

The complaint

Mr and Mrs S complain about the way that Fairmead Insurance Limited has handled their home insurance claim for damage caused to their house by a fallen tree.

What happened

Mr and Mrs S's home was damaged by a 70ft local authority owned tree, situated on their boundary, that came down in a storm in March 2019. The damage caused to the garden, the building and its contents was significant. Mr S made a claim to Fairmead. The claim was initially handled by Fairmead's underwriting agent, P, under a delegated authority arrangement. P accepted the claim on behalf of Fairmead (under the Fallen Tree peril) and appointed a loss adjuster to assess and validate it.

The loss adjuster carried out his first site visit a few days later. He noted extensive damage to the rear of the house and placed an initial reserve of £82,500 on the claim. He noted the buildings sum insured was adequate at £1million. He also noted the contents sum insured was £75,000 and said in his first report to P a few days later, that the only adequate way to establish the value of the contents at risk was to prepare a fully costed inventory.

Make safe works were undertaken (and reimbursed by P) and, on the loss adjuster's recommendation, Mr and Mrs S appointed damage restoration experts to assess the affected contents. In the loss adjuster's second report to P in mid-April it was again noted that the only adequate way to establish the value of the contents at risk was to prepare a fully costed inventory.

At the start of July, the loss adjuster that had been handling the claim left and was replaced by a colleague who reported again to P in early July. He said that three tenders were being sought from building contractors including one from insurer's approved network. The report also commented that the restoration experts had now reported that there were many high-value items damaged beyond economical repair. A first (incomplete) version 'at risk calculation' inventory of contents provided by Mr and Mrs S had, by this point, valued their contents at £109,000. The loss adjuster noted that the contents sum insured of £75,000 was clearly inadequate and that the existing reserve was insufficient to cover the extent of the loss. He recommended to P that the reserve was increased to £220,000 for buildings and the full £75,000 for contents.

Upon receipt of the report, P noted that there was substantial underinsurance which, it thought, may have implications for the claim acceptance. The claim was referred to underwriters in mid-July and A 'reservation of rights' letter was purportedly issued to Mr and Mrs S at the same time. Mr and Mrs S sent P their contents list on 9 July. The tenders for the building work were sent to P on 29 July 2019.

Between 9 July and 25 September 2019 Mr and Mrs S heard nothing from P despite chasing it numerous times (via the loss adjuster). Mr and Mrs S remained in their damaged home throughout. On 23 September they made a formal complaint to P. Mr and Mrs S asked P to make a final decision about their claim which was now 28 weeks old. They said that P had had the tenders for over 8 weeks and all the information about their contents before that, yet

they had received no information about the status of their claim. Mr and Mrs S said that all they had received were holding responses from the loss adjuster in reply to their emails. They said that P had ignored their requests about the provision of alternative accommodation and they'd continued to live in their badly damaged home with one of their elderly, unwell mothers since March. Mr and Mrs S said they had reduced living space, that parts of the house were unsafe and that P had done nothing to resolve their situation. Mr and Mrs S listed the 10 dates on which they had emailed insurers for an update on the status of their claim which had all gone unanswered. Mr and Mrs S said they were experiencing ongoing disruption and upset in their lives.

P wrote to Mr and Mrs S on 25 September 2019. It said it would review their complaint separately but in the meantime it had concerns over whether their contents had been undervalued when cover was taken out (in early 2019). P said the type of policy Mr and Mrs S had only allowed a maximum sum insured for contents of £75,000 but it now appeared the actual value of the contents in their home was more than double that amount. P said if it had known this then it wouldn't have issued Mr and Mrs P with a policy. P said Mr and Mrs S were under a duty (set out in the Consumer Insurance (Disclosure and Representations) Act 2012 – 'CIDRA') to take reasonable care when making representations. P said that where incorrect information had been provided it was, in certain circumstances, permitted to avoid the contract.

P said it hadn't yet reached a final decision about what to do but in the interests of fairness it asked Mr and Mrs S to provide a very clear and detailed explanation of why the information presented in relation to the value of their contents was so significantly misrepresented.

Mr and Mrs S sent P their 16-page detailed response on 22 October 2019. In it they explained how they had acquired their contents over the years (often from auction websites so they had no idea what the retail price of an item would be) and how they had no idea when they applied for cover that their replacement value was much more than their purchase price. They said they hadn't misrepresented the value of their contents and explained in detail how they truly believed that £75,000 was way more cover than they actually needed. They said they understood the average clause contained in their policy as the first loss adjuster had explained it to them earlier in the claim. Mr and Mrs S said they accepted it was likely to apply in their circumstances.

