

The complaint

Mrs C and Mr C complain about their insurer, Aviva Insurance Limited (Aviva). Their complaint relates to the rejection of a claim under their home insurance policy for damage to a wall at their property.

Reference to Aviva includes their agents who administer the policy and assess claims.

What happened

In August 2021 Mrs C and Mr C contacted Aviva to tell them a joint boundary wall with their neighbours had been damaged and was leaning dangerously. The damage was due to a water leak at the neighbours' property, which Mrs C and Mr C said started in March 2021 and continued until the water company fixed the leak in April 2021. However, during that time the ground had become saturated, leading the wall to lean dangerously towards Mrs C and Mr C's property.

Mrs C and Mr C were told by their neighbours they'd made a claim to their insurer for their share of the cost of repairing the damage. The neighbour's insurer agreed to cover 50% of the cost of repairing the wall, based on a surveyor's report that concluded the damage was due to the leak and the saturated ground by the wall.

However, Aviva declined Mrs C and Mr C's claim on the grounds that the wall was already leaning and was generally in a poor condition and therefore compromised (for many years). As such, this led to the damage to the wall and (under the terms of the policy) wouldn't be covered as it was gradual deterioration and in a poor condition (the policy included a condition to keep the property in good condition). While acknowledging the neighbour's insurer had accepted a claim for their share of the damage, Aviva said that was a decision for the other insurer.

Unhappy at their claim being declined, Mrs C and Mr C complained to Aviva. In their final response they confirmed their decision to decline the claim. While they appreciated Mrs C and Mr C's attempts to obtain information and reports relating to their neighbour's claim, they said they could only assess and validate Mrs C and Mr C's claim against their policy terms and conditions. Based on this, they were unable to confirm the damage to the wall was the result of a one-off insured event.

Mrs C and Mr C then complained to this service. They said the wall had always leaned towards their property, but it was only following the leak at the neighbour's property the wall began to lean dangerously. Their neighbour's insurer agreed to pay 50% of the cost of repair, based on their surveyor's report saying the damage was due to the leak. Mrs C and Mr C wanted Aviva to accept their claim (for 50% of the cost of repairing the damage).

Our investigator upheld the complaint, concluding Aviva hadn't acted fairly. While there was evidence of the wall leaning and being in poor condition, the presence of brick pillars on Mrs C and Mr C's side of the wall indicated some mitigation of the lean. But overall, he thought it likely Mrs C and Mr C hadn't complied with the condition of the policy to keep their property in good condition.

However, the investigator also thought the damage to the wall from the build-up of pressure from the leak would have been likely to cause damage to a wall in good condition (albeit less quickly). So, on balance, he concluded the damage would have happened irrespective of the condition of the wall. So, Aviva hadn't acted fairly in declining the claim on the grounds of the wall's poor condition. He thought Aviva should assess the claim in accordance with their normal claim procedure, without the good condition clause.

Aviva disagreed with the investigator's conclusions and requested an ombudsman review the complaint.

In my first provisional decision, I concluded the wall wasn't in a good condition and would have made it more susceptible to the impact of the leak. I also wasn't persuaded it would have had the impact on a wall in good condition that Mrs C and Mr C described it had on their wall.

On the point about the neighbour's insurer agreeing to pay 50% of the cost of repair, I concluded it wasn't possible to know the basis for the other insurer's decision. In the circumstances, I concluded Aviva hadn't acted unreasonably in assessing the claim against the terms and conditions of Mrs C and Mr C's policy.

Taking all these points into account, I wasn't persuaded the leak (and hydrostatic pressure) would have caused the same damage to a wall in good condition as that to Mrs C and Mr C's wall. So, I concluded Aviva acted reasonably in declining Mrs C and Mr C's claim.

Mrs C and Mr C responded in detail to the first provisional decision, including additional photographs of the wall taken before the incident, in its immediate aftermath, as well as after it had been rebuilt. They also provided additional information about the wall, together with new points about how it could have been damaged and the causes of any such damage. They also took issue with some of the findings and conclusions set out in my provisional decision. In considering what this means for my findings and conclusions, I focused on what I thought the key points, particularly those new or additional to those available when I issued my first provisional decision.

I considered four main points. First, that the wall hadn't moved in the 25 years or so since they moved into their property. They thought the wall was stable (and not in bad condition). And it was the leak at their neighbours that caused the wall to move (to lean dangerously). Second, the level of the soil adjoining the wall on their neighbour's side was higher than indicated in my first provisional decision. Combined with what Mrs C and Mr C said was the length of the area of wall affected by the leak (eight metres) and the length of time that the leak took place, they thought this would have led to a significant hydrostatic pressure on the wall (causing it to lean dangerously).

