

The complaint

Mr E complains about the decline of his buildings insurance claim under his 'Masterpeice' policy by Chubb European Group SE ('Chubb').

Chubb are the underwriters of this insurance policy. Part of Mr E's complaint is about the actions of agents appointed by Chubb. As Chubb have accepted responsibility for their agent's actions, any reference to Chubb should also be interpreted as referring to the actions of their agents.

What happened

The background to this complaint is well known to Mr E and Chubb. Rather than repeat what is already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr E had a holiday home insured with Chubb. The property was in France. Following the collapse of a retaining wall in late 2023, he made a claim under the buildings insurance part of his policy.

Chubb declined the claim initially, as they said Mr E's house was not damaged and the event that caused the wall to collapse wasn't covered. Mr E contested this and said his sewage system (connected to the house) was damaged. Chubb reconsidered the claim and agreed to settle the part of the claim related to the sewage/drainage system but maintained the main decline (collapsed wall). They said a lack of drainage at the lower levels of the collapsed wall were to blame and this fell under a policy exclusion.

Mr E raised a complaint with Chubb. As he remained unhappy with their response, he referred the complaint to our Service on 27 January 2024, for an independent review. Our investigator considered the complaint and recommended that it be upheld. As the dispute remained unresolved, the complaint was referred to me for a decision.

I recently sent both parties a copy of my provisional, intended decision. As the deadline for responses has now passed, I've considered the complaint for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Responses to the provisional decision

Both parties responded before the deadline set. Neither party has provided any additional comments or evidence that fundamentally changes the intended decision.

Mr E said he reluctantly accepted the decision and that he'd write to Chubb as he was yet to receive payment for *'100% of the reinstatement costs of the drainage system... a further 10% of these costs for the reinstatement/stabilisation of the land and...£200 complaint credit'*. In my opinion, the matter of that earlier offer was not highlighted by Mr E as an area of contention during his complaint journey with our Service. Instead, he had focused on the larger declined claim for the retaining wall.

However in the interests of pragmatism and drawing this dispute to a close, I've decided to include this issue in my final decision.

Given the developments with the sale of Mr E's property since this claim was raised and that he no longer has an insurable interest, he would need to sufficiently evidence to Chubb his outlay/expenditure on the drainage system repairs for their consideration and reimbursement up to their earlier offer value. Both parties will also note I've not included a requirement for Chubb to pay 8% simple interest per annum on this amount - as I'm satisfied the earlier offer was fair and made available to Mr E without any conditions attached or implications for the other, larger part of his disputed claim. Any later issues around payment would need to be subject to a new complaint.

The remainder of my earlier findings remain largely the same as before and form the basis of this, my final decision. This means, although my decision contains a direction, it won't be recorded as a 'change in outcome' for reporting purposes - as what I'm telling Chubb to do was already offered before the complaint came to our Service.

The scope of my decision

The complaint referral to our Service was made following a final response letter dated 22 January 2024. In that letter, Chubb didn't uphold the main part of Mr E's complaint (the declined wall claim), but recognised there'd been issues with the survey they'd arranged and offered £200 as an apology for the service provided.

The above point is important, as after Mr E made his complaint referral and our Investigator sent their assessment (recommending that the complaint be upheld) further significant developments took place. Mr E accepted our Investigator's findings, Chubb didn't.

Primarily, Mr E sold the property in June 2024 and no longer retained an insurable interest. He told us in an email dated 25 June 2024:

"I had to sell the property as I couldn't pay out the costs of the wall rebuild..."

And he has recently told us:

"...the wall rebuild costs would be netted off the purchase price - which they were in the sales contract. If I had retained the property the costs of the wall rebuild would have had to be paid from my pension savings which I didn't want to do but I sold the house as I could not carry on with the financial burden of the running costs."

In effect, Mr E is now claiming for a financial loss (sale value) because of Chubb's decision to decline the claim.

The other significant development was a further expert report was carried out into the loss in June 2024 – around 6 months after the final response letter ('FRL'), referral to our Service and our Investigator has already issued their initial assessment of the complaint.

I make these points as usually, under the rules our Service must operate under (DISP), a

financial business must first have the opportunity to consider a complaint event and either issue a final response letter or allow 8 weeks to elapse before a complainant can refer the complaint to our Service for our consideration. However, as the report from June 2024 came about in response to our Investigator's assessment, for fairness and completeness, I've considered events up until June 2024 when reaching my decision.

I'll only go on to consider the loss Mr E has suffered if I find that Chubb have unfairly reached their claim position. As the sewage/drainage part of the claim has been settled, I won't be making any findings in relation to that part of the claim.

It's not our role to determine the proximate cause of a loss. Ours is an evidence-based organisation and the main consideration I'll be making in this complaint is whether Chubb have fairly investigated and considered the complaint before declining it in line with the policy terms.

A number of expert reports have been provided and although I've thoroughly considered all of them, I won't quote the reports line by line or comment on every part of them.

