DRN-4355775

The complaint

Mr S complains about how Liverpool Victoria Insurance Company Limited (LV) handled a claim under his home insurance policy.

References to LV include their agents who handle claims.

What happened

In January 2023 a bulge formed in the gable end wall of Mr S's property, at a level with the first floor window. The bulge formed over the course of a few days following bad weather involving driving rain followed by a cold snap. Concerned about the integrity of the wall and his property, Mr S called LV. Initially, LV thought the damage could be due to subsidence (given mention of a crack in the wall), but Mr S thought it wasn't the case. He felt it more likely to be water having got into the wall then freezing, causing expansion.

LV appointed a surveyor (IG) to assess the damage. They concluded the damage wasn't caused by subsidence but could be due to different causes, including differential thermal movement, roof spread, lintel failure, poor or defective workmanship and settlement of concrete floors. None were insured perils under the policy, so the damage wasn't covered.

Mr S was unhappy at IG's conclusions and LV not accepting the damage was covered, thinking the damage was due to the adverse weather (storm) which the policy should cover. He engaged a structural engineer (JD) to inspect the damage. In their report, JD concluded the wall had destabilised due to high intensity rain entering the stonework, permeating the soft filled core between the inner and outer walls. With the frost and freezing conditions in the days immediately after the rain, the water froze and expanded, causing the outer wall to bulge outwards. Given the bulge meant the wall was at risk of collapse, JD said bracing scaffolding was needed to support the wall.

Mr S complained to LV the following month, providing them with JD's report, together with testimony from neighbours saying the bulge developed suddenly after the adverse weather. He also provided evidence and information about the steps he'd taken to address the risk of the wall collapsing. He asked LV to reconsider their position.

LV responded in April 2023 to say they were still considering his complaint and giving him referral rights to this Service. Mr S then complained to this Service in May 2023. He said JD's report confirmed the bulge was caused by a weather event and he'd paid £12,000 (part payment) for building work, £960 in structural engineering fees and £19 on metal wall ties to secure the inner wall and prevent it collapsing should the outer wall collapse. He'd also been quoted £4,776 for twelve weeks scaffolding (and £144 per week after twelve weeks). He wanted LV to cover the costs of the repair work to the wall, including the costs he'd already incurred. Given the poor service he thought he'd received from LV, he wanted them to apologise and waive the policy excess.

LV responded to his complaint shortly after Mr S's complaint to this Service. In their final response, they referred to IG's report and their conclusion the damage to Mr S's property wasn't caused by subsidence, instead referring to the other possible causes, which weren't

insured perils. LV noted JD's report conclusion the damage was due to water ingress caused by horizontal rain followed by days of freezing temperatures.

LV considered this as storm damage, setting out three criteria to assess the claim. They concluded there was a storm around the date of the incident (the first criteria). However, based on the opinion of their specialists, LV didn't consider the damage typical of that caused by a storm (the second criteria) nor that the storm was the dominant and effective cause of the damage (the third criteria). Instead, LV believed the adverse weather may have highlighted a pre-existing issue with the wall. So, they wouldn't accept the claim.

However, LV acknowledged Mr S had provided further information in February 2023, but there was a delay in it being reviewed. LV apologised and awarded £250 in compensation.

Mr S challenged LV's final response and our investigator considered his complaint but didn't uphold it. He referred to JD's opinion on the possible causes of the damage, alongside LV's further views on the likely cause of the damage. LV said the adverse weather may have highlighted pre-existing issues with the wall, which they thought had undergone maintenance work with some re-pointing using cement mortar (not lime mortar). They thought saturation and subsequent freezing of the soft fill core could have caused the outer wall to move outwards on a number of occasions over a period of time before the bulge was noticed by Mr S. So, the adverse weather might have speeded up the bulging.

Our investigator was more persuaded by LV's view, considering it more likely the adverse weather highlighted an underlying issue with the wall's construction. He didn't think rain entering the stonework possible on a wall of sound construction, with no defects. From online sources, use of cement mortar was strongly advised against, as it didn't bond well with the original lime mortar and could trap moisture leading to frost damage. He noted the policy excluded damage from gradually operating causes, including frost. He concluded the damage wasn't the result of a one-off storm, nor consistent with that expected from a storm. So, LV had fairly declined Mr S's claim. He thought LV's compensation offer of £250 for the delay in reviewing the information provided by Mr S was fair.

