

## **The complaint**

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

Any references to Aviva include its agents.

## **What happened**

In November 2022 Mr B and Mrs B made a claim under their commercial insurance policy. They were concerned about failing ground supports behind a property they owned. They appointed a structural engineer to give his independent opinion on what had caused the ground supports to fail.

Mr B and Mrs B made a claim to Aviva, who declined the claim. However, their subsidence contractor later inspected the damage. In terms of the stone terraced ground support, they said this had failed and dragged on the end of the adjacent retaining wall. They said the damage to the stone terraced ground support couldn't be considered under the policy as it wasn't a retaining wall. For the masonry retaining wall, considered a number of insured events under the policy but concluded the damage wasn't covered by the policy terms.

Mr B and Mrs B complained about the decision to decline the claim, along with the time taken to investigate and progress the claim. Aviva offered them a total of £450 compensation.

Unhappy with Aviva's response, Mr B and Mrs B referred their complaint to the Financial Ombudsman Service. To put things right they said they wanted Aviva to accept the claim and reimburse them for the costs incurred in relation to rebuilding the wall and instructing their structural engineer. They've also said Aviva should cover their lost income from not being able to let out their property and for the stress they experienced.

Their concerns were passed to one of our investigators who said ultimately, it appeared the damage had occurred gradually and didn't appear to have been caused by storm conditions. She also said the policy provided cover for damage caused by landslips, but as there was no damage to the home, Aviva hadn't acted unfairly when declining the claim. Our investigator said the compensation offered was fair in the circumstances.

Mr B and Mrs B didn't agree, so the case has 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'll start by setting out that as an informal service, our role is to focus on the central issues I consider relevant to the outcome. I've carefully everything provided by both sides, but I'll focus on what I consider most relevant. And whilst it's clear there's damage to the terraced ground support and retaining wall, Aviva would only be required to carry out repairs if I was

more persuaded the damage was caused by an insured event, as defined by the policy terms.

The first report provided by Mr B and Mrs B's structural engineer said the damage to the retaining wall had likely been caused by the ground becoming unstable after a period of heavy rain following a long period of dry conditions. The second report from the structural engineer referenced landslip, but said they thought it was more likely that storm conditions had caused the ground to become unstable, leading to the damage.

In contrast to this, Aviva's surveyor said there was no evidence of a landslip behind the retaining wall. And they considered there was also no evidence of damage caused by subsidence or storm conditions. The overall conclusion was the retaining wall failed due to a number of reasons, including deterioration based on age and the additional loading from the adjacent wall. Another inspection to decide if the damage was caused by subsidence concluded the retaining walls design was defective. Aviva said the damage wasn't covered.

Our investigator said there was no evidence the property had been damaged as a result of a landslip, so Aviva had correctly declined the claim because the home needed to be damaged in order to consider a claim. Mr B and Mrs B responded to this, saying this hadn't been the cause of the claim being declined.

There isn't clear evidence of a landslip occurring here. And I think what's persuasive the comment from Mr B and Mrs B's structural engineer in the didn't conclude a landslip had occurred or it was the most likely cause of the damage. Across four separate assessments, only one indicates a landslip might have occurred. If a landslip had occurred, I think it's likely more of the reports would have highlighted this insured event. As it was only briefly referenced in one report, I'm not persuaded Aviva acted incorrectly in considering other insured events.

The other insured events considered were subsidence and storm. As with the landslip clause, there was no consistent evidence or findings in any of the reports the damage to the walls was caused by subsidence, and Aviva's expert in this area didn't conclude the walls were damaged by subsidence. So, I've not considered this any further because the reports indicate subsidence is not the cause of the damage.

I've turned now to the question of whether storm conditions were the cause of the damage. Across a number of reports is the finding the ground had been particularly dry ahead of a period of heavy rain. The second report from Mr B and Mrs B's structural engineer references heavy rainfall around 15 and 16 November, just ahead of the damage being noticed. They also highlighted large volumes of rain on 21 November. Aviva said while there were period of high levels and rainfall, these didn't constitute storm conditions.

When considering if an insurer has acted fairly following a claim for storm damage, we'd usually expect three key questions to be answered. If the answer to any of these is no, we're unlikely to say an insurer has acted unfairly in declining a claim for storm damage. The first of these questions is whether storm conditions occurred.

I've reviewed the relevant weather records. And while I can see there were periods of heavy rain in the days before the damage was identified, I don't agree the level of rainfall was such that it would meet a generally held definition of storm conditions. As I'm not persuaded storm conditions occurred on or around the time the damage was identified, I don't consider Aviva acted unfairly in declining Mr B and Mrs B's claim under this clause of their policy.

I appreciate the indicated costs of remedial works are significant. Ultimately, I can only require Aviva to consider meeting some or all of these if I'm satisfied the damage claimed for is as a result of an insured event. I'm not persuaded this has been shown to be the case

here. Overall, I find myself more persuaded by the conclusions set out in the reports by Aviva and their consistency that the damage occurred over time. I don't consider Aviva acted unfairly by declining the claim for the damage to the ground supports and retaining wall.

I'll turn now to the handling of the claim. I can see Mr B and Mrs B have been caused some worry and confusion by Aviva's handling. There was the initial, incorrect decision to decline the claim which caused avoidable worry. There was then some delays and a lack of explanation at time in terms of how all the companies were working to review the claim.

I appreciate Mr B and Mrs B would like a breakdown of the steps Aviva took before decline the claim. I'm not going to require it do so, on the basis that I consider the investigation carried out was in line with what I'd expect to see in such a claim. I'm satisfied the compensation of £450 offered is reasonable in the circumstances, and I'm not going to require Aviva to do more here.

### **My final decision**

I'm sorry to disappoint Mr B and Mrs B, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 19 September 2024.

Emma Hawkins

**Ombudsman**