

## **The complaint**

Mr M and Mrs M complain that West Bay Insurance Plc declined their claim for storm damage to their boundary wall.

## **What happened**

Mr M and Mrs M have household buildings insurance with West Bay. On two sides of their property the boundary is a dry-stone wall. In February 2022 following Storm Eunice Mr M and Mrs M's neighbours notified them that part of the dry-stone wall had collapsed into their garden. At the point where the damage occurred there's a large ash tree which the wall is now built around.

Mr M and Mrs M submitted a claim to West Bay in respect of the damage to the wall. West Bay instructed a surveyor who visited the property in June 2022 and inspected the wall in the presence of Mr M and a dry-stone wall builder. West Bay didn't provide Mr M and Mrs M with a report from the surveyor.

Both West Bay and Mr M and Mrs M have provided photos of the wall and the tree. And West Bay have provided some brief recordings of conversations between Mr M and the surveyor on the day of his inspection and the surveyor's comments about the claim.

The surveyor advised West Bay that there was an ash tree within the boundary wall, at the point where the wall was damaged, which wouldn't have been mature when the wall was built. He said he'd met with Mr M and his dry-stone wall builder and they'd agreed that the tree had moved in the wind. His advice to West Bay was that the claim for storm damage should be declined. He said he didn't believe the wall was badly built, but it was poorly designed.

On the basis of their surveyor's findings West Bay declined Mr M and Mrs M's claim. But there was a delay in them being advised of this. Mrs M contacted West Bay in July 2023 and was told that the claim had been declined on site and Mr M had told the surveyor that he didn't require a report.

A complaint was raised and West Bay's final response letter is dated 22 July 2023. The letter isn't accurate about the date of the claim as it says that Mr M and Mrs M contacted them to report a storm damage claim in June 2023. But it does say that when he carried out his inspection their surveyor concluded that the damage to the wall was due to poor design, as the wall was built around an ash tree, rather than a result of one-off storm damage. So the complaint wasn't upheld.

Mr M and Mrs M then complained to our service. They've told us they don't accept that the damage to the wall wasn't the result of storm damage as it was noticed directly after Storm Eunice, and it was clear the wind had moved the tree and caused some of the stones to fall into their neighbour's garden. They also don't accept that the wall was poorly designed as they said it was rebuilt for them in 1998 by a local dry-stone wall builder with many years' experience and an excellent reputation.

Our investigator considered the case but didn't uphold the complaint. She said she accepted Mr M and Mrs M's assertion that the wall hadn't been damaged as a result of faulty workmanship. But she believed that the proximate, or main, cause of the damage to the wall was not the storm itself but was the tree growing within the wall that had comprised its structural stability.

Our investigator accepted that there had been storm conditions at the property in February 2022. But the claim hadn't been declined due to there not being storm conditions. It was declined under an exclusion in Mr M and Mrs M's policy which says damage resulting from poor design isn't covered.

Mr M and Mrs M say the wall was built by a very good local tradesman and parts of it were rebuilt in 1997 so poor workmanship can't be an issue. Our investigator said that West Bay's engineer hadn't said the wall was damaged due to poor workmanship. But he did say the design of the wall so close to the tree, when the tree wasn't fully established, has meant the structural stability had been compromised as the tree has grown larger. The surveyor had spoken to the dry-stone wall expert who was present at the site inspection who'd agreed that every time the wind blows, the tree will move within the dry-stone wall causing it to weaken or fall.

Given West Bay's explanation of the damage our investigator said she agreed with their decision to decline the claim. While she understood that the wall and the tree had been there for many years, she felt it was inevitable that the tree would grow larger, into the wall's space causing it to fall. And she said the photographs provided, as well as google map evidence from 2009 show the tree had been much smaller. So she was satisfied over time it had pushed further into the dry-stone wall causing it to weaken and easily fall.

She said we consider three factors when looking at storm damage claims. These are – Was there a storm? Is the damage consistent with a storm? And was the storm the main cause of the damage? In this case she was satisfied there was a storm, but not that the damage to the wall was consistent with storm damage or that the main cause of the damage was the storm itself. She also said that while there was an argument that the wall wouldn't have fallen if the storm hadn't moved the tree sideways, she was satisfied that if the wall wasn't built so close to the tree it's less likely to have fallen. And she said this because the rest of the wall away from the tree wasn't damaged by the storm.

So our investigator agreed with West Bay's decision to decline the claim and didn't ask them to do anything.

West Bay accepted our investigator's opinion but Mr M and Mrs M didn't. They advised our investigator that there was damage to the wall in 1997 in an area away from the tree. Their insurers at the time covered the cost of repairing the wall and made no comment about that the wall being built so close to the tree or the design of the wall.

