

The complaint

Mrs T complains about Royal & Sun Alliance Insurance Limited (RSA) declining a claim under her home insurance policy for damage to her property following bad weather.

Reference to RSA in this decision includes their agents.

What happened

In January 2023, following a period of rainfall, a boundary wall at Mrs T's property partially collapsed during the night. At the top of the wall was an outbuilding housing an oil tank, which had been present all the time Mrs T was at the property (some 28 years). She contacted RSA to tell them about the damage. Mrs T initially thought the collapse was the result of a storm. RSA appointed a surveyor (B) to visit the property to assess the damage. Mrs T also engaged a structural engineer (O) and a builder to assess the situation. Ahead of the visit, the damaged site was temporarily shored up and the oil tank emptied.

In their subsequent report, B said they observed the wall retained mature shrubs, trees and vegetation. And the wall was bulging at the base where there was a large tree. The report also stated there were no buttresses or drainage to the wall, allowing surface water to drain away. The cause of the damage was considered natural breakdown of materials, not the result of an insured cause. Surface water had penetrated and eroded the wall over time and caused a significant force on the wall. Based on these findings, RSA declined the claim.

Mrs T disputed B's findings and conclusions. She said there was a smaller bush some distance from the area of the collapse, not a large tree. She said the wall had a buttress and its construction (dry stone walling) meant the majority was self-draining. Mrs T also disputed B's conclusion the oil tank was placed on soft ground, saying when replaced (in 1996), it was cemented onto a base comprising concrete blocks. Nor was there any evidence the wall was bulging before the collapse and none of the trades people visiting the property mentioned any issues with the wall.

RSA considered Mrs T's challenge but maintained their decision to decline the claim. Mrs T then complained. RSA upheld the complaint in part. They maintained their decline of the claim, saying B's report and images showed the oil tank hadn't been placed on hard ground as it should have been under building regulations. It had been placed on soft ground, leading to erosion of the ground, and causing instability and damage to the wall, causing the oil tank to slip. RSA also said weather records for the date the incident occurred didn't show any storm conditions. Rather, the bad weather merely heightened an existing issue. However, RSA concluded B had failed to respond to correspondence from Mrs T, apologising and awarding £75 compensation.

Mrs T responded by sending a report from O that rejected B's findings and concluded the collapse was likely to be due to sudden failure of the bedrock or substructure in the location of the outbuilding resulting in disturbance of adjacent retaining structures. This failure (slippage) could have followed a period of heavy rain. RSA considered the report but said they didn't consider - had the failure occurred in this way - it was a one-off event as it occurred after periods of heavy rain. So, it wouldn't be covered under the policy - it was a gradually operating cause.

Mrs T then complained to this Service. She was unhappy at RSA's decline of her claim, saying the damage was caused by a one-off event that caused the oil tank to slip down and damage her property. She also disputed the findings in B's report. She wanted RSA to accept her claim and pay for the damage to be repaired.

Our investigator didn't uphold the complaint, concluding RSA didn't need to take any action. She considered whether there were storm conditions at the time of the incident (and if so, whether the damage was consistent typical of that caused by a storm and the storm was the main cause of the damage). Weather reports around the time of the incident indicated there weren't storm conditions.

Considering the findings and conclusions of both experts (B and O) she found B's opinion the more persuasive. She thought the evidence indicated bad weather around the time of the incident highlighted underlying issues with the wall (that was 150 years old). Photographs from B indicated excessive vegetation and a bulge in the wall. O's report wasn't definitive on the cause of the collapse as debris would need removal and the substructure exposed. Without drainage in the wall, over time water would seep in and the vegetation erode the stone, leading to its eventual collapse. So, the observed damage wasn't the result of a one-off event but deterioration progressively over time. The policy excluded cover for gradual deterioration (wear and tear). So, RSA applied the exclusion fairly to decline the claim. The investigator also thought RSA had acted fairly in awarding £75 compensation for failing to respond to Mrs T's correspondence.

Mrs T disagreed with the investigator's view and requested an ombudsman review the complaint. She disputed the findings by B. She maintained there was a buttress to the wall, providing a photograph from a stonemason and the wall was naturally free draining because of its construction. Nor was there a large tree or excessive vegetation.

She also said she made her claim under the landslip section of the policy, saying the steep embanked land behind the wall had moved, in a single event, bringing down the outbuilding containing the oil tank and some of the retaining wall. The landslip occurred after a hot summer followed by periods of heavy rain.

In my findings, I first considered whether the claim would be covered under the storm section of the policy. I concluded there weren't storm conditions on or around the date of the incident, so there wasn't a storm insured event under which the claim would be covered.

I then considered whether RSA acted fairly in (subsequently) declining the claim under the landslip section of the policy.

