

## The complaint

Mr and Mrs B have complained that Aviva Insurance Limited ('Aviva') declined their claim for frost damage under their home insurance policy.

## What happened

Mr and Mrs B said that the mortar on one wall of their home was damaged during very cold weather in January 2023, causing it to crumble and causing embedded flint-stones to fall out. They initially reported the matter to Aviva (as their insurer at the relevant time) in February 2023.

In July 2023, Mr and Mrs B made a claim as their builder reported that the damage was weather-related. However, Aviva declined the claim as it considered that the damage had happened gradually due to wear and tear, and so wasn't an insured event. Aviva maintained its position following a formal complaint by Mr and Mrs B.

In the circumstances, Mr and Mrs B referred their complaint to this service. However, the investigator didn't uphold their complaint. It was her view that Aviva had acted fairly and reasonably in declining the claim and applying an exclusion in the insurance policy.

Mr and Mrs B remained unhappy about the outcome of their complaint. In the circumstances, the matter has been referred to me to make a final decision in my role as Ombudsman.

## 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.

The key issue for me to determine here is whether Aviva applied the terms and conditions of the policy in a fair and reasonable manner in declining Mr and Mrs B's claim. I'm satisfied on the balance of probabilities that Aviva acted in a fair and reasonable manner, and I'll explain the reasons for my decision not to uphold Mr and Mrs B's complaint. In coming to this decision, I've also considered the submissions of the parties as summarised below.

I turn firstly to the submissions of Mr and Mrs B. They provided background details, stating that their home was 23 years old and traditionally build. The exterior wall composed of high-density breeze blocks *'with a surface composition of brick, but large areas of knapped flint held in place with mortar.'* They said that the house was maintained to a very high standard. In summary, they felt that the damage had been caused, *'exceptionally and uniquely by frost damage.'* They felt they had unequivocal evidence including a builder's report showing that the damage was caused by a one-off event. They considered that lime mortar, as in this case, was typically *'way more resilient,'* sturdy and robust than cement mortar and rarely needed any form of remedial work and, even then, *'typically minor after 50 years or so.'* Mr and Mrs R also made it clear that they'd taken out *'premier'* insurance with Aviva and considered that this covered the relevant circumstances.

Mr and Mrs B described the weather conditions which occurred in January 2023. After a period of extensive wind and rain, the elevation which was exposed to the prevailing wind became unusually saturated. It was then exposed to a week of severe frost with night temperatures dipping below -6°C on ten consecutive nights, culminating in -9°C towards the end of January. This led to a sudden and dramatic breakdown of the mortar *'which became friable on its surface.'* producing a sudden loss of mortar over two days, including six heavy, large flints, whilst the three other walls of the house were unaffected.

Aviva had initially said that there was no cover for frost damage, but then changed its view. It was agreed that Mr and Mrs B would wait to carry out repairs until there was better weather and to see if there was any further failure of the wall. Mr and Mrs B said there was further, but less, loss of mortar in subsequent rain, with no loss of flints. They said that in July 2023, they were asked for, and provided, photographic evidence and a quote of £4,250 from their builder for the repairs. Aviva requested further detail from the builder as to the cause of damage. Mr B had also asked Aviva to contact the builder directly for a proper discussion, but at that point, Aviva declined Mr and Mrs B's claim.

Mr and Mrs B said that it seemed that Aviva were expecting all the flint stones to fall out simultaneously and for the entire wall to fail before cover would apply. They felt that Aviva had done nothing to prove any lack of maintenance as it never contacted the builder, it didn't arrange a site visit to review, test or validate its assumptions. There had been no failure of the wall since the event, and the rest of the house was unaffected. Mr B pointed out the danger of damage to vehicles and, *'potentially life-threatening injury'* by falling debris. By the time Aviva reviewed the case it was too late in the year to undertake repairs.