Mr S disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. In disagreeing, Mr S raised several points. Firstly, he challenged LV's view the damage was the result of a progressive issue, rather than a rapidly occurring issue due to the adverse weather. He provided testimony from third party witnesses the bulge developed rapidly over a matter of days. So, a defined event (the adverse weather) led to the bulge, not (as LV had presented) a generalised view of what may have happened gradually. Secondly, he referred to re-pointing carried out in 2022 on the front and rear elevations of the property, which didn't raise any concerns about a bulge in the gable wall – had any bulge in the gable wall been present at that time, it would have been noticed.

Thirdly, Mr S challenged LV's view poor workmanship in previous maintenance could have caused the damage. Mr S said previous re-pointing was performed on the gable wall in line with good practice (the re-pointing was carried out by a lime mortar specialist, who'd quoted on the basis of using lime mortar for re-pointing the front and rear elevations). Nor was Mr S aware LV had taken samples or analysis of materials to validate the assertion re-pointing of the gable wall had been done with cement mortar, rather than lime mortar. The gable was professionally re-pointed in 2016 (three years before he purchased the property).

Fourthly, Mr S said neighbouring properties suffered similar damage from the same adverse weather, with one developing a bulge at the same location of a gable wall (facing the same direction as the wall on Mr S's property) although less pronounced. Mr S considered this new evidence. He understood the neighbour had submitted a claim for damage to their insurer (who he thought was also LV).

Fifthly, Mr S challenged the view the damage wasn't caused by adverse weather, due to the time between high winds and the damage being noticed. He accepted high winds and intense rain didn't occur in the six days before the bulge was noticed (as LV had said). However, those days saw unbroken freezing conditions. So, the adverse weather was a combination of intense, penetrative rain driven by high winds, followed by intense, prolonged freezing. It was this combination JD concluded was the dominant cause of the damage.

Finally, Mr S expressed concern over what he considered errors made by the investigator. One, a clerical error in referring to the incorrect insurer in his view and a second being told (incorrectly) the ombudsman had found in Mr S's favour (in a different case). This may have affected the investigator's consideration of the complaint. Mr S wanted his complaint to be reviewed objectively by a separate investigator or manager, based on facts and testimonies he'd provided (not what he considered generalisations from LV).

Having taken legal advice, he thought a balanced settlement of his claim would be LV making, at least, a 50% contribution towards the costs he'd incurred from the damage.

Our investigator considered the points raised by Mr S but didn't change his view. Mr S restated his request that an ombudsman review the complaint. So, the complaint has been passed to me to consider.

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.

My role here is to decide whether LV have acted fairly towards Mr S. I'd want to assure Mr S I've considered all the information and evidence provided as part of this complaint, both from him and from LV. Specifically, this includes all the information he provided to LV in February 2023 in support of his complaint, as well as the additional information and evidence he provided in response to our investigator's view.

Picking up his final point, as set out when confirming an ombudsman will review the complaint, I've looked at everything provided, and my role is to provide an independent decision on the complaint. So, as Mr S requested, the complaint has been reviewed objectively, based on the facts and testimonies (and the information and evidence) he and LV have provided. It isn't my role to make subjective inferences from the points Mr S has mentioned about the investigator's handling of the complaint. So, I've not considered this issue any further.

The two key issues in Mr S's complaint are, firstly, LV's decline of his claim for the damage (the bulge) in the wall at his property. Mr S says, supported by the report from JD, the damage was caused by the adverse weather (high intensity rain followed by the freezing conditions). LV say, supported by the report from IG, the adverse weather highlighted pre-existing issues with the wall, with saturation of and freezing of water in the soft fill material between the inner and outer wall, causing the outer wall to move outward. And this may have happened on several occasions over time.