Looking at the reports from B and O, it was clear they disagreed about the cause of the wall's collapse, in detail and the most likely cause of the damage. I considered the reports carefully, along with photographs of the area and the damage. On balance, I was more persuaded by O's findings and conclusions, specifically those relating to the factors B concluded led to the partial collapse.

I concluded it reasonable to conclude a landslip may have caused the partial collapse of the wall. It would also be consistent with the photographs showing the wall partially collapsed at the base – but higher levels remained in place. That would also be consistent with movement down the adjacent slope behind the wall. And it would be a one-off event, which would be covered in the policy. It wasn't reasonable to say this would be a gradual operating cause, and therefore excluded from cover. So, I didn't think it reasonable for RSA to maintain their decline of the claim for this reason.

Having reached this conclusion, I considered what RSA should do to put things right. As I didn't think they acted fairly in declining the claim on the grounds of the gradual operating cause exclusion, then they should assess the claim in line with the remaining terms and conditions of the policy.

On the issue of compensation for not responding to Mrs T's correspondence, RSA accepted failures on the part of B and awarded £75 compensation. I thought this reasonable in the circumstances of the case.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

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

My role here is to decide whether RSA have acted fairly towards Mrs T.

The key issue in Mrs T's complaint is the decline of her claim for damage to the wall at her property. She maintains it was the result of a landslip from sloping ground behind the wall after a period of heavy rainfall. She also rejects the findings of B that the collapse was due to natural breakdown of materials and gradual operating cause (due to several factors).

In considering the issue, as the claim was initially thought to fall under the storm section of the policy, I've looked at the three key issues we consider:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?*
- Is the damage claimed for consistent with damage that a storm typically causes?*
- Were the storm conditions the main (or dominant) cause of the damage?*

On the first question, RSA didn't explicitly cover this issue in their final response. But they subsequently provided weather data for the area of Mrs T's property around the time of the incident. The data shows a highest windspeed of 50mph – but two days after the incident. Nor does the rainfall immediately before the incident meet the criteria for a storm.

The policy doesn't include a specific definition of the term 'storm', other than a general description under a sub heading 2 Storm or flood within the Buildings section of the policy. This states:

“A storm will involve very strong winds powerful enough to cause structural damage to homes within its path. It's usually accompanied by torrential rainfall, hail or heavy snow.”

I've also looked at the weather data from the weather source we use as a Service. Data from the nearest weather station to Mrs T is consistent with that supplied by RSA. A peak gust of 50 mph two days after the incident (and 48 mph on each of the four days up to and including the date of the incident).. Rainfall of 16.4mm (maximum 24 hour period, two days before the incident) 56.8mm in the previous seven days and 199.8mm in the previous 30 days. None of these figures indicate what this Service consider storm conditions.

So, I've concluded there weren't storm conditions on or around the date of the incident, meaning there wasn't a storm insured event under which the claim would be covered.

Mrs T says that while she initially thought the collapse was the result of a storm, she subsequently – based on O's report – thought the collapse the result of a landslip from earth behind the wall. She reiterated this view in response to our investigator's view. She also made the point to RSA in challenging their final response, providing O's report in support.

So, I've then considered whether RSA acted fairly in (subsequently) declining the claim under the landslip section of the policy.

Given Mrs T bases her view on O's report, I've considered what it says. But as it includes a detailed response to the findings and conclusions in B's report, I've first looked at B's report (also given RSA declined the claim on the grounds of B's inspection). I've looked at their findings (in a letter from B to Mrs T declining the claim following the visit). It states:

"When the surveyor inspected the garden/boundary wall he observed that this is a wall retaining a lot of the wall retained mature shrubs, trees and vegetation. The wall was bulging at the bottom where there is a large tree, there are no buttresses or drainage allowing the surface water to drain away. The cause of the damage is considered to be due to natural breakdown of materials and not the result of an insured cause. The surface water had penetrated and eroded the wall over time and caused a significant force on the wall."

I've then considered the report from O, based on their visit to the property shortly after B's visit. The report disputes each of B's findings about: the wall retaining shrubs, trees and vegetation; the wall bulging at the bottom; the absence of buttresses or drainage; and the damage being due to natural breakdown of materials and surface water penetrating the wall over time and causing significant force on the wall. The report concludes:

"In conclusion I do not believe that the collapse of the wall was due to gradual deterioration resulting from lack of maintenance or omission of drainage details...

I would however point out that in my opinion that the angle of repose of the rockface is such that a slippage may well occur particularly following periods of heavy rain as the angle faces down towards the subject property. It is likely that this is what caused the collapse...I would therefore conclude that the collapse was likely to be due to sudden failure of the bedrock or substructure in the location of the former toilet and this resulted in disturbance of adjacent retaining structures. I cannot concur that the vegetation within the overburden area or the lack of drainage to the principal retaining wall would have resulted in the collapse of the lower section of the projecting stone structure, particularly relevant to this opinion is the fact that high level of the retaining wall to the rear of the former toilet block is still in place..."