In conclusion, Mr and Mrs B said that, unlike Aviva, they'd provided a professional assessment to support the view that the damage was as the result of a unique weather event that only affected the western elevation of their home. They also felt that they'd explained the difference between the physical properties of lime and cement mortar to explain how the damage occurred. They stated that the physics of the erosion of the outer levels of lime mortar due to frost damage on a saturated wall as the result of preceding driving rain, had caused the outer levels of the mortar to become saturated enough not to dry out enough to avoid extensive frost damage. They re-iterated that there was a *'massive loss of mortar over a few days because of the evidenced weather event'* whereas they hadn't lost mortar or flints in the previous 23 years, nor in the 18 months since.

I now turn to Aviva's submissions regarding this matter. It said that it had appointed a specialist to review the claim and also to review the builder's report provided by Mr and Mrs B, which was discussed with their *'technical oversight team'* on two separate occasions. They considered that the damage wasn't caused by an insurable event. Aviva deduced from the builder's report that there was no doubt that corrosion had occurred, and the mortar weakened due to the severe weather conditions experienced in January 2023, including heavy rain followed immediately by severe frost. It considered that this fact supported its decision to decline Mr and Mrs B's claim. They said that the *'prolonged weather has caused a weakened deterioration of the materials over a period of time, so not as a result of a one off fortuitous event.'*

I've also considered Aviva's case-notes in relation to this case. These record that the property is in a fairly exposed area and that the property is 23 years old. They also recorded the fact that there were heavy frosts over a couple of *'shortish periods'* in December 2022 and January 2023.

As for any available reports in this case, this comprises of Mr and Mrs B's builder's initial statement dated August 2023 and a follow-on report. The first document confirmed that the damage had been caused by wind, rain, and frost. The report said that this had a damaging

effect, *'leaving things such as loose flint, which causes a risk to life, if not addressed.'* The builder strongly recommended a rake out and a repoint, *'with a stronger lime and mortar and a weather protector to prevent further damage.'*

As to the follow-up report produced in May 2024, the builder stated that he specialised in traditional construction methods including flint wall construction. He said that the property had been designed and built *'using flint bound and lime mortar instead of the more common method of cement mortar.'* The report stated that lime mortar should be able to accommodate small movements to the building and slowly repair small cracks, due to its flexible and porous nature. When using the technique of flint and lime mortar the need for repair should lessen *'and corrosion should certainly not occur in a property of 23 years.'* He said that any repairs he'd previously carried out regarding lime mortar had been on property over 50 years. He concluded that, *'there is no doubt that due to the severe weather conditions we have experienced in January 2023 including heavy rain followed immediately by severe frost, that corrosion has occurred and the mortar of the exposed elevation of the house has weakened flints causing loose and damaged flints.'*

The starting point for my decision is the wording of the terms and conditions of the relevant policy, as these form the basis of the contractual relationship between the insurer and policyholder. The policy here and *'premium'* cover does cover the policyholder in principle for, *'loss or damage to the building,'* whether or not this is due to storm or other factors. The cover is then subject to some standard conditions and general exclusions. Loss or damage resulting from the following is excluded: *'wear and tear...any gradual deterioration, including but not limited to, atmospheric, climatic or weather conditions, or the action of light...costs that arise from the normal use, maintenance and upkeep of your building...faulty workmanship, defective design or the use of defective materials.'*

I'm satisfied that the weather conditions in January 2023 had been particularly poor. I'm also satisfied that Mr and Mrs B's home has suffered loss and damage which led to mortar crumbling and to a number of stones being dislodged by January 2023. Unfortunately, insurance policies don't provide cover every eventuality, and the question for me to then determine is whether Aviva fairly and reasonably applied the above exclusions based on the available evidence.

Having carefully considered the available evidence, including the builder's reports and photographic evidence, I note that Mr and Mrs B's builder didn't initially provide an opinion as to the timescale over which the lime water had become weakened and didn't specify the period over which he considered that wind, rain and frost had taken its toll. In his follow-up report however, he stated that in his opinion, there was no doubt that corrosion had occurred and that the mortar weakened during January 2024. He didn't however provide an opinion as to whether it was likely that some corrosion and weakening had occurred prior to January 2023.