Mr and Mrs S said that where, for example, the replacement value of their dining room table and chairs was cited as £23,000 by the restoration experts, they had bought it second-hand in 2017 for £4,350 (proof of payment was provided) and they had no idea when they purchased the items that they were worth that much. Mr and Mrs S said that they had valued their contents as being worth no more than £54,500 so, in taking out £75,000 of cover they honestly thought they were adequately protected.

Mr and Mrs S asked that Fairmead take what they'd said into account and accept their claim and move it along.

P wrote to Mr and Mrs S on 21 November 2019. The letter was both P's final response to their complaint of 23 September and to their more recent letter of 22 October 2019. P said that underwriters had recently agreed that Mr and Mrs S hadn't carelessly or negligently underinsured their contents. P said their explanation demonstrated that the valuation of their contents had been honestly made so it would not be avoiding the policy. P said it appreciated that it'd taken some time to reach this decision and that there'd been a delay in the progression of the claim. P said the first loss adjuster had failed to recognise that the contents were underinsured which resulted in the issue not being notified to underwriters until July 2019. P offered Mr and Mrs S compensation of £400 for the distress and inconvenience they'd been caused by the delay in progression of their claim. P said the loss

adjuster would be in touch with them shortly to discuss progression and settlement of their claim.

Mr and Mrs S had already referred their complaint about the delays and lack of progression of their claim to this service in September 2019. Their complaint was allocated to one of our investigators who looked into it for them. He issued his opinion in July 2020 noting that this was the first of two complaints Mr and Mrs S had made about their claim and related to events between the date the claim was notified (March 2019) and the date of P's decision not to avoid the claim in mid-November 2019.

Our investigator recommended that Mr and Mrs S's complaint be upheld. He said he thought there were two issues that P (on behalf of Fairmead) could've handled better, the first of which was that it took it 4 months from the date the claim was made to notice the issue with the value of the contents and the second being P's poor communication and lack of explanation to Mr and Mrs S about what the issue with their claim was. He noted that Mr and Mrs S had been under the impression that their claim was progressing (from July to September 2019) and that they'd explained the situation to P regarding the vulnerability of both their elderly mothers (for whom they were carers) who were also living/staying with them.

Our investigator said P hadn't explained why it'd taken from July to November to agree the contents issue or why it hadn't asked Mr and Mrs S to explain the discrepancies with the value of the contents sooner. He said he'd seen no evidence to explain what P was doing between July and November 2019.

Our investigator recommended that P/Fairmead pay Mr and Mrs S a further £400 (in addition to the £400 it'd already offered) as compensation for the delays and lack of clear communication.

P replied and provided evidence that it had been seeking its own legal advice about the underinsurance and the avoidance of Mr and Mrs S's policy between 20 August 2019 and late September 2019 (when it'd written to Mr and Mrs S asking them to explain how they'd valued their contents). Mr and Mrs S replied to our investigator to say that P had written to them on 25 September and that it'd taken them until 22 October to collate their evidence and write back.

Our investigator issued a second opinion and was still minded to uphold the complaint. He said that whilst P had been in touch with its legal team from 20 August it had still taken it six months from the date of the claim to write and ask Mr and Mrs S to explain how they'd valued their contents. He said the extent of the damage to Mr and Mrs S's home meant it was important that their claim was moved along as quickly as possible and he didn't think six months was a reasonable amount of time to take. He also noted that during late August and early September, P had taken account of the mistake its loss adjuster had made in failing to notice the true value of the contents.

Fairmead, through P, asked for the complaint to be referred for an ombudsman's 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.

This complaint is one of two made by Mr and Mrs S to this service about their home insurance claim for damage caused by a falling tree. As stated above, it relates to the period from the date the claim was first notified on or around 12 March 2019 to the date P accepted

Mr and Mrs S's contents underinsurance had not been carelessly made on 21 November 2019. Issues after this date will be addressed within the second complaint Mr and Mrs S have brought. That said, there is information that has relatively recently been provided by Fairmead, in response to that second complaint, that has provided further clarification about what happened in the first 8 months of the claim. That information is, therefore, of relevance to this complaint.

I can see that it wasn't until 22 July 2019 that Fairmead was notified by P about Mr and Mrs S's claim. Fairmead has more recently explained to Mr and Mrs S that P handled claims for it within an agreed delegated authority up to a claim value of £100,000. Fairmead has explained that it wasn't notified about the claim until the second loss adjuster took over in July 2019 and noticed that his predecessor had underestimated the cost of the claim (thereby taking it over the agreed delegated authority limit).

