

The complaint

Mr and Mrs R complain that Aviva Insurance Limited (“Aviva”) unfairly declined a claim they made on their home insurance policy.

The policy is in both Mr and Mrs R’s name, but Mr R has brought the complaint and so for ease I will refer to Mr R throughout my decision.

What happened

Mr R has home insurance with Aviva. In December 2024 he logged a claim because the retaining wall on the boundary of his property had collapsed. The wall is next to a tree which moved during a storm and caused the collapse of the wall.

Aviva arranged for its contractor to inspect the damage and validate the claim. Following the inspection Mr R’s claim was declined. Aviva say the tree roots disturbed the wall and so the damage to the wall was gradual and, therefore, excluded under the terms of the policy.

Mr R didn’t agree. He said the wall was maintained and was in reasonable condition. He says there is no evidence the condition of the wall caused or contributed to the collapse of the wall, and the collapse was solely caused by the movement of the tree roots during the storm. So, he complained.

Aviva say based on the images and assessment provided, the damage shown to the wall is not consistent with a specified insured event. It also referred to online images from September 2023 that show gaps in the wall.

Mr R didn’t agree so he referred his complaint to this Service. Our Investigator looked at the evidence and concluded that Aviva had acted fairly and in line with the terms of the policy. The Investigator said he hadn’t seen anything to refute Aviva’s evidence, the wall collapsed as a result of the tree roots rather than the storm, and so the complaint wasn’t upheld.

Mr R didn’t agree and said he would obtain a report from the arboriculturist he consulted regarding the state of the wall.

In August 2025 I issued a provisional decision on this complaint, a copy of my findings is below:

“I’m intending to uphold Mr R’s complaint. I’ve explained my rationale below, but before I do I want to acknowledge that I’ve summarised events in my own words and in far less detail than what’s been provided to me. If I’ve not mentioned anything it’s not because I haven’t considered it – I’ve carefully reviewed the evidence submitted by both parties. Instead, I’ve focused on the key elements of the timeline, and what I consider to be the crux of the complaint – in line with our remit as a quick and informal alternative to the courts. No discourtesy is meant by that.

It is for the policyholder to demonstrate to their insurer that they have suffered an insured loss. If they can do this then, generally speaking, the insurer should pay the cost of the claim

in line with the policy terms and conditions, unless the insurer can reasonably rely on a policy exclusion which shows it doesn't need to.

Since Aviva is relying on an exclusion to decline cover, the onus is on Aviva to show it applies. That means showing the damage was caused gradually for the purposes of the claim.

Storm damage

When we consider storm damage we consider three main issues;

- 1. Were there storm conditions on or around the date the damage is said to have happened?*
- 2. Is the damage claimed for consistent with damage a storm typically causes?*
- 3. Were the storm conditions the main cause of the damage?*

It is only if the answer to all three questions is 'yes' that we can say the damage was most likely caused by a storm. I need to then go on and consider whether the exclusion for gradual cause applies.

- 1. Were there storm conditions?*

There is no dispute that there were storm conditions at the time of the damage. Aviva have accepted this. I've checked the wind speeds and am satisfied the condition has been met.

- 2. Is the damage claimed for consistent with damage a storm typically causes?*

The damage here is the collapse of the wall. I think that is consistent with the damage caused by strong winds. The issue to decide is whether the condition of the wall was the main cause of damage, or whether the wind caused it.

- 3. Were the storm conditions the main cause of the damage?*

I have reviewed Aviva's report, which concludes that the gradual operating cause exclusion applies to Mr R's claim, as the tree roots have affected the wall while the tree remains standing. The report is based on online photographs, including one from approximately 2009 showing significant gaps between the stones. However, Mr R has provided evidence that the wall was rebuilt around April 2021. So, I don't think that image is relevant here.

Another undated image, believed to be from 2023, shows minor gaps in the wall. As this is the only photograph available, it is not possible to confirm whether there is any bulging or visible movement in the wall. Aviva's claim notes confirm the wall looks to be in a good state of repair and shows no sign of damage.

I have considered Mr R's evidence that says, "Sign of instability in a wall such as bulging would be evident over time. However, there are no such signs visible in the images, which suggests the wall was in stable condition prior to the collapse. Additionally, the severity of the collapse of a large section falling at once strongly indicates that external forces such as wind-driven tree movement, contributed to the event. It would be highly unusual for a wall to collapse in such a manner without significant force acting on it."

So having considered the opinions provided I'm more persuaded by Mr R's evidence the likely cause of the wall collapse was the storm.

The exclusion

I have given thought to both reports but based on the information provided, I'm more persuaded by Mr R's evidence. Particularly because Aviva's report significantly lacks detail and does not clearly justify why the gradual operating cause exclusion is preferred over storm damage.

The crux of the matter is whether the weather was potentially capable of causing damage to the wall, even a well maintained one. In light of the nature of the weather immediately prior to the incident I'm inclined to think the wall might have had a few years of life left in it, but for the storm. So, on balance, I think it's more likely than not, that the damage to the wall was caused by the storm. And in any event, I don't think Aviva has shown the damage happened gradually or that the exclusion can fairly be relied on, given the evidence."

Responses to my provisional decision

Mr R was happy to accept the findings and outcome I said I intended to reach.

Aviva reiterated the point that an online map image showed the wall had gradual openings since 2023. I already addressed the point about the online image in my provisional decision.

Aviva say Mr R's evidence is a single email with the opinion, based on a single image, that the damage was caused solely by the storm. Aviva say it isn't arguing there wasn't a storm or that the tree moved. However, it said the images in its report shows the condition of the wall pre-claim had already started showing signs of deterioration over time. And the storm conditions only highlighted a pre-existing issue with the wall. And that is a policy exclusion.

Aviva also say Mr R is required to maintain trees and shrubs to mitigate risk of damage and referred to the following term in the policy;

"Keeping your property in good condition

One important policy condition is that you keep all the property you're insuring in good condition. Your policy doesn't cover loss or damage caused by wear and tear or a lack of maintenance, in particular you need to maintain your home, there are some basic things you can do, for example.

On the outside

- *Check for missing or slipped tiles, or rotten window frames*
- *Ensure that gutters and downpipes aren't damaged or blocked by leaves*
- *Keep any trees and shrubs near your home well-trimmed."*

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.

Aviva stated that Mr R was responsible for maintaining his trees and shrubs to reduce the risk of damage. However, I've seen no evidence to suggest that he failed to do so, or that any lack of maintenance caused the damage. Aviva's report says, *"the claim is declined and cannot be due to the exclusion of gradual operating cause as a result of the following tree roots have disturbed wall, tree remains upright, policy exclusion"*.

I haven't been provided any information from either party which alters the findings set out in my provisional decision. So, the findings set out in my provisional decision are now that of

this, my final decision.

Putting things right

In order to put matters right, I direct Aviva Insurance Limited to;

- Assess the claim on the remaining terms of the policy.

My final decision

For the reasons I've explained I uphold Mr R's complaint and direct Aviva Insurance Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 14 October 2025.

Kiran Clair
Ombudsman