

The complaint

A limited company, which I will call J, has complained about the rejection of a claim made under its office insurance policy with Aviva Insurance Limited.

Mr F, as a director of J, has brought the complaint on its behalf. Mr F is also represented in this complaint but for ease I will refer to Mr F throughout.

What happened

Mr F says that during a storm in December 2024, a listed garden wall at its premises was blown over during a storm. Mr F contacted Aviva to claim the cost of replacing the wall.

Aviva said that the policy provides cover for walls damaged by storm but the winds on the night in question were not strong enough to be deemed to have been a storm. While there were warnings of potential storm force winds, these did not materialise in the area of J's premises. Aviva also pointed out there was no damage to other walls or buildings in the area.

Aviva sent a surveyor to inspect the damage anyway. The surveyor said there had been partial collapse of the wall but damage was more likely due to the heavy amount of ivy and other vegetation over the wall and the roots from large trees in the vicinity, which would have weakened the wall over time. It also said the photos show that the collapsed part of the wall has either no mortar or very dry, powdery mortar adhering to the broken bricks, which it says shows the mortar has deteriorated over time and has contributed to the instability of the wall. Aviva therefore said the claim was not covered.

Mr F was very unhappy with this. He says the wall was in good condition prior to the storm and he provided Aviva with footage of the wall falling during the night, trees in the garden swaying, a tarpaulin being battered, and heavy rain as proof that there were storm conditions. Mr J says the wall was battered by strong winds for hours. Mr F also says the wall sits at the end of a wind tunnel, in a high open position close to and facing the sea. He says the wind speeds recorded at local weather stations would not therefore reflect the actual conditions in the precise location of the wall at the time.

Mr F has also provided a report saying the wall was in good condition prior to the storm and says the only the parts of the wall that are still standing had ivy on them. Mr F says the wall was intact and fell during a storm, so the claim should be covered.

As Aviva did not change its position on the claim, Mr F referred the matter to us.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that the weather in the location leading up to the collapse of the wall did not amount to storm and that the damage was more likely the result of wear and tear.

Mr F does not accept the Investigator's assessment. He has provided evidence from civil engineers and a stonemason, as well as a neighbour confirming the wall was in good condition prior to this event. He says that if it "*wasn't the recorded storm, and it wasn't the ivy, and it wasn't general wear and tear, how did this wall randomly fall in a storm?*"

As the Investigator was unable to resolve the complaint, it has been passed 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.

Like all insurance policies, J's policy does not cover everything that might happen to the insured property and insurance is not to cover general maintenance but to provide cover for specified unforeseen events. J's policy provides cover for various insured events that might cause damage to the property. The insured event that is most relevant to this claim is for damage caused by storm. The cover for storm damage under the policy is, however, subject to various terms and conditions. The most relevant to J's claim are the following:

*"We will not provide cover for:
Damage to the Property Insured caused by or consisting of ...
2.2 gradual deterioration or wear and tear".*

It is a principle of insurance that it is for the claimant to establish their claim. This means that in this case, J has to establish, on the balance of probabilities that it is more likely than not that the damage it is claiming for was caused by the insured incident of 'storm'.

If Aviva wants to rely on an exclusion to reject a claim that would otherwise be covered, then it has to establish, again on the balance of probabilities, that the exclusion applies.

Our Investigator explained that, when we are considering complaints about declined storm claims, we'll usually ask three questions. If the answer to any one of those questions is 'no' we'll often find that the insurer's decline was fair and reasonable. The first of those questions is: was there a storm?

"Storm" is not defined in the policy. In the absence of a definition, we would usually consider that a storm involves violent winds, commonly together with rain, hail or snow. When considering whether there were violent winds, I bear in mind The Beaufort wind force scale which is used by the Met Office. This is based on a scale of zero to 12. Force 10 is categorised as a storm with winds of 55-63 miles per hour. However, I also bear in mind that it says structural damage (to otherwise sound property) might be caused with winds of 47mph or over.

I note there was a named storm affected areas of the UK at the time of this incident and Mr F has provided a news article warning of 70-80mph winds around some coastal areas and up to 60-70mph inland. That storm affected large parts of the country but the windspeeds varied depending on location. The fact a named storm occurred in the county, or in the region of the country in which the property is located, does not necessarily mean that a storm occurred at the specific location of the property.

To decide if there was a storm at the location of the property, we usually reference weather records from nearby weather stations. Those stations may not be in the exact location of the insured property but they do give a fair idea of what was likely occurring at the property. We don't need to see for definite that a storm occurred at the location of the property, rather we need to know that it's most likely that it did.

Aviva has provided data from a weather station nearby, which it says is also in an exposed position, so would be a reasonably accurate record of the conditions at the insured location.

The records it provided showed the maximum wind speed on 6 December 2024 was 41mph. Aviva has provided records for the period before the wall collapsed as well. The highest wind speed recorded was 56mph on 25 November 2024, 11 days before.

I have also checked a different weather report, which takes data from a weather station 1.4 miles from the insured property. This report recorded lower wind speeds than that provided by Aviva.

I do not think the wind speed recorded on the day, or the few days before the wall collapsed meet the threshold of a storm, given that the speeds recorded are not considered to be strong enough to cause damage to well-constructed and maintained property. The only episode of winds strong enough to be considered storm force winds was 11 days before the wall collapsed. I do not think this is sufficiently near in time to be the proximate cause of the damage.

I note there was also heavy rain the night the wall collapsed. Very heavy rain, even if there weren't strong winds, might equate to a storm. For heavy rain to be considered a storm we would usually expect there to have been rainfall of more than 30mm in one day (*i.e.* a 24 hours period). The weather reports I have seen show the heaviest rain for a week was on 6 December 2024 and it was 14mm in total. I do not consider this would amount to storm either.

