

The complaint

Mr and Mrs F complain about Aviva Insurance Limited's (Aviva) handling and decision to decline their claim for storm damage under a buildings insurance policy.

What happened

The background of this complaint is well known to both parties and has been detailed by our investigator previously. So, I'll summarise the key points I've focused on within my decision.

In February 2022, Mr and Mrs F made a claim on their home insurance policy after the collapse of a garden boundary wall and damage to some of their roof ridge tiles following heavy storms. There was a partial collapse of a section of the stone wall that slipped down the driveway embankment and onto the road below.

Aviva have not disputed that there were storms but declined the claim for the wall by relying on policy exclusion for gradual damage. It says the damage was primarily down to wear and tear and damage that occurred gradually. Aviva believes the storms only highlighted these problems.

Mr and Mrs F say they were told by Aviva the make safe works would be covered. Aviva disagreed, saying it wouldn't pay for these works unless the claim was accepted as valid.

Mr and Mrs F also said they have received poor service, part of their claim appears to have been ignored for damage to the roof ridge tiles, damage to stone ornaments and a ladder. Aviva also at one point cancelled the policy stating Mr and Mrs F had breached the policy condition to take precautions to prevent loss and keep the property in good condition. It later reversed this decision and instead it added a clause to the policy to exclude the boundary walls/ rockface and the balustrade.

Our investigator upheld the complaint. He said Aviva had unfairly declined the claim as he felt it was more likely that the storms had caused the damage claimed rather than wear and tear. And he didn't think it fair for Aviva to rely on the gradual damage exclusion.

Aviva didn't agree, so the complaint has been passed to me an ombudsman to make a final decision.

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've noted Mr and Mrs F have claimed in relation to an injury to a third party when they were inspecting the wall. Aviva has said its bodily injury department is handling the claim, and this is separate to the storm claim for the property. I will only be addressing the buildings claim within this decision.

It isn't disputed that there were three storms that affected the area within a very short period of time. The number of storms in quick succession affecting this area, taking into account the amount of rainfall and gale force winds, is something that could damage a wall in this way.

Aviva has attributed the damage to other contributing factors such as wear and tear. So, I have to consider if the storm was the proximate cause of the damage in this case.

Both parties have sent in their expert reports for consideration.

In summary, Aviva's structural engineers say there are six factors that it considered likely to be contributing factors to the collapse:

- Vegetation
- Lack of wall foundations
- Tree stumps
- High winds
- Surface water inundation
- Wall base slip failure

In summary, Aviva say that the vegetation covering the already old wall caused it to become unstable and the storms merely highlighted the walls longstanding structural inadequacies.

Aviva has pointed out previous slippages in 2010 and 2016. These were prior to Mr and Mrs F living at the property but Mr and Mrs F checked the claims prior to moving into the property and the damage in those instances was also covered on the basis they were caused by storm.

Following the collapse of the wall Mr and Mrs F had a structural survey done. The engineer had sight of Aviva's report. Mr and Mrs F's report was forwarded to Aviva for comment it didn't respond to our investigator until after he issued his view of the complaint.

Mr and Mrs F's engineer carried out a review on the likely mechanism of collapse and made the following points in its report against the factors raised in Aviva's report:

- The vegetation management to the affected area was sufficient as to not cause deterioration, therefore vegetation would not have contributed significantly to the collapse
- It was unlikely there was foundation instability causing collapse as any inherent instability would have manifested itself before now (this is supported by the Survey in 2018 suggesting stability)
- Tree stumps were the result of large tree removals in the past in line with best practice and would actually have served to abate any progressive deterioration. The stumps themselves would not have contributed significantly
- The combination of multiple storms with high winds and the embankment location amplifying weather effects and high rainfall contributed significantly to the damage
- Erosion of soils over time was unlikely to have been a significant contributing factor due to the sudden nature of the collapse (again, supported by the 2018 Survey)
- Wear and tear would only be relevant to the vegetation and tree stumps – but there was insufficient evidence of negative effects of the stump and there was vegetation growth to the wall elsewhere along the boundary wall in areas still standing. In the areas where the wall had collapsed, vegetation growth didn't appear to present significant detrimental impact
- The sudden nature of the collapse contradicts the idea of gradual deterioration

As our investigator pointed out, Aviva should be aware of our service's approach on gradual damage. Whilst an insurer may sometimes be able to decline a claim on a strict application of the terms, our service is able to look beyond this. In this case, we'd consider whether the consumer ought to have been aware of the damage occurring gradually. Given that there were no warnings from the Chartered Structural Engineer in the survey of 2018, and they were maintaining the vegetation I don't think the consumers ought to have been aware of any gradual damage. So, I don't think it's fair for Aviva to rely on this exclusion.