RSA considered the report. They note the comment about the incident possibly occurring after a period of heavy rainfall. They consider this wasn't a one-off event, so wouldn't be covered under the policy – it was a gradually operating cause.

Mrs T also provided a report from a structural engineer (M) which includes diagrams of potential solutions to rebuild the wall and secure the sloping ground behind it. One of the diagrams includes a depiction of the sloping ground, part of which is described as the 'approximate profile of collapsed slope'.

Looking at the reports together, it's clear B and O disagree about the cause of the wall's collapse, both in detail and the most likely cause of the damage. I've considered the reports carefully, along with photographs of the area and the damage. On balance, I'm more persuaded by O's findings and conclusions, specifically those relating to the factors B concluded led to the partial collapse.

In considering the issue of whether RSA acted fairly in declining the claim under the landslip section of the policy, I've first looked at what the policy says in regard of landslip. The policy wording document defines landslip as :

“Downward movement of sloping ground”

The Buildings Section of the policy includes a specific section under a general heading of What we cover that includes the following:

- 9. “Subsidence or heave of the site on which your buildings stand or of land belonging to your buildings.*

Landslip.”

If, as the reports from O and M imply, there was a landslip that caused the adjoining wall to partially collapse, I think this consistent with the policy definition set out above. I've then considered RSA's view that if the landslip was the result of a period of heavy rain in the period leading up to it, that wouldn't be a one-off event. Rather, it would be a gradually operating cause. So, it wouldn't be covered under the policy.

I don't agree. I think it's reasonable to conclude the landslip itself a one-off event (the slippage would have occurred at a point in time). Even if it was the culmination of (and caused by) a period of heavy rain that saturated the ground and then led to it moving. This factor, referred to by O, is cited as one possible external factor that can lead to a landslide by the British Geological Survey.¹ I think it reasonable to also take this to apply to a landslip.

Taking these points into account, I've concluded it reasonable to conclude a landslip may have caused the partial collapse of the wall. It would also be consistent with the photographs showing that the wall partially collapsed at the base – but higher levels remained in place. That would also be consistent with movement down the adjacent slope behind the wall, as the diagrams in M's report would indicate. And it would be a one-off event, which would be covered in the policy. It isn't reasonable to say this would be a gradual operating cause, and therefore excluded from cover. So, I don't think it was reasonable for RSA to maintain their decline of the claim for this reason. That is, it isn't reasonable to use the gradual operating cause exclusion to decline the claim.

I've also considered the general principle that where a policyholder makes a claim for damage or loss, the onus is on them to show an insured event caused the damage or loss. But where an insurer relies on an exclusion to decline a claim, the onus is on them to show the exclusion applies. Given my provisional conclusions, RSA haven't done enough to show it was fair to apply the gradual operating cause exclusion in the circumstances of this case. So, I've provisionally concluded RSA acted unfairly in relying on the gradual operating cause exclusion to decline the claim under the landslip insured peril (event).

Having reached this conclusion, I've considered what RSA should do to put things right. As I don't think they've acted fairly in declining the claim on the grounds of the gradual operating cause exclusion, then they should assess the claim in line with the remaining terms and conditions of the policy.

¹ *What is a landslide? – British Geological Survey <https://www.bgs.ac.uk/discovering-geology/earth-hazards/landslides/#:~:text=A%20landslide%20is%20a%20mass,fail%20and%20a%20landslide%20occurs.>*

With respect to the oil tank, Mrs T maintains it was placed on a bed of concrete slabs, cemented in. She also provides a copy of the invoice for installation of the tank, which refers to “prepare base for new tank”. While this doesn’t explicitly refer to the composition of the base, I think it reasonable to presume it was a solid base of the type described by Mrs T.

On the issue of compensation for not responding to Mrs T’s correspondence, RSA accept failures on the part of B and awarded £75 compensation. I think this is reasonable in the circumstances of the case, so I won’t be asking them to make a further award. RSA should pay the compensation (if they haven’t already done so).

My provisional decision

For the reasons set out above it’s my provisional decision to uphold Mrs T’s complaint. I intend to require Royal & Sun Alliance Insurance Limited to:

- *Assess the claim in line with the remaining terms and conditions of the policy.*
- *Pay Mrs T £75 compensation for distress and inconvenience (if they haven’t already done so).*

Mrs T responded to make several points. First, she’d had the oil in her original oil tank pumped into another tank (on the advice of her structural engineer) to remove the pressure from the original oil tank on her property and enable displaced materials to be cleared and temporary supports erected. She’d said to RSA they could then send another surveyor to inspect the property, but they didn’t take up the offer. She also said her surveyor or structural engineer hadn’t made any comment about water penetrating and eroding the wall over time (it was made by B). She also referred to the home emergency cover on her policy, which hadn’t responded to the failure of her property’s primary heating system (the oil having been drained out of the original tank). Also, both the original and temporary oil tanks were single-skinned and would need replacing with a double-skinned tank to meet current regulations.