Mr F says that there were higher gusts of wind in the exact location of the insured property as it is in a wind tunnel. However, there is no expert evidence to show that wind speeds would be higher than those recorded at the weather station due to the particular features of the location of the insured property. I also consider that the fact there was apparently no damage to other property in the location supports that the weather station records provide a reasonably accurate assessment of the wind speeds in the actual location.

I have also considered the evidence provided by J. One letter from a firm of civil engineers says:

"...we confirm the following.

The wall blew down due to storm Darragh.

As you are aware we inspected the wall when you were purchasing the property in 2020 and no significant structural defects were noted. We have inspected the wall again in 2023 and it was found to be plumb and free from signs of settlement. No structural issues were noted.

The wind speeds associated with storm Darragh were found to be 70-80mph and this is the reason that the wall blew down. There is no other reason for its sudden collapse."

I do not think this establishes the damage was caused by a storm. As mentioned above,

while there were warnings of 70-80mph winds in parts of the country, there is no reliable evidence that the winds in the location of the insured property were high enough to be considered to have been storm force winds. So while the wall collapsed during bad weather, this does not mean it is enough to establish a claim for storm damage under the policy.

Having considered everything very carefully, I do not consider that it is more likely than not that there was storm at the time, or shortly before the collapse of the wall.

As I said above, there are two other storm questions often asked when we consider a storm complaint. These are: whether the damage is consistent with storm damage and whether the storm conditions were the main cause of the damage. As I explained above, if any one of the three storm questions asked returns an answer of 'no' then it's likely the insurer's decline will be fair and reasonable. At this point, having found that there was no storm at J's property at the relevant time, I do not think that Aviva's rejection of the claim was unreasonable.

However, in case, for argument's sake I am wrong about that, and for completeness, I have gone on to consider the other two questions, as well as whether Aviva can rely on the exclusions set out above.

Storm can cause collapse of walls, so in my view the damage is consistent with damage a storm would cause.

The third question is (if there was storm) was the storm the main cause of the damage?

Aviva's surveyor said that there had been a gradual deterioration of materials in the wall and it was likely weakened by tree roots and vegetation. He said the photos show there was little mortar left and what was shown was powdery and dry.

I have looked at all the photos and videos provided by J and Aviva of the wall. The photos do support what Aviva has said. The mortar looks very powdery along a lot of the partially collapsed areas and there is some vegetation entangled on the ground next to some of the collapsed parts. I note it is not all the way along and some parts of the collapsed wall appear not to have had any vegetation on them. There are also two large trees, with one immediately adjacent to one area of collapse.

I have also considered the correspondence J provided from civil engineers, a stonemason and from the owners of the neighbouring property.

The neighbours say they maintain the wall on their side - inspecting it annually and removing any ivy. They also said the wall was in good condition with "*no visual signs of defect or erosion prior to the recent collapse*". I do not think this establishes that there was not deterioration of the mortar, or weakening from the ivy they removed, or the tree roots.

J says that while the wall had a lot of ivy over it, the section of the wall that had collapsed did not have ivy growing on it. In the photos there are some areas that clearly had ivy on them but there is one area where the wall collapsed almost to the ground that did not appear to have ivy on it. I do not think this means that parts of the wall were not weakened by ivy and that it cannot have contributed to the overall condition of the wall. Especially as the ivy appears to have needed to be removed periodically. And the part of the wall that appears not to have had ivy on it is immediately next to a very large tree. I think it is reasonable to consider the tree will have caused changes to the ground beneath the wall at that part at least.

The stonemason wrote:

“Instructed by...[J] to assess the main building and looked over the retaining wall in 2020.

The retaining wall was found to be in a good condition for the age of the wall and to be sound with the general weathering to be expected.

Again in 2022 we inspected the wall for any more deterioration and found that the wall hadn't progressed any further and didn't feel the need to carry out any remedial works at that time.”

This confirms that the last inspection by the stonemason was more than two years before the wall collapsed, so I do not find this persuasive as to its condition at the relevant time.

As well as the letter already quoted earlier, the civil engineers also wrote:

“The wall blew down during storm Darragh over the weekend prior to inspection.

The wall is a stone retaining wall. The wall is partially overgrown with ivy. There are a couple of large trees immediately behind this wall. The wall retains approximately 1.5m from the car park level down to the garden level of the adjacent flats. The wall at the Eastern end is approximately 1.4m high above car park level, tapering down towards the west. The enclosed marked-up photograph shows the extent of the wall which appears to be affected.

The wall over the area affected should be carefully taken down, the largest trees removed and a replacement retaining wall constructed. The enclosed detail shows a replacement wall detail, constructed in blockwork and clad in stone to make it look the same as the existing. The existing coping stones should be retained and re-used as much as possible.

Weepholes to be built into the new wall as shown.”

This confirms there were two large trees adjacent to a wall that was retaining a lot of ground. I do not consider that it establishes that the wall was not weakened by the tree roots and other vegetation. The engineers have not commented on the condition of the mortar or condition generally. The civil engineer's correspondence quoted earlier in this decision says it was *“plumb and free from signs of settlement”* in 2023. But again, I do not think this can be interpreted as meaning that the tree roots were not causing issues.

Having considered everything carefully, I do find that there was more likely than not *“gradual deterioration”* of the wall that was the main reason for its collapse. While that collapse happened during a period of bad weather, it does not mean it is covered because that bad weather was not sufficient to amount a storm.

With regret for the disappointment I know this will cause, I'm therefore satisfied that Aviva's decline of their claim was fair and reasonable. As such, I'm not going to require it to accept or settle the claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or

reject my decision before 3 September 2025.

Harriet McCarthy
Ombudsman