

The complaint

Mr and Mrs L complain that Lloyds Bank General Insurance Limited turned down their building insurance claim and then refused to renew their policy.

What happened

Mr and Mrs L held building insurance cover with Lloyds Bank. At the rear of their garden there's a retaining wall which runs alongside a river/brook. The wall is shared with their neighbours, with each neighbour responsible for their own section of the wall.

On 9/10 February 2024, part of the wall collapsed. Mr and Mrs L's section of the wall showed crack damage, and there was movement to their garden decking. They therefore made a claim to Lloyds Bank.

Lloyds Bank assessed the claim. It noted there was a new section of wall that had been built on top of an older wall, and it was the newer upper wall that had the crack damage. Lloyds Bank thought the damage to the upper wall had been caused by settlement of the older wall. And that the older wall had settled due to river erosion, gradual dilapidation and trees growing through it. Lloyds Bank noted there was slight deformation of the rear decking that was partly supported by the retaining wall, and thought the movement had been caused by deterioration of the supporting timbers.

Lloyds Bank considered the claim under the subsidence cover and accidental damage cover, but concluded a claim wasn't payable under either section of the policy. It therefore turned down the claim. Lloyds Bank also decided not to offer cover to Mr and Mrs L at their policy's renewal the following year.

Mr and Mrs L complained to Lloyds Bank about its decision to turn down their claim, and decision not to renew their policy.

Lloyds Bank issued its final response to the complaint in July 2024, but didn't alter its claims decision or decision not to offer Mr and Mrs L renewal of their policy. Unhappy with this, Mr and Mrs L brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought Lloyds Bank's decision to turn down the claim had been fair, and also said it was up to Lloyds Bank if it wanted to offer Mr and Mrs L renewal of their policy.

Mr and Mrs L didn't accept our investigator's findings and so the matter has been passed to me for a 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.

Lloyds Bank arranged for a structural engineer (Mr P) to carry out an inspection. Mr P made the following main observations and conclusions:

- The modern wall upstream had dropped vertically due to the collapse of the original drystone wall underneath.
- The timber decking felt springy underfoot, but this appeared to be the result of a combination of lack of maintenance and inadequate support.
- The cracking to Mr and Mrs L's section of wall was clearly associated with obvious weaknesses and dilapidation of the lower wall.
- A tree (one of several) was growing out of the lower wall.
- The collapse of the wall upstream hadn't damaged Mr and Mrs L's section of the wall.
- The damage to Mr and Mrs L's wall appeared to be the result of inadequate consideration of the effect of building the modern wall on top of the older wall, together with the gradually operating effects of weather and lack of maintenance.
- The deterioration of the decking stemmed from poor design and maintenance. It may be regarded as a temporary structure and prone to deterioration.

Mr and Mrs L then arranged for a civil engineer (Mr T) to carry out an inspection. Mr T made the following main observations and conclusions:

- The wall was in fair to poor condition, but stable. It had significant cracks at the top section and erosion at the base. The crack damage followed a pattern of stepped failure, typical of foundation settlement or settlement of the supporting wall below.
- The older drystone wall was structurally stable but had been affected by scouring at the base which had caused settlement.
- The ground abutting the wall had settled and was revealed by settlement of the timber decking towards the fall. There were areas where the decking had failed.
- The house had no signs of movement/damage.
- Some of the concrete flags used as coping had slipped as they slightly protruded from the rest of the wall. This misalignment could have been caused by the collapse of the wall upstream.
- The newer section of masonry wall had developed stepped cracks, and these were discovered after a heavy storm. Their nature indicated settlement issues and the cracks were localised in the areas of settlement around the area of scouring.
- The foundation of the drystone wall has settled due to soil erosion around the base. The concrete apron (built to prevent erosion) has failed, and the presence of the concrete apron indicates a history of issues with erosion.
- Due to the deterioration of the concrete apron, the wall has little to no protection against further deterioration at its base from scouring as well as a storm event.
- The collapse of the wall upstream likely accelerated the deterioration of the stream's invert and wall, further compromising the structural integrity of the wall.
- Significant scouring was observed in the stream's bed, undermining the foundation of the wall. The erosion caused by the stream, particularly after the flooding event, resulted in its failure and had a substantial impact on the structure of the wall.
- Increased water velocity during a storm event concentrates flow towards the base of the wall, exacerbating scouring.
- The loss of the concrete apron (protection from scour) due to the increase in river velocity during a storm event has increased the risk of erosion leading to settlement of the drystone wall.