The second issue is the service provided by LV to Mr S during the claim process. Mr S says it took too long, adding to his frustration at the decline of his claim. LV accept their service wasn't of the standard Mr S should have expected, awarding £250 compensation.

On the first issue, I've noted LV initially considered the claim under the subsidence section of the policy. But as both IG and JD concluded the damage wasn't caused by subsidence (nor does Mr S) I think it reasonable to conclude the damage wasn't the result of subsidence.

Mr S says the damage was caused by the adverse weather conditions, a combination of intense, driving rain that penetrated into the wall, followed by a period of days of freezing temperatures that led to the expansion of the soft fill core between the inner and outer walls. In their final response, LV considered the claim under the storm section, using three criteria, concluding that while there were storm conditions around the date of the damage, based on the opinion of their specialists, they don't consider the damage typical of that caused by a storm (the second criteria) or that the storm was the dominant and effective cause of the damage (the third criteria). Instead, LV believe the adverse weather may have highlighted a pre-existing issue with the wall.

In cases of claims assessed under storm damage, there are three key questions we consider as a Service:

- Do we agree that storm conditions occurred on or around the date the damage is said to have happened?
- Is the damage claimed for consistent with damage that a storm typically causes?
- Were the storm conditions the main (or dominant) cause of the damage?

On the first question, in their final response LV concluded there were storm conditions around the date of the damage to the wall. In LV's complaint notes there's a report from the weather source we use as a Service that indicates significant rainfall some nine days before the date Mr S first notified LV of the damage. And freezing temperatures for six days following the rainfall, with the lowest recorded temperature some four days before the notification of the damage. Alongside a reference to 'dry storm' between the two dates for rainfall and freezing temperatures, I've concluded this shows there were storm conditions in the period immediately before the damage was noticed by Mr S and then notified to LV. So, the answer to the first question is 'yes'.

I've then considered the second question, whether the damage is consistent with that to be expected in a storm.

I've looked at the reports from IG and JD. Taking JD's opinion first, their report states:

> *"Based on our observations and inspection of the property both internally and externally, it is our opinion that the wall has destabilised due to the high intensity rain event which occurred immediately prior to the appearance of the high-level bulge.*
>
> *With the horizontal cracking visible above the bulge, it is our opinion that the high intensity driving rain has entered the stonework construction to the gable wall and permeated into the soft filled core between the inner and outer dressed stone panels.*
>
> *It is our opinion that this has caused the soft fill material to slump and with the frost and freezing conditions immediately after the heavy rain an expansion due to the water in the soft fill freezing course has caused the outer masonry course to push out from the inner course….*
>
> *Due to the speed with which this gable wall has bulged, it is our opinion that this is not due to a long term issue of settlement but a weather driven event that has caused rapid bulging to high level from water ingress and freezing of the trapped water."*

Turning to IG's report, it first concludes the damage isn't considered to have been caused by subsidence. It goes on to state:

> *"Externally there is a significant high level bulge to the rear section of the solid stone gable wall. Internally movement of the gable wall laterally has caused slight cracking within the front bedroom and bathroom on the first floor and, on the ground floor, within the lounge and kitchen, The external and internal damage appears to be reflective of lateral movement of the rear upper section of the gable wall.*
>
> ***Cause***
>
> *As indicated above the damage evident appears to be due to bulging/horizontal movement of the gable wall of the property. This damage appears to be de-bonding of the inner and outer stone skins of the wall while a lack of lateral restraint may also be a contributory factor. The damage is not due to subsidence."*

As part of our investigation of Mr S's complaint, LV provided further clarification of their view:

> *"Weather may have highlighted pre-existing issues with the wall. Areas of the wall had obviously undergone some maintenance works, some of the wall had been repointed using cement mortar, as opposed to lime mortar. I would suggest it was not expansion in the joints that caused the stones to de-bond and bulge but the saturation of and the freezing of water in the soft fill material causing the external skin to move outward – this may have resulted from a saturation/freeze/outward movement/settlement of the soft fill material on a number of occasions over a period of time prior to the damage being noted by the policyholder.*
>
> *In my experience de-lamination generally occurs over a period of time and, by assumption, on a number of occasions. On each occasion the bulge possibly increases slightly. It may have been that the preceding weather conditions speeded up the process in this instance. I note high winds were not recorded for six days prior to the date of loss."*

Taking these views together, it indicates agreement (particularly given the further LV view) the most likely cause of the damage was rain entering the wall, saturating the soft fill core between the inner and outer walls. The freezing temperatures following the rainfall then caused the saturated soft fill core to freeze and expand, causing the bulge in the outer wall. Looking at the evidence and information alongside these views, I'm persuaded this is the most likely immediate cause of the damage (Mr S's fifth point).

