

The complaint

Mr H has complained about his property insurer Aviva Insurance Limited as it declined his claim for a boundary wall which collapsed during a flood.

What happened

There was a flood in January 2021 – parts of the field adjoining Mr H's home, as well as the home's garden were under water. The boundary wall – made of specialist materials – collapsed and Mr H made a claim. Aviva declined the claim because, it said, there hadn't been a storm.

In July 2021 Mr H decided to challenge Aviva's decision. Aviva reviewed the claim and said the wall was old, so it had likely been affected by wear and tear. Aviva said, as such, it wasn't minded to change its view on the claim. And Mr H complained to us.

During the course of our complaint Mr H provided some expert reports on his wall. And Aviva, in July 2022, sent a loss adjuster to Mr H's home to assess the wall. Aviva's loss adjuster felt the wall hadn't been maintained. Aviva maintained its decline of the claim.

Our Investigator, having taken all the reports into account, said he felt the wall had most likely suffered due to wear and tear, rather than having been affected by a one-off instance of flooding. So he didn't uphold the complaint.

Mr H was unhappy. His complaint was passed to me for an Ombudsman's consideration.

My view on the expert reports differed to that of our Investigator. I felt the complaint should be upheld with Aviva needing to settle the claim and pay £500 compensation. So I issued a provisional decision to explain my views on this to both parties. My provisional findings were:

"Having done so I intend to uphold it. If my final decision remains the same and Mr H accepts it within the deadline set, Aviva will have to reinstate the wall and pay £500 compensation. I've set out my views below and both parties will have a chance to respond before I make my final decision.

In my view Aviva failed Mr H at the first notification of his claim. Seemingly Aviva only looked at things at that stage on the basis of whether or not a storm had occurred. Whilst I know Mr H had mentioned heavy rain there doesn't necessarily need to be a storm for flooding to occur. Mr H accepted Aviva's assessment initially, and that is understandable – it is the insurance expert. It was July 2021 when Mr H reverted back to Aviva. So his claim was delayed by around seven months or so at the outset because of Aviva's initial failure to properly consider the claim.

I think Aviva then failed Mr H again when it reviewed the claim. It didn't have anyone attend to assess the wall. And Aviva didn't even ask Mr H for any evidence or photos of the wall or flood event. Rather Aviva chose to assume that because this is an old wall, it must have failed due to wear and tear. I think that was unfair and unreasonable of Aviva to make an important claim decision like this based on no more than an assumption.

Both parties though then did obtain expert reports. Mr H from specialist contractors and Aviva from its loss adjuster. On this occasion I prefer the evidence of the contractors. The wall in question is built of specialist materials and I haven't seen that the loss adjuster has any particular specialist knowledge in this area. In fact, having read his report, he doesn't seem to have taken the specialist nature of the wall into account at all. I also bear in mind that because Aviva declined the claim on incorrect grounds at the outset and actively chose not to have anyone assess the wall when it had the opportunity to review the claim in July 2021, that it was 18 months after the event when the loss adjuster viewed the wall and made his report. So, before even taking the specifics of his report into account, I'm not persuaded that it's fair to give it much weight.

I've looked at some of the specifics though. The adjuster seems to have come to conclusions about Mr H's wall by viewing the walls that remain in the area around it. But I think the adjuster has failed to take into account the rebuild date of one of the nearby walls, and that another may sit on slightly higher ground. So it seems neither of these walls would have been affected in the same way as Mr H's. So I don't think they give any indication about why Mr H's wall might have fallen.

I also note the loss adjuster suggests that signs of previous maintenance to the wall might suggest it hadn't been in good condition. And that brick piers which still remain may not have been in good condition – which might have affected the walls stability. But on the point of the previous maintenance – capping tiles having been replaced – this merely shows the wall was looked after. And I bear in mind that independent advice about this type of wall says that ensuring the wall remains capped is an essential part of maintaining its integrity. So the presence of replacement tiles shows it was being maintained. And I've not seen any evidence of missing tiles – which might suggest Mr H hadn't maintained it during his time at the property. Regarding the brick piers I note they are still standing and so I'm not persuaded that a lack of some mortar in them caused a whole section of wall to fail – a whole section that was also partly submerged under floodwater.

