

The complaint

Miss M and Mr M have complained that Aviva Insurance Limited (Aviva) unfairly declined a claim for storm damage under their home insurance policy.

What happened

Miss M and Mr M contacted Aviva to make a claim when a garden wall fell in their garden following a storm. Aviva asked Miss M and Mr M to provide quotes for the work. Several months later, Miss M and Mr M contacted Aviva with further details about their claim. Aviva then sent a company to assess the wall. It declined the claim as it said the damage was the result of wear and tear.

When Miss M and Mr M complained to Aviva, it maintained its decision to decline the claim. So, they complained to this service. Our investigator upheld the complaint. He said the evidence suggested the damage was more likely due to a storm than wear and tear. He said Aviva should settle the claim, pay interest on any repairs already paid for by Miss M and Mr M and pay £100 compensation.

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

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 uphold this complaint. I will explain why.

When we look at a storm claim complaint, there are three main issues we consider:

1. do we agree that storm conditions occurred on or around the date the damage is said to have happened?
2. is the damage claimed for consistent with damage a storm typically causes?
3. were the storm conditions the main cause of the damage?

We're only likely to uphold a complaint where the answer to all three questions is yes.

For the first question, I've checked the local weather conditions around the time the damage was found. This showed wind speeds of up to 62 mph, which would be considered storm conditions. I also think a storm could cause a wall to fall in some circumstances. So, I think the answer to the first two questions is yes.

So, I've thought about the third question, which is about the main cause of the damage. I note that when Aviva declined the claim it told Miss M and Mr M it was "*not reasonable to assume that storm had been the sole reason that the wall has now failed*". As Aviva is likely to be aware, it is not the general position of this service that a storm has to be the "*sole*" cause, rather it has to be the "*main*" cause. The presence of other factors, such as signs of

wear and tear, doesn't necessarily mean that the storm couldn't be the main cause of the damage.

I have looked at the report from the company that inspected the wall. This said

"There are a lot of stepped cracks across the whole wall and some are quite large. The top of the wall has brick on edge coping. It has at some point been re-pointed, but the mortar is falling out. Therefore the damage is not due to storm damage but due to wear and tear."

I don't think this is the most persuasive assessment of a wall. There is no assessment of why the mortar was falling out and whether this was more likely from before or after the wall fell. As part of that I'm mindful that the wall was assessed over six months after the wall fell and that Miss M and Mr M have said that issues with the mortar were the result of the wall falling, rather than the cause of it.

I'm aware Aviva also looked at online images and, in particular, one from 2008 that showed issues with the mortar. Aviva told this service the image showed that the wall wasn't in great condition in 2008 and said there was no confirmation of maintenance works since then and that it was reasonable to think that the wall might have worsened. However, the survey report said the wall had been repointed at some point. So, I think this suggests there had been maintenance on the wall. I'm not clear when this was, but it was Aviva's own surveyor who identified the re-pointing. Aviva also told this service the 2008 image showed a lean on the wall. However, I couldn't see a lean and the survey report didn't refer to it leaning before it fell. I could see a lean in an image from 2022, but the wall had already fallen by this point and the image showed that the wall had been propped up.

I've also looked at the photos taken by the surveyor. These show both the inside and outside view of the wall. There are some large cracks in places in the wall, including near the top. Miss M and Mr M have said the issues with the mortar and the cracking was the result of the wall falling and also the work on the wall to prop it up. This included hitting it with a hammer when the props were put in place. In my view, it is reasonable to think that at least some of the cracking and damage was due to the wall hitting the ground during the storm and it then needing to be propped.

Aviva has also said there might have been a sail effect due to the fence attached to the top of the wall. It said this might have weakened the wall over time. However, I'm not persuaded Aviva has shown there was a sail effect that had been affecting the wall over a number of years. This includes because I don't think it has persuasively explained why any issues with the mortar were primarily from a sustained period before the wall fell. It also hasn't shown other signs of ongoing weakness within the wall.

So, thinking about all of the above, I don't think Aviva has shown that the main cause of the damage was more likely wear and tear and that it was therefore reasonable for it to apply this exclusion and decline the claim. The wall fell following a storm and based on what I've seen, I think it is reasonable to say that the storm was more likely the main cause of the damage.

As a result, I think Aviva should settle the claim for the damage based on the remaining terms and conditions of the policy. If Miss M and Mr M have already paid for work on the wall, Aviva should settle those costs and pay interest on that amount because they lost use of that money.

I'm aware Miss M and Mr M said Aviva told them they could get the work done and that it was only later that Aviva sent a surveyor and then declined the claim. Looking at what Aviva said at the start of the claim, I didn't see anything that said it would settle the claim. It asked

for information to validate the claim, such as quotes for the work. When Miss M and Mr M later provided further information, Aviva sent a surveyor to assess the damage. I don't think what Aviva did was unusual. However, I think Miss M and Mr M were caused inconvenience by how Aviva assessed their claim. So, I think Aviva should pay Miss M and Mr M £100 compensation for the impact on them.

Putting things right

Aviva should settle the claim based on the remaining terms and conditions of the policy. It should pay interest on any work Miss M and Mr M have already paid for that is covered by the claim. Aviva should also pay £100 compensation.

My final decision

For the reasons I have given, it is my final decision that this complaint is upheld. I require Aviva Insurance Limited to:

- Settle the claim based on the remaining terms and conditions of the policy and without applying the exclusion for wear and tear.
- If Miss M and Mr M have already paid for work on the wall that is covered by the claim, pay 8% simple interest on that amount from the date on which they paid the money to the date on which Aviva settles the claim.
- Pay Miss M and Mr M £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr M to accept or reject my decision before 31 August 2023.

Louise O'Sullivan
Ombudsman