

The complaint

B complains that Aviva Insurance Limited has unfairly declined to accept a claim made for damage to the retaining wall at its property.

B does not think Aviva has acted fairly when relying on an exclusion relating to gradual deterioration. It feels the cause of damage is Accidental and should be accepted under the policy as such.

What happened

B notified Aviva that the retaining wall had unexpectedly collapsed on 20 January 2024. Aviva appointed its specialist contractor to inspect the damage and following the inspection report completed on 25 March 2024, Aviva declined to cover the claim.

Aviva said it believed the cause of the damage had been occurring over time with the structure of the wall having been weakened with the tree roots as this grew. So it repudiated the claim as it felt its exclusion to not cover damage which is the result of gradual deterioration or wear and tear was applicable.

B contested the claim decline and provided further information to Aviva in November 2024. It didn't think the report was completed by a qualified expert and the claim decision was wrong for a number of reasons. It said the wall had stood for around 50 years and had always been well maintained and it was built in accordance with the building standards and practices of the time. The collapse of the wall was sudden and unforeseen and it believed the cause of the collapse was the underground tree roots from a cherry tree situated near the wall. It also highlighted a number of errors within the experts report.

Aviva passed this to its specialist contractor to consider whether its position on the claim should change. It provided a response which maintained its previous recommendation to decline the claim. It said the tree roots would have destabilised the masonry over a significant period of time and it felt this was the cause of the damage to the wall. It also highlighted some concerns with the structure of the wall and its build. Overall, it said it felt the exclusion had been fairly applied and it didn't think the claim decision should change.

B brought its complaint to this Service and our investigator didn't think Aviva had made an unfair claim decision based on the information provided to it at the time. They explained they could only consider the actions of Aviva up until the point of the final response issued in December 2024 and based on what had happened up until this point, they didn't think Aviva had treated B unfairly.

The investigator explained Aviva needs to demonstrate it has fairly relied on the exclusion within the policy. When it repudiated the claim and later maintained this decision when the decline was appealed, it had expert evidence which supported its position. They didn't think B had provided anything to persuade them that Aviva had been unreasonable when relying on the information it had. As a result, they didn't uphold B's complaint.

B didn't agree with the investigators outcome and provided a significant amount of

information it had gathered since the wall had been repaired which they felt demonstrated the claim decision made by Aviva was unfair. Our investigator said this was information that hadn't been considered previously by Aviva and had only become available after its had considered the complaint, so they couldn't comment on it. They had focused on what had been available to Aviva on 30 December 2024 only, and based on this, they didn't think Aviva had made an unfair claim decision.

B still disagreed with the outcome and asked that the complaint be referred for 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.

I've decided not to uphold this complaint, for much the same reasons as our investigator. I appreciate B will be disappointed with the outcome, but I'll explain why, I don't think Aviva made an unfair claim decision previously or has treated B unfairly.

B has made a claim for Accidental Damage to its property with the damaged retaining wall. When a claim is made, the claimant needs to demonstrate there is an insured event or peril. Aviva hasn't disputed that the wall has been damaged, nor that the damaged could be classed as Accidental Damage. But it has said it thinks the exclusions within the policy are relevant here and can be relied on.

Aviva has said 14.2.2.2 and 14.2.2.4 is relevant and says the following:

"We will not provide cover for, ... gradual deterioration, wear and tear, atmospheric or climate conditions, normal settlement or shrinkage, domestic pets, subsidence, heave or landslip, pollution or contamination

Faulty workmanship, defective design or the use of defective materials"

When the claim was first made, Aviva instructed its specialist to report on the cause of the damage. It said there was visible evidence of tree roots from a nearby tree causing undulation to the pavement and this indicated the roots could be affecting the structural integrity of the wall. It also highlighted several concerns about the workmanship of the wall with:

"no header brick cross bonding, no retention piers to support the wall, the brickwork itself has not been cross tied to create structural stability, and the outer skin of the wall has not been tied to the outer."

Its conclusion was issues had been occurring over a period of time, with the structure weakening due to its age and installation issues along with the tree roots impairing the structure as they grew.

I don't think Aviva acted unfairly, when in receipt of the report, it declined to cover the claim as the exclusions are relevant and I think it has been evidenced there was both concerns about the impact of the general condition and deterioration of the wall because of its age and how this could have been impacted by the nearby vegetation. And with a number of concerns identified about the construction of the wall, I don't think Aviva made an unfair claim decision when declining the claim.

B asked that Aviva reconsider its position in November 2024 and provided a list of the reasons why it felt the previous claim decision was unfair and should be reconsidered. It

explained the wall had been built to the correct building standards of the time and had stood for nearly 50 years, demonstrating it was unreasonable to say it was poorly constructed or that this would have been the reason for the collapse.

It said it believed the tree roots were the cause of the damage as despite the tree having been in place for nearly 50 years too and having been regularly maintained and cropped, the roots may have now compromised the structure of the wall. It felt the surveyor who attended was inexperienced and the previous report included several errors about the damage and details of the claim, including references to there being no wall ties when the photos provided show these to be present. And it made reference to case law which it felt supported its position that the Accidental Damage was not foreseeable and was a sudden one-off event.

Aviva passed this information to its appointed expert, but it said its opinion remained unchanged. They explained the survey was completed by a different surveyor to whom B had said and as well as this person being suitably qualified, the claim was reviewed by its technical leads before the decision was made.

The action of the tree roots would destabilise the masonry over a significant period of time and this would be considered gradual deterioration to the property. And while B believed the wall was built to the correct standards, it maintained that it wasn't built as would be expected for a wall of this nature. It also said the caselaw presented related to subsidence and specifically, root induced subsidence. The claim made here was for Accidental Damage and different peril.

The expert concluded to say, it felt the undulation of the pavement evidenced on its inspection and within the photos supported that there had been significant tree root action and it was correct to maintain the repudiation of the claim under exclusion 14.2.2.2.

Overall, I am not persuaded Aviva has acted unfairly or made an unfair claim decision, based on the information available, when it maintained the repudiation of the claim. While B provided a list of what it felt was wrong and had been missed, this was its own opinion, or hearsay opinion in places, to what it had been told. But no expert evidence or opinion was provided. In comparison, Aviva used a suitably qualified expert to assess the damage at the property and later review the appeal made by B. It explained why it felt the exclusions for gradual wear and tear are applicable and I am persuaded this has been fairly used. It follows that I don't think Aviva has made an unfair claim decision.

I appreciate since the complaint was brought to us, B has received more information and opinion on the wall and the cause of the damage. I would expect Aviva to consider this and provide an answer to B as to whether it changes the position on the claim. Once provided, if unhappy with the outcome, B can raise a new complaint. But until Aviva has considered the information and made a claim decision, I cannot comment on whether it has acted fairly and it is not the role of this Service to assess the claim itself.

My final decision

For the reasons I've explained above, I don't uphold B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 10 October 2025.

Thomas Brissenden
Ombudsman