The report from Mr H's contractor is brief. But essentially says there is no sign of the wall having suffered long-term water damage. The contractor believes the flood caused the damage. And, for me, that seems to make sense given the independent advice I've seen about these type of walls – seemingly they need little maintenance and will dry and/or be free draining as long as the base area is kept clear. I've seen a photo from Mr H, and photos found on the internet by Aviva's loss adjuster of the wall – seemingly soil was not built up against the wall. However, seemingly walls like this will suffer if they can't drain or water gets 'inside' them. Looking at the significant flood which occurred here, I think it's very likely the wall would have been negatively affected. And nothing Aviva has presented makes me think that it is more likely that the wall's collapse was unrelated to the flooding and caused due to its (likely) poor condition.

So, Aviva has not satisfied me that it fairly and reasonably declined Mr H's claim for flood. I think it must now settle the claim. The policy allows Aviva to choose how it does that. Often an insurer will want to arrange and complete repairs. However, I don't know if Aviva will have specialist contractors at its disposal that may be able to complete this type of skilled work. If it doesn't then it will have to settle the claim based on the cost Mr H will incur to get the wall reinstated. Aviva may think it's liability for reinstatement will only extend to rebuilding the collapsed part of the wall. But I'm not persuaded that would be reasonable here. Mr H's reports suggest the flood affected the rest of the wall as well, although not so much that it collapsed. But also now the wall has been in an incomplete state with parts of it exposed to the weather for some considerable time. So I don't think that rebuilding the collapsed section only would equate to a reasonable reinstatement. I mention this now so it can be taken into

account by Aviva when it is deciding the extent of its liability for reinstatement with a view to settling the claim.

In terms of compensation I bear in mind that Mr H and his family have now not been able to use their garden freely for two summers. They've also had additional concerns about safety at the property with the boundary wall down and the property left vulnerable as a result. I think Aviva should pay Mr H £500 compensation."

Mr H said he agreed with my findings and had nothing further to add. But when Aviva replied objecting to what I had said, Mr H responded to the points Aviva had raised.

As noted above, Aviva objected to my provisional decision. It had one of its technical oversight consultants give a view on the claim outcome and my findings, given the reports and photos available. In short, the consultant said that his opinion was that the claim should remain declined. He said it was his view that the wall was exhibiting signs of wear and tear and Mr H had been negligent in not carrying out any maintenance.

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've considered Aviva's response to my provisional findings. But it hasn't changed my view on this complaint. The technical consultant acknowledges that this is an unusual type of construction that does not require much maintenance – but then seeks to criticise Mr H for not having done any maintenance. He also argues that the way the wall fell is not consistent with how walls, which are swept away by flood waters, collapse. But at no time has it been suggested that this wall collapsed because fastmoving flood waters had swept its base away whilst moving through the point where the wall stood. His comments in this respect are totally at odds with the issues at the heart of this claim and complaint – that this type of wall, due to its unusual construction, is vulnerable to the type of standing flood water which it was subjected to prior to its collapse.

I've only noted a couple of points above from what the consultant has said, but I have taken everything into account. Overall, I don't find the consultant's view of this compelling and it hasn't persuaded me that my assessment of the available evidence, as set out in my provisional decision, is unfair and/or unreasonable. As such my provisional findings, along with the comments I've made here, are the findings of this, my final decision.

Putting things right

I require Aviva to:

- Settle the flood claim for Mr H's wall, in line with the remaining terms and conditions of the policy, such as excess. But taking into account my comments above about needing to pay Mr H's cost to reinstate it if it can't provide suitably skilled specialist contractors to complete the work.
- Pay Mr H £500 compensation.

My final decision

I uphold this complaint. I require Aviva Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 November 2022.

Fiona Robinson

Ombudsman