So, Mr P (appointed by Lloyds Bank) thought the damage was caused by a combination of factors – namely that the modern wall shouldn't have been built on top of the older drystone wall, as well as gradual weathering damage and lack of maintenance of the older wall. This led Lloyds Bank to consider there had been settlement of the older wall, caused by river

erosion (amongst other reasons). It also thought there was very limited drainage and no allowance for thermal expansion in the modern wall, both of which may have exacerbated the movement.

Mr T (appointed by Mr and Mrs L) thought the cracking to Mr and Mrs L's section of the upper wall had been caused by settlement of the older drystone wall below. Mr T said the settlement of the drystone wall was caused by scouring beneath the wall. Therefore, both parties seem to be largely in agreement that the cause of damage was settlement of the older drystone wall, and this had mainly been caused by erosion/scour.

Mr T has helpfully provided further information about the term 'scour'. He explains that scour is the erosive removal of sediment around structures like foundations due to flowing water. He says scour can be categorised into two types – long-term scour and acute (event driven) scour. He explains that acute scour entails sudden and severe erosion occurring during extreme flooding. Mr T said it was his analysis that the scour affecting Mr and Mrs L's section of the wall was acute and was a direct consequence of intense rainfall and flash flooding. His reasoning for this was evidence of fresh erosion with minimal vegetation growth thereby indicating recent activity, a lack of layered sediment deposits which would typically indicate chronic scouring, and distinct and sharp undermining at specific sections of the wall, consistent with sudden hydraulic forces.

I've therefore considered what the policy covers. When Lloyds Bank assessed the claim, it considered it against the subsidence cover and accidental damage cover. Our investigator also thought about whether the damage would be covered under the storm peril, but concluded it wasn't. I've therefore considered each of these sections of cover, as well as the relevant exclusions that Lloyds Bank has relied upon.

The policy defines 'storm' to mean '*strong winds over 55mph, and/or hail or snow that's extreme enough to damage hard surfaces or break glass. Rain alone is not a storm*'.

As our investigator has explained, when considering a claim for storm damage, we will ask three questions. If the answer to any of these questions is no, it's unlikely we'd expect an insurer to accept a claim for storm damage. The questions are:

- 1 – were there storm conditions on or around the date the damage happened?
- 2 – is the damage consistent with damage a storm typically causes?
- 3 – were storm conditions the main cause of the damage?

Mr and Mrs L notified Lloyds Bank of their claim on 12 February 2024. I note the face of the wall can't be seen from their property, and I understand they had to cross the brook in order to view the damage to the wall. I think it's reasonable to assume their reason for doing this was the collapse of the wall upstream on 9/10 February 2024. So, the crack damage to their section of the wall may well have been there before they inspected the wall on this date.

I've seen an email from the Environment Agency which says they routinely carry out visual inspections of watercourses, and in doing so, often inspect privately owned structures such as walls. And where their inspections note damage to privately owned elements, such as the boundary wall here, they will endeavour to write to the landowners. They confirmed the river behind the property is inspected on an annual basis, and whilst there are records of two collapses that have taken place, no defects or damage was noted before those events. However, they also said they were limited to what they could access and visually inspect.

We don't know when the Environment Agency carried out their last inspection and also don't know if they actually inspected Mr and Mrs L's section of the wall. So, we can't be sure when the cracks appeared.

Nonetheless, I've looked at the weather reports for February 2024, and I see there were storm conditions (storm force gusts) for a few days at the beginning of this month. So, the answer to question one is potentially yes, though this wasn't immediately before the damage was discovered.

