

The complaint

Mr and Mrs M complain that U K Insurance Limited trading as Churchill Insurance (UKI) declined a claim made under their buildings insurance policy.

Where I've referred to UKI, this also includes any actions by agents acting on their behalf.

What happened

In January 2024, following a storm, a large part of the top section of Mr and Mrs M's retaining wall between their property and a neighbour was sheared off, resulting in the collapsed part falling into their garden. Therefore, Mr and Mrs M made a claim to UKI, their building insurance provider.

UKI recognised there were storm conditions at the time of the loss and arranged for a supplier to inspect the damage. The supplier concluded that the cause of the loss was the fence attached to the wall caused a sail effect, which then caused the wall to come down. Mr and Mrs M's claim was subsequently declined by UKI as they said the storm wasn't the cause of the damage.

Mr and Mrs M were unhappy with UKI's claim decision, so they approached the Financial Ombudsman Service.

One of our investigators looked into things but he didn't uphold the complaint. He said that whilst there were storm conditions, he thought the information provided showed the wall was suffering from wear and tear, and he said he wouldn't expect a fence falling onto a wall to cause the damage that occurred unless there were existing issues with it.

Mr and Mrs M didn't agree so the case was passed to me for a final decision.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

I've reached a different outcome to our investigator, so I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Firstly, I should clarify, that when issuing his assessment on the case, I think our investigator misunderstood what had happened at the time of the loss. This is because he said he wouldn't expect a wooden fence falling onto a brick wall to cause

the damage being claimed for. However, the wooden fence didn't fall onto the wall. Instead, the wooden fence was securely attached to the top of the retaining wall, and both came down whilst attached to each other.

I'll also outline that Mr M's policy excludes storm damage to fences. Mr M already accepts this won't be covered due to the exclusion. As I agree it's excluded, I don't think UKI would be acting unfairly by declining this under the policy. However, Mr M is claiming for the wall that came down, and that's what I'll be considering below.

When we consider complaints about storm damage claims, we take into account the following three questions, and if any of the answers are no then it's likely a claim won't succeed:

- Were there storm conditions?*
- Is the damage consistent with storm type damage?*
- Was the storm the main or dominant cause of the damage?*

Were there storm conditions?

Mr and Mrs M's policy doesn't define what UKI consider to be storm conditions. But UKI already accepts a storm occurred as the weather records indicated 64mph winds at the time of the loss. I'd also consider this to be storm conditions.

Is the damage consistent with storm type damage?

The fence and wall both came down during the storm force winds, and this type of damage is consistent with storm type damage.

Was the storm the main or dominant cause of the damage?

When UKI's supplier inspected the damage, he concluded that the fence on top of the wall had acted as a sail, which had caught the wind, and caused sufficient force for the top section of the retaining wall to shear off and collapse down into Mr and Mrs M's garden. UKI's supplier concluded that if it wasn't for the fence acting as a sail, it's unlikely the wall would've collapsed. So UKI declined the claim.

I can see why UKI may have been inclined to decline the claim, on the basis that the fence caused the top section of the wall to shear off in the storm force winds. However, I don't think that's fair or reasonable in the circumstances.

I say this because Mr and Mrs M's property is set much lower than their neighbour, and between the two properties is the retaining wall, and attached to the top of the retaining wall was a securely attached fence. I can see why this would be present, as without it, the edge of Mr and Mrs M's neighbour's garden would be an exposed sheer drop down to their garden. So, I don't think there was anything wrong, in principle, with the design of the divide between the two properties.

Whilst the fence may have acted as a sail in the storm force winds, ultimately, I think the storm was the dominant cause of the damage. Because, if it wasn't for the storm, then the fence wouldn't have acted as a sail and caused the wall to come down. So, I think it would be fair and reasonable to conclude the storm was the main or dominant cause of damage. There is nothing to show but for the storm, the wall or fence would've come down. And whilst damage to fences itself isn't covered, there isn't anything in the policy which excludes a fence playing a part in the overall damage being caused.

I do note that in UKI's communication with Mr and Mrs M they said:

"As previously advised, we will be declining your claim under Page 5 of your policy booklet which states "Just like most insurers we don't cover: wear and tear; maintenance; any damage caused gradually; faulty workmanship; faulty design or the use of faulty materials"

However, whilst I accept these exclusions are in the policy terms, I don't think any parts of those apply here. I'll explain why.

When UKI's supplier visited and inspected the wall and damage, they didn't make any reference to the wall suffering with wear and tear or gradual damage. And having looked at the images taken by the supplier, I don't think these show any wear, tear, gradual damage or lack of maintenance either. In fact, the wall construction and condition in my opinion looks to be very good, the wall is of substantial thickness, and it came down during a one-off event of storm. It also came down in one large section and didn't break apart despite the significant height it fell from, which further enforces that its condition was good.

Whilst the contractor mentioned there was no expansion joint in the wall, UKI hasn't shown the wall didn't comply with the relevant building regulations at the time of construction, which was some years ago. And I'm not persuaded therefore that they've shown that there was faulty design, workmanship or materials either.

So, for the reasons outlined, I'm minded to conclude the storm was the dominant cause of the damage, and the exclusions UKI referred to don't apply either.

With the above in mind, unless anything changes as a result of the responses to my provisional decision, I'll be directing UKI to reconsider Mr and Mrs M's storm damage claim in line with the remaining policy terms.

In addition, Mr and Mrs M obtained quotes ranging from £18,000 upwards to carry out the repairs. And being told, unfairly in my view for the reasons outlined, that their claim would be declined has caused them significant distress with the prospect of having to find a significant sum to repair their wall. And as I think UKI unfairly declined the claim, I think UKI has caused that unnecessary distress. So, unless anything changes as a result of the responses to my provisional decision, I'll also be directing UKI to pay Mr and Mrs M £200 compensation."

Therefore, I was minded to uphold the complaint and to direct UKI to reconsider Mr and Mrs M's storm damage claim in line with the remaining policy terms, and to pay Mr and Mrs M £200 compensation.

The responses to my provisional decision

UKI responded and said they accepted the provisional decision.

Mr and Mrs M didn't respond to the provisional decision by the deadline to do so.

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.

And I've thought carefully about the provisional decision I reached. As neither party has provided anything in response to my provisional decision that would lead me to reach a different conclusion, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

It's my final decision that I uphold this complaint and direct U K Insurance Limited trading as Churchill Insurance to:

- Reconsider Mr and Mrs M's storm damage claim in line with the remaining policy terms
- Pay Mr and Mrs M £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 30 September 2024.

Callum Milne
Ombudsman