Mr and Mrs B indicated that additional, albeit less, mortar loss had occurred during further rain events. On this basis, whilst the loss of stones may have happened over two days, I consider it likely that the mortar had been gradually deteriorating over a much longer period. I also consider it likely that the particularly poor weather in January 2023 had then highlighted a pre-existing weakness, leading to more sudden and dramatic loss of the outer layer of mortar, including loss of a number of flint-stones. Mr and Mrs B accepted that the characteristics of flint can give rise to poor bonding if cement-based mortar is used. However, I consider it likely that the weakening of lime-based mortar can likewise give rise to poor bonding when the mortar weakens or is compromised, particularly where there are large and heavy embedded flints.

To explain this further, I'm persuaded by Mr B's evidence that the porous nature of lime mortar allows walls to breathe, to allow moisture to evaporate and reduce the risk of damage from trapped moisture and 'freeze-thaw' cycles. I also take the point that it can accommodate small movements and '*has the ability to ostensibly self-heal and slowly reseal fine cracks that may develop over time.*' Neither party has however provided evidence to show how these properties then interact with large flint-stones embedded in the mortar given that flint is hard and impervious as explained by Mr B.

I note that Aviva also reviewed the matter and thought that the type of mortar was hardy and shouldn't be affected by weather conditions unless it was already aged and compromised. I agree. The property is relatively new and whilst Aviva expected the type of mortar here to need re-pointing or replacing within 20-30 years of being applied, Mr and Mrs B stated that it should last 50 years, '*lime mortar typically lasts 50 years on exposed walls before repointing is required*'. It would also be expected to withstand relatively extreme weather including walls facing the prevailing weather. Such winter conditions would over the years include prolonged and heavy rain and freeze-thaw conditions during winter.

The final decision that the damage isn't covered by the policy is supported by the builder's recommended action which is to repair the damage using stronger lime mortar. This suggests that the lime mortar on the wall facing the prevailing weather may not have been sufficiently robust. It's interesting that the builder then suggests the use of weather protector on porous lime-mortar.

Whilst it's not necessary for me to reach a final determination as to which of the above exclusions was the predominant factor in the weakening and corrosion of the mortar over time, I consider it very likely that a combination of these excluded factors did apply. I'm satisfied that it wasn't therefore unfair or unreasonable for Aviva to have relied upon them. In summary, the evidence suggests that the original material hadn't been sufficiently strong, and it was likely that it had then gradually deteriorated. As above, I consider it likely that the January 2023 weather conditions highlighted this pre-existing fault and weakening. I consider that the weakness in the mortar had therefore, on the balance of probabilities, been building up over a lengthy period and more than one winter, and the winter weather in December 2022 and January 2023 will have eventually highlighted that weakness.

I do think that Aviva could have done more to assist Mr and Mrs B when they reported this damage and could have arranged for an assessor to view the damage at the outset. Aviva had initially said that there was no cover for frost damage, but then changed its view. I also agree with Mr and Mrs B that it would have been better if Aviva had spoken to their builder in order to have a full discussion about his view. However, on balance, and having fully considered the builder's further report, I don't consider that such actions would have made any difference to the ultimate conclusion.

I appreciate that this final decision will come as a great disappointment to Mr and Mrs B. Mr B has clearly taken a great deal of time and care in preparing his arguments to Aviva and also to this service. They are well put and have some merit. In the circumstances, I do consider that this is a finely balanced decision. I must however reach my decision on the basis of whether the relevant exclusion has been fairly and reasonably applied by Aviva, and I consider that it has been for the reasons given above.

### **My final decision**

For the reasons given above, I don't uphold Mr and Mrs B's complaint and I don't require Aviva Insurance Limited to do any more in response to their complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 2 October 2024.

Claire Jones  
**Ombudsman**