Third, they disagreed with Aviva's view that the wall had been significantly leaning for a considerable period of time prior to the incident. They also noted the wall didn't collapse during the incident – it leant significantly and dangerously, at which point they decided to remove the upper part of the wall. Fourth, they disagreed with what I said in my first provisional decision about bricks in the wall fracturing in the incident, specifically that the affected bricks were at some height above ground level, which didn't suggest it was likely the failure was due to hydrostatic pressure. Mrs C and Mr C pointed to publicly available information they'd found about vertical cracks in walls, suggesting they could indicate soil shifting underneath the wall's foundations. Based on what they'd found, Mrs C and Mr C thought the hydrostatic pressure from the saturated soil caused by the leak could have significantly damaged the wall's foundations. Which in turn would lead to a 'shearing' force on the wall, resulting in vertical cracks that were wider at the higher level of the wall

(compared to the lower level). They thought this was more likely to have caused the cracks in the wall (and failure of the bricks) than an underlying weakness in the bricks themselves.

Aviva initially responded to say they had no further information to add following receipt of the provisional decision.

However, given the detailed response to the first provisional decision from Mrs C and Mr C, I thought it reasonable to provide the response to Aviva for them to consider, including from a technical perspective. In particular, those aspects indicating new information to that previously available (the level of the soil adjoining the wall on their neighbour's side being higher than indicated in my provisional decision) and the potential impact of the hydrostatic pressure on the wall's foundations.

Aviva responded to say they acknowledged the detail of Mrs C and Mr C's response, but their view was they weren't saying the wall wouldn't have failed had sufficient force acted on it. Rather, their view was there was no evidence of a one-off incident or insured peril having occurred. They said the wall had failed because of hydrostatic pressure, being a gradual build-up of water pressure in the soil and not being relieved. This, coupled with the condition of the wall, accelerated its decline and caused the damage. The force acting on the wall wasn't in question – but the force hadn't acted in a one-off incident as defined by the policy wording. They added the height of the soil didn't change their perspective, nor the point raised by Mrs C and Mr C about the potential impact of the hydrostatic pressure on the wall's foundation.

I considered carefully the points made by Mrs C and Mr C and Aviva. I concluded that the new information, evidence and points changed my view of the complaint, such that I concluded it should now be upheld.

Because I reached a different conclusion from that in my first provisional decision, I issued a second provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided and why

I've considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether Aviva have acted fairly towards Mrs C and Mr C.

I've carefully considered the responses from Mrs C and Mr C, together with the responses from Aviva. On their first point, I don't have reason to doubt what they've said about the wall not having moved in their time at the property. And that it moved because of the leak incident. This would also be consistent with what Aviva said in their response about the wall failing because of hydrostatic pressure.

The second issue, the level of the soil adjoining the wall on their neighbour's side being higher than indicated in my provisional decision, I think this is significant. While I haven't seen any specific evidence about the impact the greater height of soil would have had, on the balance of probabilities I think it would have meant greater hydrostatic pressure bearing on the wall. Together with Aviva's acceptance of the wall failing because of hydrostatic pressure, I think this changes my provisional view about the significance of the hydrostatic pressure and its impact on the wall. So, I've concluded the wall did lean (though not fail completely) from the hydrostatic pressure.

On the third issue, the lean of the wall before the incident, having looked at the evidence provided by Mrs C and Mr C, together with the original information and photographs, I've not changed my view the wall was leaning before the incident. However, I have considered the question of the condition of the wall and the extent to which it affected its ability to withstand the hydrostatic pressure from the leak. In doing so, I've also considered Aviva's point that their decline was due (coupled with their point about the hydrostatic pressure not being a one-off event as defined in the policy) to the condition of the wall.

Given what I've now concluded about the likely greater significance of the hydrostatic pressure from the leak, I've thought again about whether the condition of the wall is likely to have affected its ability to withstand the pressure. Or whether the wall would have been likely to be affected irrespective. Looking at the available evidence again, I've changed my view on this point. Given the likely more significant hydrostatic pressure, I think (on the balance of probabilities) it's likely the damage to the wall would have happened irrespective of its condition. So, I've concluded it isn't reasonable for Aviva to decline the claim on the grounds of the condition of the wall (their original grounds for decline of the claim).

