

The complaint

Mr D, on behalf of the Estate of Ms D, has complained that Ageas Insurance Limited (Ageas) unfairly declined a claim for damage to a wall under a home insurance policy.

What happened

Ms D contacted Ageas to make a claim when a wall in her garden collapsed. A few months later, Ageas sent a surveyor to assess the damage. A few weeks after this, the surveyor phoned Ms D to tell her the claim had been declined.

Shortly after this, Ms D died and Mr D took over dealing with the claim. Ageas wrote to Mr D and confirmed the decision to decline the claim due to the pre-existing condition of the wall and the degradation of the retained soil bank. Mr D reviewed a copy of the surveyor's report and told Ageas he didn't agree with it. Ageas didn't reply, but later confirmed to this service that we could consider Mr D's complaint.

Our investigator didn't uphold the complaint. He said the surveyor found a range of pre-existing issues with the wall, which the policy didn't provide cover for. So, he said it was reasonable for Ageas to decline the claim.

As Mr D didn't agree, the complaint was referred to me.

I issued my provisional decision on 10 November 2022. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

Ms D's wall collapsed during a time of significant bad weather in the region where she lived and that centred on the area she was based in. This included "Torrential Rain" recorded within one mile of Ms D's home on the day before the wall collapsed of 23.9mm of rain in one hour and 48.8mm in 24 hours. The day the wall collapsed 21.5mm was recorded in one hour with 86.7mm in 24 hours. There was also flooding to properties recorded within one mile of Ms D's postcode. Following this weather event, a review of flash flooding in the region was carried out by a government non-departmental public body to consider what had happened on those dates and its impacts in order to understand extreme short duration floods.

When Ms D contacted Ageas, she explained there was a slope near the wall, water had built up and the pressure had pushed down the wall. Ageas said it would send a surveyor. After some chasing by Ms D, about three months later a surveyor visited. The surveyor's report explained what he assessed to be the cause of the wall collapsing. He said:

"The damaged wall is partially retaining with a soil bank in the medical centre side. It is from this direction the majority of the rainwater has come from causing the wall to fall outwards into the terraced houses gardens. As this has happened it has also taken down the corner of the wall which is in the customer's garden. On inspection of the remaining wall and the condition of the brickwork it would appear it was not in good condition with foliage growth and missing pointing. These defects along with the retained soil bank have been highlighted by the recent heavy rainfall which has then combined to caused the wall to collapse in the

adjoining gardens. I do not believe the wall has been specifically damaged by the weather conditions alone. The wall does appear to have been listing outwards which has then been compromised by the poor weather.”

I provided Ageas with video footage of the flooding in the area Ms D lived and a link to the public body’s report and asked Ageas some questions about the surveyor’s findings. Ageas said the surveyor was no longer with the surveyor company. It said it had tried to contact him but without success. I asked whether the surveyor was aware of the weather conditions when the wall collapsed. Ageas said he would have been and that he would have checked the weather database that showed the torrential rain outlined above and that he had referenced heavy rainfall in his report.

I also asked Ageas to consider bulletins prepared by the local council that listed roads within a half mile radius of Ms D’s property where properties were flooded due to drains being overwhelmed. I asked how the surveyor was able to say the wall had a lean before the water built up behind it, rather than it being the result of it. I asked Ageas to explain how the foliage growth had contributed to the wall collapsing and how it knew the three-month delay in the surveyor visiting hadn’t affected the foliage growth. When Ageas replied it said it had used the remote sense data provided by its weather service. It said the weather data didn’t constitute enough to be considered a storm or flood. It said if Mr D could provide evidence there were drainage issues that caused the damage, it would review this further. It said the issues with the wall, including the mortar and foliage would have taken longer than three months to occur. However, it had been unable to contact the surveyor to get his comments.

I don’t agree with Ageas that the amount of rainfall wouldn’t be regarded as a flood or storm. I’ve looked at the policy and couldn’t find a definition for either of these perils, but the hourly and daily amount of rainfall on both days would normally be regarded as well above the minimum levels to show storm conditions. The weather conditions were recorded one mile away. The weather service defined a flood as “sudden escape of water from a burst river, canal or dam, or inundation from the sea”. It also included a disclaimer for flood information that said: “flooding is often localised and caused by factors unrelated to the weather” and that it couldn’t claim to be an authority. So, the weather service was measuring a specific type of flooding and acknowledged there might be other localised flooding and that it wasn’t an authority on this.

