

The complaint

Mrs H and Mr P have complained that Aviva Insurance Limited (“Aviva”) unfairly declined a claim for damage to their property, following a period of adverse weather.

Any reference to Aviva in this decision includes its appointed agents.

Mrs H and Mr P have been represented in this complaint by a third party. For simplicity I’ll refer to the representative’s comments as Mrs H and Mr P’s own.

What happened

Mrs H and Mr P’s property stands on a river bank and the garden adjacent to their property is supported by stone retaining walls. In February 2024, Mrs H and Mr P made a claim under their home insurance policy with Aviva, after a period of adverse weather caused the river to flood and put pressure on nearby structures. Their rear terrace, decking and a section of the retaining wall collapsed as a result.

Aviva appointed loss adjusters to visit the property and carry out an inspection, and the claim was subsequently declined, with the underwriter citing river erosion as the main cause. As this was a gradually operating cause, which is excluded under the policy, Aviva said there was no cover available.

Mrs H and Mr P challenged that decision saying they believed debris flowing down the river had impacted the wall and caused it to collapse, so Aviva agreed to send a surveyor out to inspect the damage. This inspection was arranged for March 2024 but had to be pushed back to April. A report was then produced in May.

The report concluded that the failure of the wall was a result of multiple defects, the age of the wall, the design and construction of it, and the conditions at the time of the collapse – but did not conclude that river erosion or damage from the impact of debris were the primary causes. Aviva declined the claim on the basis that the policy specifically excluded damage relating to defective design or construction, as well as wear and tear and gradually operating causes.

Mrs H and Mr P didn’t agree with Aviva’s decision, so they made a complaint. In its final response to their complaint, Aviva said Mrs H and Mr P should obtain an independent surveyor to undertake an inspection and produce a cause of damage report. It said it would then consider this.

In August 2024, Mrs H and Mr P provided a claim report from their own loss adjusters which concluded that the failure of the wall was due to extreme weather conditions that resulted in significant flooding, and they also referred their complaint to the Financial Ombudsman Service. Our Investigator considered the complaint, but didn’t recommend it be upheld. She said, in summary, that although Mrs H and Mr P held an all-risks policy, based on the available information Aviva had fairly relied on the defective design exclusion.

Mrs H and Mr P didn’t accept our Investigator’s opinion. They said there had been

procedural inconsistencies, a shifting causation narrative and that the insurer's version of events had been accepted without scrutiny. So the complaint was referred to me for an Ombudsman's 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mrs H and Aviva have provided. Instead, I've focused on those I consider to be central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

I'm satisfied Aviva didn't fairly rely on the river erosion exclusion when it gave its initial reason for declining the claim. The exclusion for river erosion isn't relevant to this claim, as that particular exclusion only relates to loss or damage caused by subsidence or heave of the site on which the buildings stand, or landslip. There's no evidence of those perils in Mrs H and Mr P's case.

That being said, I don't consider this meant the claim was ultimately unfairly declined. On 24 May 2024 Aviva confirmed that the collapse had occurred due to the wall's defective design and construction and gradual causes. I think the further investigations it carried out would've always been necessary to establish the cause of the damage because there wasn't enough information available to fairly determine the cause before the surveyor had carried out his assessment in April 2024.

When making a claim on an insurance policy, it is for the insured – so in this case Mrs H and Mr P – to demonstrate they've suffered a loss covered by the policy. If they can do so, then Aviva would need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it. So I've considered whether Aviva has applied the following policy exclusion fairly to decline the claim:

"13. Defective Design or Construction Exclusion

We will not pay for any loss, damage, liability, cost or expense of any kind caused by or resulting from:

- *poor or faulty design*
- *defective or faulty materials*
- *faulty workmanship*
- *failure to comply with manufacturers' installation instructions or the required building regulations carried out by any persons including you or anyone engaged in your service"*

The evidence Aviva has relied on in relying on this exclusion and declining the claim includes the expert surveyor's report dated 11 April 2024, which concludes that the remaining walls didn't show signs of river erosion, but that it was also unlikely for debris impact to be the sole cause of the wall's collapse. The report detailed why it was unlikely – from what the surveyor saw and noted – that the wall collapsed due to the impact of debris alone. And I think the explanations he's given are sufficiently detailed and plausible. The surveyor also commented in his report that the wall wasn't of modern retaining wall design, and no drainage outlets were recorded.

