

## **The complaint**

Mr B complains that Aviva Insurance Limited unfairly declined a claim on this home insurance policy.

## **What happened**

The circumstances of this complaint are well known to both parties, so I'll only summarise them here.

- Mr B tells us that in October 2022, following a storm a neighbour alerted him that his boundary wall was leaning towards the street.
- Mr B contacted Aviva to make a claim.
- Aviva declined the claim. In its final response dated 23 November 2022 it advised Mr B it had reviewed images of the wall and believed there was historical damage to the wall and didn't consider the damage to be caused by a one-off storm event.
- Mr B was unhappy with Aviva's decision and that it hadn't visited his property to assess the claim. He was also unhappy that Aviva had removed his no claims discount despite not settling the claim.
- Mr B brought his complaint to this service in March 2023
- Our investigator didn't uphold the complaint. His view was the storm probably highlighted an existing problem and Aviva had reached a fair conclusion in declining the claim. He didn't think a site visit by Aviva would've added anything to the claim as it would only show the current state of the wall.
- Mr B asked that an ombudsman decide his case

## **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.

Having done so I've reached the same outcome as our investigator, and largely for the same reasons. The crux of this complaint is whether Aviva have acted unfairly in declining the claim.

When deciding a claim for storm damage there are 3 main issues I have to consider:

- Do I agree storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage consistent with damage a storm typically causes?
- Were the storm conditions the main cause of the damage?

Aviva have not disputed whether there was a storm on the night the incident occurred. So I'm persuaded it's more likely there was a storm.

Our investigator said it was debatable if a storm would cause a wall to lean in the way it is. From what I've seen, including pictures and publicly available images I'm not entirely persuaded the damage is consistent with that typically caused by the windspeeds in the area around the time of the incident. However, I agree with our investigator that there is some debate and will therefore consider the final issue – were the storm conditions the main cause of the damage.

The policy document defines a storm as:

*“An unusual weather event with persistent high winds usually associated with rain, thunder, lightning or snow.”*

It goes on to state:

*“The wind speed or gust should normally exceed 55mph (48 knots) to be a ‘storm’ but we take other factors into consideration such as where the property is sited. A storm can highlight defects rather than cause them and damage due to lack of maintenance, wear and tear or which happens gradually is not covered.*

*We'll check what the weather was like when the damage happened and may ask for pictures or ask an expert to look at the damage to decide if it was caused by a storm and confirm that a lack of maintenance didn't cause or contribute to the damage”*

Aviva have used publicly available images of the wall from 2019 and 2009 and say its height, lack of support pillars and the presence of tree roots underneath have gradually caused the wall to lean, and the images from 2019 show it was leaning. They say the images from 2009 show the wall was laden with Ivy which will have weakened the structure and possibly added to previous problems.

Mr B says the wall wasn't leaning prior to the storm, and that the comparison between current pictures and historical images is flawed as they show a different line of sight. And a fence panel next to the wall actually leans towards his house giving the appearance that the wall was leaning towards the road. And he points out there was no vegetation on the wall when he bought the property which was newly built in 2016.

I've looked at the images available and can see evidence of previous repairs to the wall, possibly an infill of a former gateway and uneven brickwork. There are also indications the wall was previously covered in vegetation, and the images from 2009 bear this out. I'm not suggesting Mr B was aware the wall had previously been covered in Ivy, simply that it had been present and could have been a contributory factor in the damage to the wall. Importantly I find the images from 2019 persuasive, I'm satisfied they do show the wall was leaning.

Having reviewed the evidence and testimony both parties have provided I'm more persuaded by Aviva's view that the damage to the wall is historical and wasn't caused by the winds experienced around the time of the claim. I find it more likely the storm highlighted an existing problem and wasn't the main cause of the damage.

I note Aviva has reinstated the no claims discount and I'm satisfied it has appropriately corrected its mistake.

It's not for this service to tell a business how to investigate a claim, but I can consider if it acted reasonably. In this case it chose not to visit the site and relied on pictures provided by Mr B and publicly available street view images. I find this reasonable and in line with the policy terms and conditions, and I'm satisfied the outcome of the claim wasn't impacted.

In the circumstances of this case I'm satisfied Aviva have acted reasonably in declining the claim and I won't be asking it to do any more.

### **My final decision**

For the reasons above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 August 2023.

Martyn Tomkins  
**Ombudsman**