

The complaint

Ms B has complained about Aviva Insurance Limited's (Aviva's) handling and settlement of a claim she made under her home insurance policy, for damage caused by subsidence.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, Ms B is unhappy that following removal of vegetation at one of the rear garden boundaries of her property, Aviva didn't replace the trees or construct a new retaining wall. She says there has since been a landslide from her neighbour's property into her garden, causing a health and safety issue.

Ms B is also unhappy that Aviva has refused to deal with some regrowth of the vegetation in question. And she's unhappy Aviva says earlier damage to her front boundary wall wouldn't be covered, and that she needs to raise a new claim for an escape of water she has reported. Ms B says the escape of water is linked to the front boundary wall issue and the subsidence claim.

Our investigator considered Ms B's complaint, but she didn't think it should be upheld. She said the expert evidence suggested the removal of trees had not caused the weakening of the land behind, but rather that it had exposed the poorly constructed pathway and retaining wall on the neighbour's side, which wouldn't be Aviva's responsibility to put right.

Our investigator said Aviva had treated the stumps and provided advice to Ms B as to how to manage any regrowth until the stumps died off. She said garden maintenance and management of the regrowth was Ms B's responsibility, not Aviva's. She also said that the available evidence suggested the leak was not linked to the subsidence claim and so it was fair for Aviva to say a new claim needed to be made for this issue. Our investigator also said Aviva's earlier decision to decline cover for the front boundary wall was fair and reasonable, in light of the expert evidence.

Ms B didn't accept our investigator's opinion. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

Having done so, while I appreciate it will come as a disappointment to Ms B, I agree with the outcome reached by our investigator. I'll explain why.

For ease of reference, I'll address each of Ms B's complaint points in turn.

Tree removal and landslide

As a result of investigations into Ms B's claim for subsidence damage, it was confirmed that the cause of subsidence was clay shrinkage caused by the root systems of vegetation at the boundary of Ms B's property.

Aviva removed the offending vegetation as part of the claim settlement. This is what we'd expect it to do as a lasting and effective repair cannot be achieved unless the cause of the subsidence is also dealt with.

Ms B has complained that Aviva didn't replace the removed vegetation with anything else. She says her neighbour's property is above hers, and that because the trees weren't replaced a landslide has occurred.

Aviva sent out a surveyor to consider this issue on 2 February 2023. I've seen contemporaneous notes of his report which state (with my added anonymisation):

"I attended today without (Ms B) as she was working and she felt the bank to the left of her house was DANGEROUSLY UNSAFE and it was the insurers responsibility to install a retaining wall where the tree was removed by (contractor). I attended and inspected the bank and it did not appear to be unsafe and a steel rod was sticking out that was not adding any support and could be removed. I believe the rod was left behind when the boxing was formed on the boundary by the neighbour to form their concrete path. (Ms B) correctly paid to have the first 14m of the boundary wall to be built in double brick (2 courses) to retain the soil. The next 8m was built from concrete posts and gravel boards with timber panels.

The tree that was removed did not cause any further damage to the bank, IT ONLY EXPOSED THE POORLY CONSTRUCTED/ NON EXISTANT RETAINING WALL BEHIND. The left side neighbours soil and concrete path is approximately 700mm high and the neighbours concrete has had approximately 300mm of the soil below which has eroded away. This appears to be on the neighbours property so this is NOT the insurers responsibility to build a completely new retaining wall."

I've not been provided with any contradictory expert reports to support that the exposed soil is unsafe solely as a result of the tree removal. But Ms B says that following the surveyor's visit in February 2023, a further visit took place in March 2023. She says the person who visited agreed with her that the site was unsafe due to the removal of the vegetation. She says Aviva has refused to share this report with her.

Our investigator spoke with Aviva about this, and it said the March 2023 visit was carried out by a contractor whose instruction was to create a schedule of repair works for the accepted subsidence damage, not to provide an additional report or opinion on the issues it had confirmed were not covered under the claim. So, Aviva says no report was created and so there isn't one for it to share with Ms B.

