

## **The complaint**

Mr P complains that U K Insurance Limited trading as Privilege declined his claim for storm damage to his garden wall.

## **What happened**

Mr P has household buildings insurance with Privilege. On 2 January 2024 Mr P says that the garden wall to the side of his property was damaged by strong winds. He contacted Privilege to make a claim on his policy.

On 9 January 2024 a surveyor instructed by Privilege attended Mr P's home to inspect the damage to the wall. Mr P says the surveyor told him the repairs to his wall weren't covered by his policy as the wall had missing bricks, frost damage, porous cement joints and the material the wall was built from was breaking down. Mr P has told us that he asked the surveyor to show him where this damage was, but he was unable to do so.

Mr P says he was also told that the concrete footings the wall was built on had slipped forward, causing the wall to lean. Mr P says that this comment was made without any inspection of the footings, and when he suggested that they dig down and inspect the footings, the surveyor said he didn't have time and Mr P just had to accept that his claim wasn't covered. He was also told that he needed to arrange to have the wall repaired, as it was in danger of falling over.

Mr P says he wasn't happy with what the surveyor told him as the wall had been well maintained and it had been upright and in good condition until the strong winds on 2 January 2024. So he arranged to obtain quotes for repairing the wall from two builders. Mr P has told us that both builders said there was no problem with the structure or condition of the wall apart from what they considered to be obvious wind damage. And one of the builders dug down to inspect the concrete footings and said they were in good condition.

Mr P says that he called Privilege to give them this information and was asked to send copies of the letters from the builders. There was a delay in Privilege sending Mr P a copy of the surveyor's original report and further comments he made having considered the builder's letters.

Mr P raised a complaint on 12 January 2024 about the decline of his claim and the attitude of Privilege's surveyor who he said was aggressive and wasn't happy when Mr P didn't agree his findings. Privilege's final response letter is dated 18 March 2024, although Mr P has said that he didn't receive a copy of the letter until September 2024. Privilege didn't uphold Mr P's complaint as they said their surveyor had considered the comments from Mr P's builders and said these made no mention of damage to the wall he'd noted. Or that the surveyor had confirmed that "the wall has been there for 47 years and it is at the end of the life span. The recent winds have exasperated the wall."

Privilege referred Mr P to his policy which states that wear and tear and gradually occurring damage aren't covered. So they didn't uphold Mr P's complaint.

Mr P hadn't received the final response letter and continued to contact them as he hadn't received the surveyor's reports. During the call chasing up the reports Privilege told Mr P they hadn't been sent. He finally received copies on 20 April 2024.

Having received the reports Mr P contacted Privilege on 21 April 2024 as he was unhappy with their surveyor's findings, as he said he hadn't carried out an adequate inspection of his wall. And as two builders had advised him that the wall was damaged by the storm conditions on 2 January 2024.

Privilege called Mr P on 25 April 2024 to tell him their surveyor had reviewed the letters from the builders he'd instructed and maintained that the damage to the wall was due to wear and tear and gradual deterioration over time, and the storm had exacerbated the condition of the wall. So they maintained their decline of his claim.

Mr P then complained to our service. Our investigator considered the case and said his role wasn't to assess the claim, but to consider the evidence and form an opinion on whether the claim had been assessed fairly or whether Mr P's claim for storm damage had been unreasonably declined.

In looking at a claim for storm damage our investigator said he had to consider three questions.

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 or dominant cause of the damage?

Our investigator said he'd carried out independent checks on the weather conditions around the reported date of loss. The peak wind speeds in the area were around 60mph on 2 January 2024, so he agreed that storm conditions occurred on this date. And that the damage to Mr P's wall was consistent with damage typically caused by winds of this speed. So the answer to the first two questions was yes.