In weighing up the reports I note Aviva's report doesn't provide information about the degree to which each contributing factor contributed overall to the damage. Aviva's report also relied on the assumption that there were no foundations, but Mr and Mrs F's evidence contradicts it, and this was sent to Aviva on 27 September 2022, to show that the consumer's builder had dismantled the wall in the area of the collapse to reveal foundations.

In Aviva's response to this evidence, it has reiterated there is no evidence of foundations in place and questions how this is possible due to the gradient present. It continues to say the dry-stone wall appears to have been built directly onto the ground, which is how they were built originally, if there was a foundation put in then this would have been at a later date, but it would question how this is possible with the embankment. Aviva has also said it disagrees that the vegetation was kept under control as access is simply not possible. And there is inadequate drainage.

However, I'm persuaded by Mr and Mrs F's evidence that there does appear to be some foundations excavated by their builder. They have also said the vegetation has been controlled and it is annually trimmed. Aviva raised that there was inadequate drainage but, in its report, I note it says the effectiveness of the drainage is unknown.

In addition, Mr and Mrs F have said that the old stormwater clay pipe has been repaired prior to this event with a flexible liner to ensure leaks did not damage the rockface and continued to take excess water away from the property as intended. Aviva has pointed to some cracks in the drive as evidence of long-term movement to the bank/embankment. However, I'm not seen clear evidence that this has been caused by movement of the bank/embankment and also note that this is a fair distance away from where the slippage occurred. So overall, I am more persuaded by Mr and Mrs F's engineer that the damage was caused primary by the high winds and rains from the storms. I will therefore instruct Aviva to reconsider the claim without relying on exclusions for wear and tear and gradual damage.

In addition to the declination of the claim, Mr and Mrs F have complained of the poor service it has received regarding other parts of their claim. They raised that there was damage to the ridge tiles when they first notified the loss to Aviva, this has not been addressed and only in the response received after our Investigator's view has it said that this can be resolved by way of some photographs. I take this as an acknowledgement that it hasn't acted on this prior to this complaint, and I will instruct it to consider this under the claim.

Mr and Mrs F also raised damage to stone ornaments and a ladder, again I will instruct Aviva to review and respond on these items directly with Mr and Mrs F.

Finally, Aviva told Mr and Mrs F that it was cancelling their policy on the grounds they had breached the policy condition to take precautions to prevent loss and keep property in good condition. I note Aviva overturned their decision, but I'm not satisfied the original decision to cancel the policy was fair and no doubt caused Mr and Mrs F distress. I say this because the 2018 survey that Mr and Mrs F had, did not make them aware of any immediate or likely danger and they were carrying out vegetation management in line with best practice.

Overall, I'm persuaded there has been poor service and independent of any claim I will instruct Aviva to pay £400 for the distress and inconvenience caused.

Putting things right

I will instruct Aviva Insurance Limited to:

- Reconsider the claim without relying on exclusions for wear and tear and gradual damage
- Pay any amounts Mr and Mrs F have paid that fall under the insured damage (costs that are covered), Aviva should also pay an additional 8% simple interest on these amounts from the date of payment to the date of settlement
- Consider the make safe works and costs when reconsidering the claim, including discussing any costs being claimed by any third party with the third party directly (so Mr and Mrs F don't have to do this)
- Consider the ridge tile damage and other items listed above
- Independent of any claim payments, Aviva should pay Mr and Mrs F £400 in total for the distress and inconvenience caused

My final decision

For the reasons given above I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 14 March 2023.

Angela Casey
Ombudsman