Aviva's explanation here is plausible, and I've no reason to doubt what it says about the purpose of the visit or the lack of an additional report. So, in the absence of such evidence, I find the surveyor's comments from February 2023 to be the most persuasive evidence available. Based on these, the dominant cause of any landslide was the poorly constructed and/or absent retaining wall on the neighbour's side, rather than anything Aviva's contractor caused by removing the trees. In these circumstances, I don't think it would be fair or reasonable to expect Aviva to construct a new retaining wall.

Aviva has also explained to Ms B that her policy does not cover her for the replacement of vegetation removed as a result of a subsidence claim. It says it would be irresponsible for it to replace the vegetation, given that's what caused the subsidence damage in the first place. And I agree. I wouldn't expect Aviva to remove vegetation in order to address the cause of subsidence and to deliver a lasting and effective repair, only to replace it with vegetation which could compromise that repair.

It follows that based on the weight of the expert evidence available, I'll not be directing Aviva to take any further action with regards to this issue.

Wisteria regrowth

Ms B is unhappy that a Wisteria stump (part of the removed vegetation) has started to regrow. She wants Aviva to deal with this.

As part of the vegetation removal, the wisteria plant was cut down to a stump and treated with "ego plugs" designed to kill the stump. Aviva says that if Ms B removes any regrowth, the stump will eventually die off. It also says that Ms B can cover the stump with an opaque material to help prevent further regrowth until the stump dies.

I've thought carefully about this issue. I can appreciate why Ms B feels Aviva should deal with this, given it was Aviva who removed the vegetation. However, I don't think this means it's Aviva's responsibility to continually manage the regrowth. Aviva's responsibility was to remove the cause of subsidence, which it says monitoring results have confirmed it has. And providing Ms B manages the initial regrowth as part of her routine garden maintenance, which is not something Aviva would be responsible for, the evidence suggests the stump will die. So ongoing regrowth management shouldn't be necessary in the long term.

Taking everything into account, I don't consider that Aviva's position here is unfair or unreasonable.

Escape of water and boundary wall

Aviva says the escape of water Ms B has complained about has been caused by an internal shower waste pipe which is embedded within the floor screed. It says this issue is separate to the subsidence claim, and so Ms B needs to raise a new claim if she'd like the damage considered under her policy.

Ms B has provided a quotation from a contractor which suggests that the cause of the escape of water was the collapse of a wall fracturing the plastic shower waste pipe, both externally and through the wall. The report suggests the fracture likely runs through the pipe, which is buried internally within the floor screed, up to and underneath the shower tray.

I've no reason to doubt the conclusions of the contractor who provided the report and repair quotation. However, this doesn't mean I agree the issue should be remedied as part of the subsidence claim.

I say this because Aviva had already declined to cover the collapsed garden boundary wall prior to this subsidence claim, on the basis it was caused by gradual deterioration and the weight of the neighbour's hedge pushing on the wall, rather than an insured peril.

This claim decision is supported by the surveyor's report from February 2022 which specifically highlights the wall which collapsed, which is a significant distance from the areas of subsidence damage, as not being related to the subsidence claim.

Instead, Aviva said the wall was in poor condition, and that it was suffering damage due to the weight of the neighbour's hedge pushing on it, causing it to tilt. Aviva said this was damage which had happened gradually, which is excluded under the policy terms.

I've seen the available photos of the wall in question at the time of the collapse and note that it does appear to have been leaning due to effects of the hedge, rather than downward movement of the ground (subsidence) beneath this wall. This is further supported by the arboriculturist's report, which highlighted the various trees/hedges/shrubs which were causing subsidence, but specifically said that the particular hedge in question was causing 'direct' damage (rather than subsidence damage) to the boundary wall.

Based on all the above, I'm persuaded, on balance, that the dominant cause of damage to the wall was wear and tear, or damage which happened gradually, which is excluded under the terms of Ms B's policy. So, I think Aviva's decision not to cover the damage to the wall was in line with the policy terms and was fair and reasonable in the circumstances.

And as the reasons for the wall collapse, which Ms B says resulted in the escape of water, was not the same episode of subsidence which Aviva has agreed to cover, I also agree that it's fair for Aviva to insist that Ms B needs to raise a new claim, if she wants the damage caused by the escape of water to be potentially covered under her policy.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 10 November 2023.

Adam Golding
Ombudsman