I've then considered whether this damage is consistent with what we'd expect in a storm. Water ingress, particularly one involving significant rainfall, is generally something to be expected from storm conditions and which then causes damage. It's more common for such ingress and damage to result from issues with roofs, rather than external walls.

Mr S, supported by the views of JD, believe the intense, driving rain penetrated the wall. However, that being the case – and I think it is likely to have been the case given I've seen no other view of how the rain penetrated the wall – the issue then is whether that is something to be expected. Thinking about this, I'm not persuaded that a solid, robust wall would have allowed in significant rain, causing saturation of the soft fill core behind. I think it's reasonable to expect a wall to resist penetration by rain, notwithstanding how significant and prolonged the exposure (exacerbated by high winds driving the rain). To let in significant amounts of water, to the degree necessary to saturate the soft fill core, would indicate either damage from the rainfall itself (such as dislodged mortar or stonework) or existing fissure(s) in the wall which allowed the rain to penetrate into the soft fill core behind.

On the balance of probabilities, taking all the evidence and information into account, I'm more persuaded by the latter. So, I'm not persuaded the damage is consistent with that to be expected from a storm – unless there was an existing issue with the wall. That then takes me on to the third question, whether the storm conditions were the main (or dominant) cause of the damage.

On this issue I've noted LV's further comments about the adverse weather highlighting pre-existing issues with the wall and that the saturation and freezing of the soft fill core may have happened on a number of occasions over a period of time prior to the damage being noticed by Mr S. And the adverse weather may have speeded up the process (of saturation, freezing and outward movement).

While the initial issue was the rain penetrating the wall and saturating the soft fill core, what then led to the bulge was the period of cold weather, which led to the freezing of the saturated soft fill core. The freezing led to expansion, which in turn led to pressure on the outer wall, causing it to bulge. To this extent, I agree with Mr S's view the damage was the result of a combination of the rain penetration followed by the freezing.

At this point, I've then considered Mr S's first and second points, challenging LV's view the damage was the result of a progressive issue, rather than a rapidly occurring issue due to the adverse weather. And that re-pointing work didn't raise any concerns about a bulge in the gable wall – had any bulge in the gable wall been present, it would have been noticed. I've seen the testimony from third parties that there wasn't any bulge prior to it being noticed after the adverse weather. While the testimonies use very similar - if not identical - wording in some places and one is on headed paper for a scaffolding firm engaged by Mr S to brace the bulging gable wall, together with what I've concluded about the most likely cause of the damage, I'm persuaded there wasn't an obvious, noticeable bulge prior to it becoming apparent after the adverse weather.

On Mr S's third point, about whether poor workmanship in previous maintenance could have caused the damage, I've looked at the evidence and information provided. There's an invoice from the contractor who carried out re-pointing of the front and rear elevations of the property walls It indicates the use of lime mortar. While it provides evidence of recent maintenance of the property, it isn't on the part of the property where the bulge occurred (the gable end wall). So, it isn't directly relevant to consideration of the cause of the bulge.

Mr S says previous re-pointing was performed on the gable wall in line with good practice, by a lime mortar specialist (the gable was re-pointed in 2016, before Mr S purchased the property). Mr S also says he isn't aware LV have taken any samples or analysis of materials to validate their assertion re-pointing of the gable wall had been done with cement mortar, rather than lime mortar.