On the fourth point raised by Mrs C and Mr C, the likely impact of the hydrostatic pressure on the wall's foundations, while they've pointed to publicly-available information on this issue, they haven't provided any specific, expert evidence to support its relevance or presence in the specific circumstances of the wall at their property. Without that specific evidence, I'm not persuaded it changes my view. For their part, Aviva haven't specifically commented on the issue, as they don't consider it changes their view about the hydrostatic pressure (coupled with the condition of the wall) being the cause of the damage.

Having considered each of Mrs C and Mr C's points, I've also considered Aviva's point about the force acting on the wall not being in question – but the force hadn't acted in a one-off incident as defined by the policy wording. However, this wasn't one of the reasons given by Aviva when they declined the claim originally. They did so on the grounds that the wall was already leaning and was generally in a poor condition and therefore compromised. As such, this led to the damage to the wall and (under the terms of the policy) wouldn't be covered as it was gradual deterioration and in a poor condition.

However, as I've changed my view about the likely impact of the condition of the wall on its ability to withstand the hydrostatic pressure, I've considered Aviva's view. However, I'm not persuaded it's reasonable. Having looked at the wording of the policy, I can't see any term of 'one-off event' defined. Nor can I see an exclusion that would clearly apply to what seems to me to be an event involving (as Aviva's case notes indicate) an 'escape of water' (which would be covered). In the absence of a clear definition, I don't think it's reasonable to say that the leak – even though it continued for some weeks before being fixed by the water company – wasn't a 'one-off event'. Based on these factors, I've concluded it isn't reasonable to decline the claim (now) on these grounds.

Taking all these considerations into account, I've changed my view and have now concluded Aviva haven't acted fairly in declining Mrs C and Mr C's claim.

Having reached this conclusion, I've gone on to consider what I think Aviva needs to do to put things right. As they have unfairly declined the claim (on the grounds of the condition of the wall and that there wasn't a one-off event or insured peril under the policy) they should settle the claim in accordance with the remaining terms and conditions of the policy. My understanding is that the wall has been rebuilt following the incident, with Mrs C and Mr C having paid half the cost (the other half having been settled by the neighbour's insurer). Given this, I think it's reasonable for Aviva to settle the claim on the basis of half of the cost (subject to Mrs C and Mr C providing evidence of the cost and their having paid half). This should be subject to any policy excess, as appropriate.

On the assumption Mrs C and Mr C have already paid half of the cost of rebuilding the wall, Aviva should also add interest at 8% a year simple from the date Mrs C and Mr C paid their share of the cost, to the date Aviva settle the claim.

Given what's happened, I also think it's reasonable to consider the impact of the case on Mrs C and Mr C, in terms of the distress and inconvenience to them. Taking all the circumstances of the case into account, I think £250 would be reasonable.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Mrs C and Mr C's complaint. I intend to require Aviva Insurance Limited to:

- *Settle Mrs C and Mr C's claim in accordance with the remaining terms and conditions of the policy. On the assumption Mrs C and Mr C have paid half the cost of rebuilding the wall, Aviva should settle the claim on the basis of half the cost (subject to Mrs C and Mr C providing evidence of the cost and their having paid half).*
- *Pay Mrs C and Mr C £250 in compensation for distress and inconvenience.*

On the assumption Mrs C and Mr C have already paid half of the cost of rebuilding the wall, Aviva Insurance Limited should also add interest at 8% a year simple from the date Mrs C and Mr C paid their share of the cost, to the date they settle the claim.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Mrs C and Mr C accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Mrs C and Mr C responded to say they had nothing else to add. But if Aviva responded with any additional information, they would like the opportunity to review any such information and respond.

Aviva responded to say they had no further comments to add to what they had already provided and their technical team hadn't commented further.

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.

My role here is to decide whether Aviva have acted fairly towards Mrs C and Mr C. As both Mrs C and Mr C and Aviva have responded that they have, respectively, nothing else to add and no further comments, then my final decision remains the same as my second provisional decision, for the reasons set out in the second provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Mrs C and Mr C's complaint. I require Aviva Insurance Limited to:

- Settle Mrs C and Mr C's claim in accordance with the remaining terms and conditions of the policy. On the assumption Mrs C and Mr C have paid half the cost of rebuilding the wall, Aviva should settle the claim on the basis of half the cost (subject to Mrs C and Mr C providing evidence of the cost and their having paid half).

- Pay Mrs C and Mr C £250 in compensation for distress and inconvenience.

On the assumption Mrs C and Mr C have already paid half of the cost of rebuilding the wall, Aviva Insurance Limited should also add interest at 8% a year simple from the date Mrs C and Mr C paid their share of the cost, to the date they settle the claim.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell them Mrs C and Mr C accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 6 December 2022.

Paul King
Ombudsman