

## **The complaint**

Mrs M is complaining that Aviva Insurance Limited has declined a claim she made on her commercial property insurance policy for damage to a shared wall.

## **What happened**

In February 2023 Mrs M contacted Aviva to say a wall she shared with two neighbours had become damaged in a storm and she said she wanted to claim for the damage on her commercial property insurance policy. Aviva declined the claim as it thought the damage was as a result of a gradual deterioration of the wall and it didn't think the storm was the primary cause of the damage. It believe the primary cause of the damage was that tree roots had over time caused damage to the foundations of the wall, resulting in the wall leaning towards Mrs M's property. Mrs M didn't think this was fair as she said the insurers of her two neighbours had agreed to settle the claim.

Our investigator upheld this complaint as he didn't think Aviva had done enough to show the wall had failed due to a gradual deterioration. He thought the wall had been well maintained and didn't seem to be in a considerable disrepair.

Aviva highlighted that Mrs M's neighbour had had a large silver birch tree removed from the garden. It set out that those types of trees were known to have large roots and it said it was aware that the tree before removal was extremely high. So it thinks this tree was likely to be the cause of the damage. It also provided photographs which it said showed the wall was not in a good condition and had evidence of poor previous repairs. It also highlighted that some sections of the wall were missing mortar.

The investigator still thought the storm was the primary cause of the damage, so he thought Aviva should settle the claim. Aviva didn't agree so the complaint's been passed to me to decide.

## **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 decided to uphold this complaint and I'll now explain why.

The terms of the insurance policy covers Mrs M for loss or damage arising from a storm. However, the terms of the policy also set out that it won't cover loss or damage that happens gradually – i.e. it's down to wear and tear. Aviva believes the damage occurred because of gradual damage to the wall. In particular it says the wall has suffered damage arising from tree roots causing it to weaken over time.

In thinking about this, I've asked myself three questions:

1. Were there storm conditions as defined under the terms of the insurance policy?
2. Is the damage claimed for consistent with damage a storm typically causes?

### 3. Were the storm conditions the main cause of the damage?

There were wind speed of around 63mph at the time the damage occurred. So I'm satisfied there was a storm and I don't think it's unreasonable to conclude such windspeeds can damage a wall. So I'm satisfied the answer to questions (1) and (2) is "yes". This also isn't in dispute. The issue is whether the storm was the main cause of the damage, or is there another underlying reason that was the primary cause of the wall damage.

Both parties have provided a lot of information in support of their respective positions. I can also understand Mrs M's upset that Aviva has declined her claim, but her two neighbour's insurers have covered their respective claims. But this doesn't mean Aviva's approach is unfair. That said, I've found the statements provided by Mrs M's neighbours and their respective claims handlers to be particularly persuasive.

I recognise that the inspection report Aviva has provided sets out that the inspector wall has said he could see evidence that a tree root has caused damage to the wall's foundations. I'm aware that there was a large tree in the vicinity of the wall, which has been removed, but this was removed around seven years ago. The investigator spoke with the tree surgeon who removed the tree who said he knew the property well. The surgeon confirmed it was possible the tree roots could damage the wall, but he said it wasn't possible to confirm either way.

However, I am aware that Mrs M's neighbours have had builders and surveyors inspect the wall. Crucially the surveyor has said *"the wall is in not too bad a condition considering the age, there is no vegetation growing through the wall and pointing. The pointing and bricks are in good conditions and the damage is consistent with the claim details"*. This is a report by a surveyor whereas, Aviva's statement isn't provided by an as qualified expert. Critically, there aren't any photographs or evidence of the root being the cause and it seems the report is based on the inspector's opinion. Taking everything into account, I haven't seen enough for me to say Aviva's position that the storm wasn't the primary cause of the damage was fair.

Ultimately, the insurance policy covers loss or damage arising from a storm unless Aviva can show otherwise. So it's for Mrs M to show the wall has suffered loss or damage and that it occurred during a storm. If she does so, it then falls upon Aviva to show that an exclusion clause or breach of a policy condition applies. As I said, all parties accept the wall was damaged during a storm, so it's for Aviva to show that the damage arose as a result of gradual damage. So, the question for me to ask is whether Aviva has given me enough to conclude that whether it's *most likely*, that there was an underlying issue with the wall that caused the wall to become damaged in the storm. I don't think it think it has.

### Putting things right

So it follows that I think Aviva's decision to decline the claim was unfair and I think it should do the following to put things right:

1. Settle the claim in line with the terms and conditions of the insurance policy;
2. If Mrs M has paid for any repairs to the wall, Aviva should pay 8% simple interest per year from when Mrs M paid it until she gets them back. If Aviva thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.
3. Pay Mrs M £300 in compensation for the distress and inconvenience she's suffered from not having her claim settled and for the challenges she's faced in trying to get the matter resolved.

**My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint. I require Aviva Insurance Limited to settle the complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 November 2023.

Guy Mitchell  
**Ombudsman**