Ageas and the surveyor haven’t disputed that water hit the wall. I accept that people leave companies, but this means it hasn’t been possible to understand about the lean the surveyor identified with the wall or whether the flood would have affected the mortar. I’m aware that Ageas has said the foliage would have taken longer than three months to grow, but I haven’t seen any assessment of whether the wall being knocked over enabled the foliage to grow more than it would have otherwise or how the foliage affected the stability of the wall. I’m also not clear how the surveyor could assess that the soil was saturated over time, by which I take to mean before the wall collapsed, when he didn’t view the wall until three months after the incident and doesn’t seem to have given any consideration to the soil saturation caused by the weather event on the day the wall collapsed and whether the soil saturation could have built up further after that.

Mr D told this service he had spoken to the nearby medical centre that had also been affected:

“... who confirms that their boundary wall fell into neighbouring properties on [a named close-by road] due to the volume and force of water which had been running down the slope of the grounds and against the wall, following a lengthy period of very heavy rainfall.

We recalled that at the time we both spoke with affected property owners on [the named close-by road] who had suffered flood damage to their houses, specifically after the wall fell and the released flood water ran through their (sizeable) back garden and into their house to the front of their property. All of the other insurance companies involved had upheld the claims, so I imagine that reports of this flood water and resulting damage would be in the respective claim documentation."

I'm unable to access information on other claims, but I have no reason to doubt what Mr D has said about what happened in terms of the flood water and the impact on neighbouring properties. In my view, this is also consistent with the weather conditions recorded in the local area and its impact on the day the wall collapsed.

Based on everything I've seen, I currently intend to say I don't think it was fair for Ageas to decline the claim. There were flash floods in the local area with flooding recorded within one mile of where Ms D lived from rivers, or similar. The drainage system was overwhelmed within half a mile of where Ms D lived. Ageas and the surveyor haven't disputed there was significant rainfall or that water built up behind the wall. In my view, Ageas hasn't been able to show why a survey carried out three months after the damage happened is more persuasive than the clearly documented local conditions that show the extent and impact of flooding in the local area. Based on what I've seen, I currently think it's more likely than not that the main cause of the wall collapsing was the flood water hitting the wall. The wall has now been repaired. Mr D said this cost £1,296. So, I currently intend to say that Ageas must pay that amount to resolve this complaint, although it can take into account any excess payable when making settlement.

Ageas has also told this service the delay in the surveyor visiting didn't affect the claim. I'm not currently persuaded by this view. I think this caused distress and inconvenience to Ms D. I also haven't seen evidence to show the surveyor took into account the delay and whether this affected the conditions he observed when he inspected the wall. So, I also currently intend to say that Ageas should pay £300 compensation to the Estate of Ms D.

I asked both parties to send me any more information or evidence they wanted me to look at by 8 December 2022. Both parties replied before that date.

Mr D agreed with my decision. He said he could provide further evidence related to neighbouring properties. He also commented on the provider of the insurance policy. I've read this, but haven't repeated it here as it's about a different company than Ageas.

Ageas disagreed with my decision. It said although there was rainfall, this didn't cause the wall to collapse. It pointed to the surveyor's findings, including the photos, the condition of the wall and the foliage growth. It said these issues were the reason the wall collapsed. It said the proximate cause of the damage needed to be an insured event. It said the proximate cause wasn't the flood, it was the pre-existing damages. It said it was correct to decline the claim.

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.

Having done so, I've decided to uphold this complaint and for the reasons given in my provisional decision. As part of that, I've considered the comments from both Ageas and Mr D. I'm aware Ageas disagrees with what I said in my provisional decision. When I made that decision, I carefully considered the surveyor's report and the photos. I also considered other evidence, including the local conditions at the time the wall fell, the delay in the wall being assessed and Mr D's comments about how neighbours were affected. I explained how this informed my view of the surveyor's findings and why I didn't think it was reasonable to decline the claim.

Ageas' comments don't cause me to change my view about how this claim should be resolved. I remain of the view that it's more likely than not that the flood was the main cause of the wall collapsing. So, I require Ageas to settle the claim and to pay £300 compensation.

Putting things right

Ageas must pay £1,296 for the cost of repairing the wall and £300 compensation for the distress and inconvenience caused.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Ageas Insurance Limited to:

- Pay £1,296 for the cost of repairing the wall.
- Pay £300 compensation for the distress and inconvenience caused to Ms D.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms D to accept or reject my decision before 30 December 2022.

Louise O'Sullivan
Ombudsman