Looking at the evidence and information available, on the issue of whether cement mortar was used on the gable end wall, I haven't seen any independent evidence of the nature of the re-pointing carried out in 2016. There is a statement from a law firm dated 2019 (when Mr S purchased the property) listing works carried out on the property. One of the items is described as:

> *"Outside…*
>
> *Removed render to gable end and repointed…"*

While this confirms re-pointing of the gable wall was carried out, it doesn't say anything about the method used, or the specific type of render (mortar).

However, I have noted the following statement in JD's report:

> *"…it was noted that the gable wall has been cement mortared."*

This is consistent with the further comment from LV set out above, that "…*some of the wall had been repointed using cement mortar, as opposed to lime mortar,"* So while I've not seen any indication or evidence LV took samples or analysis of materials, given JD visually inspected the gable wall, I'm persuaded cement mortar was used in the re-pointing.

I've also noted JD's report includes the following recommendation:

> *"We further recommend that the cement mortar is removed, and lime mortar repointing is undertaken to avoid water retention to the wall core."*

This recommendation confirms the conclusion I've reached about the presence of cement mortar. But saying it should be removed to avoid water retention suggests to me it was inappropriate to have used cement mortar in the repointing. It also suggests the cement mortar contributed to, if not caused, water retention in the soft core filling that then was subject to freezing, leading to the bulge.

Thinking about these points, I've concluded the use of cement mortar was, at least, a contributory factor to the damage (the bulge) to the gable wall. And while the JD report doesn't explicitly state the presence of cement mortar caused the ingress of water from the rainfall, I think it's reasonable to infer this from the recommendation it is removed.

On Mr S's fourth point, that neighbouring properties suffered similar damage from the same adverse weather, I've considered the information provided. While I understand why Mr S says this is new evidence, my role is to consider the evidence and information about the damage to Mr S's wall. It isn't to consider what happened to other properties, where the circumstances may be different. It's for the insurer of a property, whether LV or another insurer, to consider any claim made by the owner of the property, as a policyholder. And for them to assess any such claim in accordance with the relevant policy and the specific information and evidence about the property and any damage that may have occurred.

Taking all these points and conclusions together, I don't think the nature of the damage is consistent with the damage a storm typically causes. And that storm conditions weren't the main or dominant cause of the damage.

Moving on from these conclusions, in declining the claim, there's mention of gradually operating cause in LV's case notes, which together with the above comments about pre-existing issues and the process over time indicates LV have applied a policy exclusion for gradually operating causes; The policy booklet sets out the following In their final response, Great Lakes refer to the following exclusion in the policy booklet under the *General exclusions* section::

> *"We will not pay for*
>
> *Any claim arising from:*
>
> - *Anything which happens gradually including deterioration or wear and tear, settlement or shrinkage;*
> - *Mildew, fungus, climatic or atmospheric conditions, frost, wet or dry rot;…*
> - *Faulty design, materials or workmanship"*

Given my conclusions above about the likely nature and cause of the damage, I think it's reasonable for LV to have applied the exclusion to decline the claim. So, I've concluded LV acted fairly and reasonably in declining Mr S's claim.

I've then considered the second issue, the service provided by LV during the claim process. Mr S says it took too long, adding to his frustration at the decline of his claim. LV accept their service wasn't of the standard Mr S should have expected, awarding £250 compensation.

Looking at the evidence and information available, while complaint handling isn't a regulated activity within the remit of this service, the information provided by Mr S in February 2023 to support his view his claim should be accepted is directly relevant to LV's assessment of the claim. It's also clear from their acceptance that their service wasn't of the standard Mr S should have expected. And their complaint notes indicate the information should have been considered by the claims handling team – but it wasn't until they came to consider their final response to Mr S's complaint.

As such, it is something I can consider. I think LV's failure to review the information Mr S provided until some three to four months after he provided it caused Mr S distress and inconvenience and unnecessarily prolonged their assessment of his claim.

So, I'm upholding this aspect of Mr S's complaint. Taking all the circumstances of the case into account, I think £250 compensation for distress and inconvenience is fair and reasonable. My understanding from LV is that they've paid the compensation (via a cheque, which has been cashed). So, I won't be asking them to take any further action.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2023.

Paul King
Ombudsman