

The complaint

Mr B and Mrs B complain that Aviva Insurance Limited have unfairly declined their claim for damage caused by a fallen tree.

What happened

Mr Band Mrs B held buildings and contents insurance with Aviva.

In October 2024 a tree from a neighbouring property fell onto their property during a storm. It landed on their tennis court, damaging both the boundary fence and the tennis court fencing.

The tree was removed and Mr B and Mrs B's neighbour paid for the boundary fence repairs. They then made claim for damage to their tennis court perimeter fence.

Aviva declined the claim, saying that the policy didn't cover damage to fences.

Mr B and Mrs B complained to Aviva, saying that it wasn't the boundary fence they were claiming for but the tennis court perimeter fence, which Aviva had covered on a previous claim.

Aviva rejected Mr B and Mrs B's complaint, and so they brought their complaint to us.

One of our investigators looked into the complaint and although he initially thought that the claim shouldn't have been declined, after receiving further information, he changed his view and agreed that Aviva had acted fairly.

Mr B and Mrs B disagreed with our investigators view, and so the case has come to me to review.

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 have to decide whether Aviva have applied the terms of the policy and acted fairly when declining the claim. Having done so I'm not upholding this complaint, and I'll explain why.

Aviva are relying on the exclusion at page 17 of the policy to decline the claim. Under the section entitled - "Buildings – what's not covered", it says:

"Damage to fences, gates and hedges caused by storm, or by falling trees or branches"

Mr B and Mrs B say that this is unfair because the fencing which is damaged is not boundary fencing, but the wire perimeter fencing around the tennis court, which is an integral part of the tennis court. They say they are unable to play tennis with the fence down as balls would go outside the court.

Mr B and Mrs B have also argued that when a previous tree fell on the tennis court in 2022, Aviva paid for the repairs to the fencing, and so this creates a precedent.

I've thought about what Mr B and Mrs B have said and whether the exclusion has been fairly applied.

The exclusion is wide and doesn't say that only boundary fencing is excluded, which means it applies to all fencing, gates and hedges within the property. So, it may similarly exclude fencing that is for other specific purposes, such as surrounding a pond, or separating a section of the garden. While I appreciate that the damaged fencing is to segregate the tennis court, I can't fairly say that the exclusion doesn't apply - it is still within the broad term of fencing. The fact that it may be an integral part of the tennis court doesn't assist them as there is no specific cover for the tennis court in the policy.

I can also see that Aviva have previously paid for repairs to the tennis court fence in 2022 under similar circumstances when a tree fell on the court.

It's important to understand that each renewal of policy constitutes a new contract of insurance, and Aviva are entitled to assess each claim separately and on the circumstances of the claim and the policy wording at that time.

The wording in force at the time the policy was originally bought only excluded loss or damage "caused by storm to fences, gates and hedges".

The policy wording changed from renewal in August 2021 to also exclude damage to fences caused by falling trees. However, when determining the claim in 2022, Aviva accepted that the wording change wasn't drawn to Mr B and Mrs B's attention at renewal, and so they decided to pay it. This doesn't, however, create a precedent as Mr B and Mrs B think, as each claim is decided on its own merits, and I can't see that Aviva have misinterpreted the terms as at November 2024 unfairly.

I appreciate this isn't the answer Mr B and Mrs B wanted, but I hope it explains why I don't think Aviva have done anything wrong here.

My final decision

My final decision is that I'm not upholding Mr B and Mrs B's complaint about Aviva Insurance Limited and so they don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 3 June 2025.

Joanne Ward
Ombudsman