They disputed the claim being declined under the policy exclusion relating to poor design, as they say dry-stone walls aren't designed and provided a leaflet from the Dry-Stone Walling Association for our investigator to consider.

Our investigator considered the further information provided by Mr M and Mrs M but didn't change her opinion about the case. She said she didn't dispute that previous insurers made no comment about the wall being poorly designed but didn't consider this was relevant to the circumstances of this claim.

This was because West Bay hadn't said that the workmanship of the wall was poor, or that the whole wall was poorly designed. What they'd said was that it was poor design to place a

dry-stone wall so close to a tree that would inevitably grow in size. She agreed with that. And the earlier claim didn't relate to the section of the wall next to the tree, so there would have been no reason for the previous insurer to comment on this.

Mr M and Mrs M provided a photo of their son sitting on the wall by the tree in 1999. Our investigator said this shows the tree was much smaller then, which suggests the tree has grown over time causing problems with the wall's structural integrity.

She also considered the further evidence provided about dry-stone walls not being walls that can be designed and the technical specifications leaflet describing them as more of "an art than a science." She didn't disagree this was the case. But she maintained that West Bay hadn't said the whole wall was of poor design, merely the section close to the ash tree which had grown significantly over the years.

So our investigator maintained that West Bay hadn't done anything wrong in declining the claim as the main cause of the damage wasn't the storm, but the design of the wall so close to the tree.

Mr M and Mrs M didn't accept our investigator's further opinion so the case has come to me for a 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.

For this to be accepted as storm damage I have to be satisfied of the following: -

- 1) That there were storm conditions on or around the date the damage happened.
- 2) That the damage claimed for is consistent with damage a storm typically causes. And
- 3) That the storm conditions were the main cause of the damage.

And I also have to consider the cover Mr M and Mrs M's policy provides for storm damage and any relevant policy exclusions that apply to the claim.

It's not disputed that there were storm conditions in February 2022 when Mr M and Mrs M's boundary wall sustained damage. I think damage to a boundary wall could be considered as the type of damage a storm might cause, but I don't have enough evidence to say with any certainty that the storm caused the damage in this case or that the storm conditions were the main cause of the damage.

Mr M and Mrs M's policy provides cover for storm damage, but there's a general exclusion for loss or damage caused by or arising from "faulty workmanship, defective design or the use of defective materials." And West Bay have declined the claim based on this exclusion.

Mr M and Mrs M have provided information about the work of the dry-stone wall builder who rebuilt the wall for them in 1998. It's clear from the information they've provided that he had many years' experience and had an excellent reputation in his field. West Bay haven't said that the wall was poorly built, what they've said is that building the wall around a growing ash tree was a poor design and as the tree has grown it's compromised the structure of the wall.

I've considered what Mr M and Mrs M have said about dry-stone walls not being designed so this exclusion can't apply. But I'm not persuaded by this. The ash tree has been incorporated

into the section of the wall that was damaged, so it's my view that it has to be considered as part of the wall, whether by design or otherwise.

I've also considered what Mr M and Mrs M have said about a previous claim for damage to the wall which was accepted by their then insurers. While I note that the earlier claim was accepted the claim related to a section of the wall away from the ash tree. So the presence and impact of the tree wasn't relevant to that claim, and I wouldn't have expected the insurers to comment on the general condition of rest of the wall unless there was obvious damage.

That claim was dealt with over 25 years ago. Looking at the photographs provided of the wall in the late 1990s and those taken showing the current damage it's clear that the tree has grown substantially over the last 25 years.

When West Bay's surveyor carried out his inspection it was agreed by the parties present that movement of the tree in the wind had caused the damage to the wall. This suggests that the tree was an important factor in the damage that occurred. And as there was only damage to the wall in the section around the tree I'm not persuaded that the storm was the main cause of damage in this case. If the storm was the main cause of the damage then I'd have expected other parts of the wall to also be affected.

West Bay declined the claim under an exclusion in respect of damage caused by "poor design." I'm persuaded that it was fair and reasonable for West Bay to decline the claim under this exclusion, not because the whole wall was poorly designed, but because the damaged section of the wall has been built so close to an unestablished tree which would inevitably grow over the years.

As I'm satisfied that it was reasonable for West Bay to decline the claim I'm not asking them to take any further action.

### **My final decision**

For the reasons set out above my final decision is that I don't uphold Mr M and Mrs M's complaint about West Bay Insurance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 November 2024.

Patricia O'Leary  
**Ombudsman**