In February 2025, the same surveyor wrote to this service and provided further clarification following our Investigator's queries. He said that as the wall was known to be 20 years old, serious design failures should be considered in accordance with BS 8002 and BRE Good Building Guide relating to retaining walls (GBG 27).

He added that the wall was of unreinforced design and should therefore have complied with various standards including BS 5628-1 and BS 5628-3, as well as BS 5390 for the selection and detailing of stone masonry. He also noted other design defects, including the following:

- Given the wall's height, it was unsuitable for its intended purpose as BS 8002 states that for walls over 1.5m high buttressing or reinforced concrete design should be used, which wasn't used in the construction of Mrs H and Mr P's wall.
- The design should've taken account of the influence of the drainage conditions behind and through the wall. Water should've drained into a drainage system which allowed free exit of the water either by the provision of weepholes, or by porous land drains and pipes laid at the bottom of the drainage layer.

Aviva said this was the only professional, expert opinion it had received and so it was fair for it to rely on the exclusion based on the findings of the surveyor. I'm also persuaded by the evidence that the wall was likely of poor or faulty design and so it was fair for Aviva to rely on the exclusion it relied on to decline the claim, because the defect was material to the loss Mrs H and Mr P incurred.

In response to our Investigator's view, Mrs H and Mr P have said the following:

- If Aviva seeks to rely on a faulty workmanship exclusion, it would still be responsible for the damage, as the wall was rebuilt by Aviva following a previous claim by the neighbour.
- They still believe the damage was caused by impact from items being washed downstream as reported in the news.
- They had personally seen weep holes in the wall that was rebuilt, but these cannot be seen now because that part of the wall was washed down the river in the storm. And to allege that the wall had no weep holes is to accuse Mrs H and Mr P of being dishonest.
- That the Ombudsman is in place for consumers and the insurer has been believed without challenge, which is not in line with the Consumer Duty 2023.

I've considered all the points made by Mrs H and Mr P carefully. But I'm still not persuaded that Aviva has declined their claim unreasonably. Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy document, including any exclusions to cover.

And in Mrs H and Mr P's case, although the reason Aviva declined the claim may have changed – this was due in part to additional information being brought to light, through additional inspections, surveys and reports. That isn't unusual and that doesn't always mean it was unreasonable for the insurer to reach the earlier conclusions it reached based on the information available to it. I'm satisfied that when its first decision was challenged, Aviva carried out further investigations in a timely manner, as I would've expected it to.

As an Ombudsman, my role isn't to support either party to a complaint, but to determine if the financial business complained about has acted fairly and reasonably in all the circumstances. I've considered the impact of the Consumer Duty in this case and although the Duty applies to this complaint, I'm not persuaded Aviva has treated Mrs H and Mr P unfairly or that its actions haven't been in line with the Consumer Duty or what I'd expect to see in a claim of this nature.

In relation to the weep holes Mrs H and Mr P have said they've personally seen, I've no doubt they've relayed their genuine recollection – but I must base my decision on the available evidence. And the evidence – including photos – that I've seen, doesn't support the position that the wall had adequate drainage.

And I've not seen sufficient evidence that Aviva was responsible for the rebuild of the wall that collapsed in 1998. I've seen the claim form from the time and it's likely that the wall affected was a different wall which was owned by their neighbour – not the same wall which fell and was claimed for in 2024. This is also supported by the photos provided by both parties to this complaint. Mrs H and Mr P have said that the claim file is over two decades old and there must therefore be relevant information missing. They've said it's plausible that the wall repair extended beyond the initial claim narrative, but I've seen no evidence of this. So I can't safely conclude that the two claims involved the same wall and that Aviva is ultimately responsible.

I'm sorry to disappoint Mrs H and Mr P, but based on everything I've seen, I don't consider Aviva has declined their claim unfairly, so I won't require it to do anything differently. If Mrs H and Mr P obtain any new evidence to challenge Aviva's findings, however, then they should put this to Aviva in the first instance and I'd expect Aviva to fairly consider it. If they then disagree with Aviva's response, they will be able to raise a complaint with Aviva and ultimately refer that complaint to this service – subject to the usual rules and time limits that apply.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr P to accept or reject my decision before 21 October 2025.

Ifrah Malik
Ombudsman