And when looking at whether the storm conditions were the main or dominant cause of the damage, he'd considered the reports and supporting information and reached an outcome based on what he believed to be most persuasive. He said the report provided by one of the builders who inspected the wall for Mr P indicates that he'd inspected the wall, including the foundations, and found it to be in good condition. Which was at odds with the findings of Privilege's surveyor.

Our investigator said that the surveyor's report speculates that the footings of the wall were "likely" to have started to break down. But he felt there was uncertainty in the report which supported Mr P's allegation that a proper inspection of the footings hadn't been completed. And he didn't find the conclusions reached by the surveyor to be persuasive in comparison with the report Mr P had obtained.

And looking at the reports along with the images of the wall, he didn't agree that it had been shown that the damage was consistent with wear and tear as Privilege says. Based on the evidence our investigator was persuaded that the answer to question three was yes, and that the storm was the dominant or main cause of the wall movement, and so an insured event had occurred.

As an insured event, storm damage, had occurred our investigator said it was for Privilege to show that an exclusion applied or that a policy condition hadn't been met. And as he didn't agree that it had been shown that wear and tear was the main cause of damage to the wall,

he wasn't satisfied that Privilege had fairly declined Mr P's claim for storm damage.

So our investigator said Privilege should reconsider Mr P's claim for storm damage subject to the remaining policy terms and conditions.

Mr P accepted our investigator's opinion but Privilege didn't. So the case has now 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.

Mr P's policy states that it doesn't cover "Wear and tear (damage that naturally and inevitably occurs because of normal wear of ageing) or any damage caused gradually." Privilege have declined Mr P's claim under this exclusion based on their surveyor's report. While the surveyor has said that the strong winds may have exacerbated the damage, he says that the main underlying cause was wear and tear due to the age of the wall.

I've set out in the background above the three questions that need to be considered in all storm damage claims. I'm satisfied that the answer to the first two questions is yes as on the date Mr P reports his wall was damaged there were peak winds in his area of 60mph. And that the damage to the wall is consistent with the damage storm conditions are likely to cause.

So I need to consider the third question, whether the storm conditions were the main or dominant cause of the damage. Privilege's surveyor maintains that the wall, including the footings, were in a poor condition and the strong winds highlighted a pre-existing problem. He refers to finding "brittle mortar joints, frost damage and loose bricks to the top course of the wall, and effervescence at the base of the wall due to salting." And that "The wall has shifted or slipped from the footings and is subject to natural breakdown of materials and deterioration of mortar works due to age and wear and tear." Privilege say that the signs of general wear and tear should have been visible to Mr P.

Mr P has told us, and I accept, that the surveyor didn't inspect the footings of the wall. And as the surveyor didn't inspect the footings his statement that "the wall has shifted or slipped from the footings" isn't supported by any evidence.

Mr P asked two local builders to inspect the wall and provide quotations for its repair. He's told us that both builders said the wall was in good condition. And Mr P has told us that one of them dug down to expose the footings which he also said were in good condition. I find this more persuasive than Privilege's surveyor saying he knew "from experience" that the footings were in poor condition and "likely" to have started breaking down.

I've considered the photographs of the wall and while there is discolouration in places I'm persuaded by what Mr P's builders have said, that the wall appears to generally be in a good condition.

So I'm not persuaded that Privilege have shown that the damage to Mr P's wall is consistent with wear and tear. I'm satisfied that the dominant or main cause of the damage to the wall was the storm conditions. As storm damage, an insured event, has occurred it's for Privilege to show that an exclusion applies or a policy condition hasn't been met. And as I'm not persuaded that the main cause of the damage was wear and tear, it follows that I don't think Privilege have declined Mr P's claim fairly.

**Putting things right**

To put things right I require Privilege to assess Mr P's claim for storm damage to his wall, subject to his remaining policy terms and conditions.

**My final decision**

For the reasons set out above my final decision is that I uphold Mr P's complaint about U K Insurance Limited trading as Privilege.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 April 2025.

Patricia O'Leary  
**Ombudsman**