admiral wouldn't need to consider the property owner's liability clause. The exclusion clause is set out below.

10. Gradual causes

Any loss or damage caused by anything that happens gradually including wear and tear, wet and dry rot, damage due to exposure to sunlight or atmospheric conditions, due to settlement, or any due to mildew, rust, corrosion, birds, insects, woodworm, pests or vermin.

Based on its experts report, Admiral said "the wall would not meet current construction standards, given the wall thickness to height ratio. There is no gravel backfill behind the retaining wall as would commonly be found in modern construction. This would allow the ground water to percolate through the gravel towards the weepholes, relieving hydrostatic pressure. There has been a removal of a number of smaller trees from the garden and a mature tree removed from the embankment, close to the area of collapse. Trees can absorb significant quantities of water. In their opinion the combination of the inadequacies of the wall construction and the removal of the large mature tree and smaller trees are likely to have contributed to the collapse".

I have read the report provided by Admiral's expert and it's consistent with what Admiral has said. The expert believes the wall was probably largely hidden from view, obscured by dense foliage and at the rear of the garden at the top of an embankment. It was likely the wall had been deteriorating for some time hidden from view.

However, Miss T provided evidence from her local contractor. She said this contradicted Admiral's expert. Miss T's local contractor looked specifically at Admiral's conclusion that the wall collapsed due to "age related wear and tear". The expert report stated the following conclusions:

- "this suggests the wall was not suffering from a lack of maintenance"*
- "there are visible signs of repointing works with the latest collaborative maintenance being undertaken approximately 5 years ago"*
- "as a property owner with little knowledge of civil engineering or construction standards the maintenance works undertaken during the period of ownership is reasonable"*

I've considered both reports carefully and I find it difficult to decide one way or the other, as the reports are contradicting and both well written and persuading in their own ways. However, for Admiral to apply the exclusion clause for gradual deterioration, it has to prove this is the most likely, most plausible conclusion. I don't think it has done, as I think both reports carry equal weight, so I don't have definitive evidence to say gradual deterioration was the main cause of the damage. Therefore, I don't think it has been fair in applying the exclusion clause. So, I have gone on to consider the claim for property owners liability.

I have considered the circumstances of this claim against the policy wording for property owner's liability very carefully. It does look in this situation that either way it unfolds Miss T was likely to end up paying for the damage to the highway. I think Admiral is liable at an early stage even though we can't predict the outcome of a court ruling. The policy term relates to sums "you legally have to pay" and so Miss T has made a reasonable point that she was liable for the collapse of the wall on to the road. There doesn't appear to have been

any notice served on her from the council, though it looks likely this would have followed had she not acted.

I don't think it would be fair to have expected Miss T to have refused to pay these costs for the highway to be cleared, traffic management and structural repairs carried out. Or potentially wait for the local authority to take legal action against Miss T, take her to court for a judgement and face the liability of the claim and significant court costs against her. I think in these circumstances, it is clear Miss T took responsibility and did the right thing after consulting her expert engineer and local authority.

I don't think Miss T should be disadvantaged or penalised under the policy. Therefore, I intend to uphold this complaint, I think the policy does cover Miss T's claim in respect to the costs she incurred following the collapse of her wall and the impact this had on the highway. To be clear, Miss T wouldn't be covered for the repair or replacement of the wall as her storm claim was fairly declined, however, I think it's reasonable she is covered for the costs she has incurred in respect to any public liabilities. I intend to require Admiral to settle the claim for the property owner's liability claim in line with the remaining terms and conditions. As Miss T has been without this money, I think it's fair that Admiral pay simple interest at 8% per annum on the claim amount from the date it initially declined the claim to the date it pays the settlement.

It is open to the parties to obtain a further report should they wish to, and I can ask the other party to consider it".

Responses to my provisional decision

Admiral didn't agree with my provisional decision.

Admiral said *"in order to determine if all the costs being claimed from the customer are part of the safeguarding relevant to the case, the report would need to be reviewed prior to a decision being made"* in order to ensure the costs are correct.

Admiral said, *"the cost entirely relates to the rebuild of our insured's wall and not the result of any damage to the council property"*. Admiral said it was the new wall being built that required safeguarding. Admiral then said *"I understand [the ombudsman] has mentioned the customer doing this has prevented costs or a claim from the council directly, we cannot comment on losses that haven't taken place and it is the customers own duty to ensure she mitigates her own losses"*.

Miss T accepted my provisional decision and she said she didn't have anything significant to add. Miss T wanted to reinforce her view and said *"Admiral when they sent their engineer to site, he declined to speak with [me] about the history of the wall. Had he done so several of the inaccuracies in Admiral's report could have been avoided relating to the removal of trees which she played no part in and the maintenance that had taken place. As a result, [I] felt compelled to commission [my own] report to counter these inaccuracies which gave the impression [I] had been negligent"*.

Miss T provided invoices to evidence the costs she had incurred for *"emergency stabilisation and clearance works plus traffic management"* which totalled £12,932.25. She said she didn't include the invoices for rebuilding the wall (over £60,000) as she thought the findings were fair based on the history and evidence provided. Admiral didn't provide any comments on the costs provided by Miss T.

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 have considered the responses and I have looked at this complaint again and I remain of the view I've taken the correct approach on liability. As I set out in my provisional decision, *"it does look in this situation that either way it unfolds Miss T was likely to end up paying for the damage to the highway. I think Admiral is liable at an early stage even though we can't predict the outcome of a court ruling. The policy term relates to sums "you legally have to pay" and so Miss T has made a reasonable point that she was liable for the collapse of the wall on to the road. There doesn't appear to have been any notice served on her from the council, though it looks likely this would have followed had she not acted"*.

I think it was inevitable that Miss T would incur this liability and the policy shows Miss T is covered for *"sums you legally have to pay"*.

Admiral said *"The cost entirely relates to the rebuild of our insured's wall and not the result of any damage to the council property"*, but I think this completely ignores the point I made as to the danger the debris caused to the highway and its users. Admiral hasn't provided any comments on the invoices Miss T has shared which support the expert report commissioned by her.

The invoices that have been submitted provide evidence that the costs Miss T is claiming for is for *"emergency stabilisation and clearance works plus traffic management"* and not for the building of the wall as Admiral have argued. I think it's fair these costs are covered by the policy as I have set out in my provisional decision. Therefore, I continue to uphold this complaint.

My final decision

My final decision is I uphold this complaint, I require Admiral Insurance (Gibraltar) Limited to:

- Settle Miss T's claim for property owner's liability to the value of £12,932.25 in line with the remaining terms and conditions, plus 8% simple interest per annum (from the date of the initial decision to decline the claim to the date the settlement is paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 April 2022.

Pete Averill
Ombudsman