It was at this point that Fairmead's complex and major loss claims department took over the claim. This meant all subsequent financial decisions were subject to its approval. P, and the loss adjuster it'd appointed, moved to acting on Fairmead's behalf on a 'retained authority' basis.

Fairmead has since accepted that P handled this first complaint without its direct involvement. Fairmead has said this appears to have been due to a misunderstanding on P's part about the retained authority complaints process. And it has said that P should've referred this first complaint of Mr and Mrs S's to Fairmead as it would've handled and managed the complaint's escalation to this service. Fairmead has recently apologised to Mr and Mrs S for the confusion caused.

I've set out in some detail above what happened during the course of the first 8 months of Mr and Mrs S's claim. It is of course reasonable for an insurer, when it becomes aware that there may be underinsurance or a careless misrepresentation, to want to take some time to look into both. That is to be accepted. But it appears to me, from the evidence I've seen, and to which I have referred, that Mr and Mrs S were left in a severely damaged and dangerous property, caring for two elderly and infirm ladies, for an avoidable and un-necessarily long period of time.

I mention above that the first loss adjuster in his first report (two days after the tree came down) recommended to P that the only way to establish an accurate contents value was to complete a full inventory. He said it again in his second report a month later. I've seen no evidence that P asked him to arrange such an inventory or approached Mr and Mrs S directly to prepare one. Indeed, it was two months after the event (and whilst Mr and Mrs S were abroad) before they were asked to prepare a room by room inventory of their contents.

It appears to me that this amounts to an un-necessary two-month delay. And it is unclear to me from the evidence I've seen whether it was the loss adjuster himself that asked Mr and Mrs S to provide the inventory or whether he did so at the behest of P. That evidence is unavailable.

It also appears to me that P's comments about the first loss adjuster failing to recognise the contents were underinsured aren't, if you take the comments from the first of his two reports into account, entirely accurate. He clearly had immediately noted that a full inventory was needed in order to provide an accurate valuation.

Mr and Mrs P contacted P/the loss adjuster over 10 times between 9 July 2019 and 23 September 2019 to enquire about the status of their claim (which they believed to have been accepted). Other than an occasional holding email from the loss adjuster they received silence. Whilst I can see that legal advice about underinsurance and avoidance was being

sought by Fairmead from 20 August, it's not entirely clear to me firstly why Mr and Mrs S's emails went unanswered or why it took between 5-6 weeks (mid-July to late August) to instruct lawyers for advice (and not provide Mr and Mrs S with the courtesy of a response to any of their emails). I've seen mention from P that a 'reservation of rights' letter was issued to Mr and Mrs S in July but no copy of that letter has been provided nor have Mr and Mrs S (who have been diligent about keeping records) ever made mention of receiving one.

Of course, from Fairmead's recent correspondence with Mr and Mrs S it is now known that there were issues and confusion between it and P and that these directly and adversely impacted Mr and Mrs S. Communication was non-existent and there were delays in progressing the claim. And all the while Mr and Mrs S remained in their damaged home endeavouring to care for their elderly mothers.

I don't think it needed to take Fairmead over six months to notify Mr and Mrs S that it had concerns about them being underinsured and to ask them to explain why that might be. I've mentioned above two significant periods of delay that, in my view, were avoidable. Added to this is the non-existent communication about the status and progression of the claim and the fact that it was imperative, given the nature and extent of the damage and their personal circumstances, that the claim was moved along.

Putting things right

All insurance claims, by their very nature, attract a certain degree of inconvenience and often distress for a policyholder. But where an insurer, through its words or actions, makes an already distressing situation worse, this service can recommend it pays compensation to the consumer. I've thought about the avoidable trouble and upset that Fairmead/P put Mr and Mrs S to during the first 8 months of their claim and I agree with our investigator, for the reasons I've set out above, that Fairmead should be required to pay an additional £400 (making a total of £800) for the distress and inconvenience it caused Mr and Mrs S by delaying the progression of their claim and failing to communicate with them for long periods of time.

Mr S says they haven't received the first £400. If that is the case, Fairmead will now need to pay a total of £800 in compensation. Fairmead firm must pay the compensation awarded within 28 days of the date we tell them that Mr and Mrs S have accepted my final decision.

My final decision

My final decision is that I uphold this complaint. I require Fairmead Insurance Limited to pay Mr and Mrs S total compensation of £800 for the trouble and upset they were caused as I've explained above in the 'Putting things right' section of this decision. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 3 June 2021.

Claire Woollerson

Ombudsman