Given the relevance of a report Mrs T obtained from a consulting firm (M) about options for rebuilding the wall, the report was shared with RSA. Their technical expert having reviewed the report alongside the other evidence and information, RSA responded to say they didn’t consider the wall had collapsed because of a landslip (though they accepted the wall didn’t collapse due to a hydrostatic pressure bearing on the wall from a period of wet weather). While the illustrations in M’s report indicated a profile of sloping ground behind the wall that could have caused a landslip that brought down the wall, RSA didn’t think this likely as the illustrations weren’t accurate depictions of the site, but illustrative of what might be done to restore the wall. Photographs of the collapsed section of wall indicated no such higher sloped land which could have slipped into the wall.

RSA thought it likely the collapse of the wall caused a landslide – not that a landslide caused the wall to collapse. RSA also thought the age and condition of the wall caused it to collapse, leading to the relatively small amount of earth behind it to slide.

However, the technical expert also said it was odd that RSA hadn’t considered damage to the tank or main property under the accidental damage section of the policy (even if the damage wasn’t considered to have been caused by a landslip. Regardless of the cause of the collapse of the wall, the damage to the tank and wall of the main property (and other associated damage) could still be considered to be sudden, unexpected and visible damage not caused on purpose (so would be accidental damage).

As RSA had provided new evidence and information, this was shared with Mrs T to consider. Mrs T responded to make further points. She said four lorry loads of debris were removed from the site following the incident. She also maintained the wall, while old, wasn’t in a poor state of repair with no cracks, bulging or sagging. She maintained the collapse was due to a

landslide, not because of the age or condition of the wall. Also, the report from M was based on a full on-site inspection, the report being prepared by an experienced specialist. She also provided a geological survey report on the adjoining area behind the wall. She provided photographs of the damage to the main property and associated fittings and other items.

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.

My role here is to decide whether RSA acted fairly towards Mrs T.

I've carefully considered the further representations, evidence and information provided by Mrs T and RSA.

On the points made by Mrs T, I accept what she's said (including the comments made by M about the basis for their report). While M's report is intended to provide options for reinstatement of the site, including the area behind the wall, it was based on an on-site inspection. So, I don't think it can reasonably be characterised simply as 'illustrative'. I've also considered, as set out in my provisional decision, the views of O about the likely cause of the collapse. Photographs of the damage also indicate a substantial volume of earth after the incident. And RSA's technical expert's response acknowledged – although then coming to a different conclusion – that a landslip from a higher level in the slope behind the wall could have brought the wall down. And it's accepted that hydrostatic pressure (which could also have been a cause of the collapse) was unlikely to have been the cause.

So, while there are still differences of view about the likely cause of the wall's collapse, and inherently some uncertainty about the precise cause, on balance I still conclude landslip the more likely cause of the collapse.

That being the case, then as it's clear the main property was also damaged in the incident, the policy exclusion for damage to the wall unless damage was caused to the property at the same time, from the same cause, wouldn't apply and therefore couldn't reasonably be used to decline the claim (RSA's technical expert also makes this point).

On the point about accidental damage to the main property, a point made by RSA's technical expert, I agree this is something RSA should have considered, even after declining the claim for damage to the wall. However, given my conclusion about landslip being the more likely cause of the collapse (and damage also being caused to the main property) then I think it reasonable for RSA to assess all the damage under the landslip section of the policy (rather than assessing damage to the wall under landslip and to the main property under accidental damage) and settle the claim on that basis.

Mrs T makes additional points about her heating system and it not being assessed under the home emergency section of the policy. However, RSA assessed the claim (and declined it) under the home insurance section of the policy. So, any issues Mrs T has about whether the home emergency section of the policy should have been applied would be something for her to raise separately with RSA (assuming they are also the insurer of the home insurance section of the policy).

My final decision

For the reasons set out above it's my final decision to uphold Mrs T's complaint. I require Royal & Sun Alliance Insurance Limited to:

- Settle the claim for damage to the wall and main property in line with the landslip section (and remaining terms and conditions) of the policy.
- Pay Mrs T £75 compensation for distress and inconvenience (if they haven't already done so).

Royal & Sun Alliance Insurance Limited must pay the compensation within 28 days of the date we tell them Mrs T accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 24 October 2024.

Paul King
Ombudsman