My key findings

The starting point with any claim is the insured (Mr E) has to demonstrate that an insured event covered by the policy has occurred. The onus then passes over to the insurer (Chubb) to either accept and settle the claim, or decline it in line with the policy terms.

In summary, Mr E has argued his claim is payable as:

- He wasn't aware of the wall in question having been rebuilt before or after he purchased the property in 2019.
- The wall had been built around 15 years ago.
- There is no evidence of faulty construction in the remaining wall that is standing.
- The cause of the collapse was heavy rainfall which applied increased soil/earth pressure to the wall, resulting in a landslide.

Chubb on the other hand, in summary, have declined the wall claim as they say:

- A one-off rainfall event wasn't solely responsible for the wall collapse. The wall was predisposed to instability.
- The collapsed wall had no drainage. There is no drain at the base, nor any weep holes near the base.
- "The collapsed section of wall was a double wall, the remaining sections of wall are made from limestone block masonry (not a double wall). The failure of the 'double' section is... as a result of a weakness at the junctions with the single walls..."
- The absence of breeze blocks on the parts of the wall that have not collapsed on either side of the damaged area could indicate that the wall had previously been rebuilt after previous damage.
- There were potential weaknesses at the junctions of the double skimmed wall and the original wall.
- The remaining sections of the wall still standing are bulging at lower levels which indicates the wall can't withstand the pressure of the soil behind it.
- The loss being claimed for wasn't caused by a one-off incident of rainfall - rather the damaged wall faced increased pressure over a period of time which was compounded by no drainage (weepholes) in the lower parts of the wall and eventually the force on it became too much to withstand.
- There were no other landslides recorded within 500m of the Mr E's property and the property is located in an area of clay shrinkage and swelling risk.

Having carefully considered all of the evidence and representations from both Mr E and Chubb, I currently intend to find that Chubb have fairly declined Mr E's claim for damage to the retaining wall. I'll explain why below. The relevant exclusions (gradual or sudden loss and faulty planning, construction or maintenance) relied on can be found on page 27 of Mr E's policy document.

The evidence I'm most persuaded by is the third report, carried out in June 2024. This report goes into much greater detail than the earlier reports and provides evidence backed explanations as to what likely led to the collapse of the wall. I find that Chubb can fairly rely on it to decline the claim. Nothing provided by Mr E has sufficiently undermined this report.

As this claim was initially raised as a storm damage claim, I've also kept our well-established approach to storm damage claims in mind when reaching my decision. It's not in dispute that there was very heavy rainfall around the time of the wall collapse following an earlier period of very dry weather. Given that Mr E's property rested on ground that was susceptible to clay shrinkage and swelling, this is important. The referenced reports also highlight this issue.

When considered alongside the design of the wall, the bulging of the sections still standing and the lack of drainage in the collapsed section - I find that Chubb fairly investigated this part of the claim before declining it in line with the relevant policy terms.

For Mr E's complaint to succeed I'd have to be persuaded, on balance, that his explanation and evidence was more persuasive and undermined the position taken by Chubb. In summary – that the wall was well designed, in good condition, had adequate drainage and it was one off heavy rainfall that caused the landslip. Chubb have acknowledged that the heavy rains were a contributory factor (clay swelling) - but not the dominant cause of the wall collapse. The basis of their argument is 'but for' the wall's design and drainage issues – it wouldn't have been toppled by the increased pressure the swollen clay exerted on it. On balance, I find this to be reasonable.

I've also considered if any other part of the policy ought to have responded to this claim, but overall I find that Chubb haven't unfairly declined the claim when choosing to rely on the relevant policy exclusions.

It follows, that as I've found Chubb fairly declined the wall claim, I won't be going on to consider the financial loss Mr E says he's suffered because of the wall not being repaired prior to the sale of his property.

The service provided when considering the claim

It's disappointing that some of the most detailed evidence from Chubb is dated around six months after the final response letter and our Investigator's assessment had gone out. But for balance, an insurer is entitled to initially proportionately investigate a claim and it wouldn't be uncommon for more detailed evidence - such as multiple reports/surveys to be presented as a claim progresses and both parties remain in dispute.

Chubb initially declined the claim for damage to the drainage system. But I note that they then offered a claim settlement for this part of the claim. As outlined earlier in the decision, I've included this as part of my direction.

In their final response letter, Chubb also offered £200 in recognition of the impact of their service failings on Mr E. On balance, I find this to be fair, reasonable and proportionate – relative to the impact on Mr E. As it doesn't appear this was paid (prior to Mr E's acceptance following our Investigator's assessment), I'll be directing Chubb to pay it (if they've not already done so).

Putting things right

Chubb European Group SE need to (if they've not already done so):

- Pay Mr E £200 in recognition of the impact of their service failings.
- Settle the claim for the drainage/sewage pipes part of the claim and 10% uplift for land stabilisation as per their earlier offer - subject to satisfactory evidence from Mr E that he has had these repairs carried out and incurred an outlay.

My final decision

My final decision is that I partially uphold this complaint and direct Chubb European Group SE to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 March 2025.

Daniel O'Shea
Ombudsman