Moving onto point two. The damage to Mr and Mrs L's section of the wall is crack damage. I wouldn't expect a storm to typically cause a retaining wall to crack. So, the answer to question two is no.

Turning to point three. If a storm *did* cause the scouring of the wall's foundations, and this in turn led to the settlement and therefore crack damage in the wall and the dipping to the decking, you might say that storm was the indirect cause of the damage. Though I can't say the storm was the main cause of damage, since the damage was ultimately caused by settlement.

Mr T has explained that acute scour happens during extreme flooding. However, there was very little rainfall on the days when there were storm force winds in early February 2024. I note there was high levels of rainfall on 9 February 2024, though not enough for me to describe this as a rainstorm. Also, our investigator checked the levels of the brook around this time and noted the recorded levels were within the usual ranges, and there were no periods of particularly high levels.

So, there was no identifiable extreme flooding event caused by a storm around this time which could be said to have caused acute scouring beneath the wall (and therefore the settlement). I'm not persuaded that a storm was the main cause of damage. So, the answer to question three is no.

As the answer to two of the questions is 'no', I'm satisfied that Mr and Mrs L don't have a valid claim under the storm section of cover.

The policy also covers subsidence, including heave and landslip. However, it excludes claims for damage to garden walls and decking unless the property is damaged at the same time by the same cause. Mr and Mrs L's property showed no sign of damage. Therefore, there's no cover under the subsidence section of the policy.

Finally, Mr and Mrs L's policy includes accidental damage. The policy terms say this means *'damage that's sudden, unexpected and not done on purpose. There needs to be a one-off, specific event that caused the damage...It doesn't include damage that's due to a lack of maintenance or damage that happens slowly over time...'*

The damage to Mr and Mrs L's section of the wall and decking (though Mr P also thought the decking was poorly designed and maintained) has been identified by Mr T and Lloyds Bank as being caused by settlement, and I note that settlement is specifically excluded under the accidental damage cover.

Also, as I've said above, there's no specific one-off flooding event (whether caused by a storm or not) identified that can be said to have caused the scouring and therefore the damage to the wall and decking.

As an aside, whilst I appreciate Mr T thought there had been acute scour rather than long-term scour, as I've said there hasn't been an identifiable event that caused this. So, I think it's probably reasonable to say this happened over a period of time, even if not considered to have happened over the long-term. The policy has a general exclusion for damage caused by ground being worn away over time by water.

So, I'm satisfied it was reasonable for Lloyds Bank to refuse the claim under the accidental damage section of cover too.

Lloyds Bank has also relied on other policy exclusions, including poor workmanship and design, but as I've already found the claim isn't covered, there's no need for me to consider these.

I've thought about whether the misalignment of the coping stones on the top of the wall would be covered under the accidental damage section of the policy. Mr P concluded the collapse of the wall hadn't damaged Mr and Mrs L's section. Mr T thought the misalignment *could* have been caused by the collapse of the wall upstream. Given the uncertainty around this, I don't think there's enough here for me to say the collapse of the wall upstream most likely caused damage to the coping stones. If settlement of the older wall caused the cracks in the newer modern wall, this could have also caused the coping stones to move.

I recognise my decision will disappoint Mr and Mrs L, but I don't require Lloyds Bank to accept the claim.

Mr and Mrs L are also unhappy about Lloyds Bank's decision not to offer them renewal of their policy.

It's up to an insurer what risk to accept, and what terms it wants to offer (if at all). Lloyds Bank decided not to offer Mr and Mrs L renewal in 2025 because of the additional risk to the property presented by the problem with the wall. As part of the wall has collapsed, it's thought Mr and Mrs L's section of wall is also in danger of collapsing and it's not known what impact this will have on their property. I think this was a commercial decision Lloyds Bank was entitled to make. The policy terms make it clear that the policy provides cover for 12 months, and if Lloyds Bank wishes to offer renewal, it will get in touch with the insured before their renewal date. Though here, Lloyds Bank decided not to offer Mr and Mrs L renewal and told them of this decision several months before their policy was due for renewal. I think this was fair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 20 August 2025.

Chantelle Hurn-Ryan
Ombudsman