

## **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.

By the time P issued its final response letter of 21 November 2019, Mr and Mrs S had already made a complaint to this service (complaint 1). That complaint 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 and was upheld by our investigator in July 2020. He recommended that Fairmead pay Mr and Mrs S a further £400 (in addition to the £400 it offered in November 2019) for poor claims handling and avoidable delays. Fairmead disagreed with our investigator's findings and asked for that complaint (complaint 1) to be referred for an ombudsman's decision.

Following P's final response letter of 21 November 2019, the loss adjuster contacted Mr and Mrs S and by 13 December a settlement amount for the damaged contents had been agreed (having applied the policy's average clause) along with some outstanding expenses they'd paid. A revised sum for the building repairs was also negotiated and agreed between Mr and Mrs S and the loss adjuster such that by 17 January 2020 the loss adjuster confirmed to them that this was the amount he was recommending to Fairmead to cash settle the claim.

Despite several chaser communications from Mr and Mrs S to the loss adjuster and from the loss adjuster to P/Fairmead, no payment for either the building or contents parts of the claim had been paid by the beginning of February 2020. Frustrated by the lack of progress, Mr and Mrs S again approached this service. Mr and Mrs S continued to live in their damaged home throughout with Mrs S's aged and infirm mother who at times they had to send to stay with relatives due to the cold and dangerous state of the house. Mr and Mrs S explained to our investigator that P/Fairmead remained uncommunicative and that they were considering raising a second complaint.

Shortly after, Mr S told our investigator that the contents claim had been settled by Fairmead (for just over £41,000).

Mr and Mrs raised a second complaint with P on 14 February 2020 which it acknowledged shortly after. When the 8 weeks in which Fairmead was required to respond to Mr and Mrs S's complaint had passed, they wrote to our investigator again to ask that this service set up this second complaint. They said their claim was now 57 weeks old, that no alternative accommodation had been provided, that no green light had been given to start the building works, that they'd received no update on the status of their buildings claim and no response from Fairmead to their complaint. They said the situation was upsetting and stressful.

Our investigator set up this (second) complaint against Fairmead. In the meantime, Mr and Mrs S continued to chase Fairmead (via the loss adjuster) about the status of their claim. At the end of May 2020, the loss adjuster told Mr and Mrs S he was meeting with Fairmead the following week and was optimistic something concrete would emerge from the meeting. When, by mid-June 2020 they had heard nothing again, Mr and Mrs S contacted the loss adjuster. They said they had no contact from Fairmead for over six months yet they continued to live in hardship, the quality of their life had been compromised and that not one deadline for payments, complaints, response promises etc. had been met by Fairmead during the duration of the whole claim. Mr and Mrs S said they had suffered incalculable hurt and spent hours of wasted time trying to get answers.

Our investigator looked into this second complaint for Mr and Mrs S. In turn Mr and Mrs S continued to push the loss adjuster through to the end of August. He told them at the end of June 2020 that the settlement proposals agreed in January were always subject to

Fairmead's approval. He said Fairmead had raised specific issues regarding the inclusion in the settlement amount of certain provisional sums that ultimately may not be required and the inclusion of VAT without the provision of invoices first. The loss adjuster said he hoped to get instructions from Fairmead and have news for them soon. Mr S said he couldn't understand why it'd taken Fairmead six months to ask these questions.

On 16 September 2020, Mr S let our investigator know that Fairmead had paid the majority of the cash settlement into his account (£190,082.72).

Our investigator issued his findings into this complaint on 8 December 2020. He explained that this complaint related to the period between 21 November 2019 and 16 September 2020. He said he thought P/Fairmead had unreasonably delayed the claim despite being aware of Mr and Mrs S's personal situation as carers for their two elderly mothers. He thought Fairmead had caused Mr and Mrs S a lot of un-necessary additional distress for which it should pay them compensation of £1,500.

Mr and Mrs S accepted our investigator's findings. P replied to say Fairmead wanted the complaint referred for an ombudsman's decision; it provided no other comments.

The complaint was passed to me for a 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 the second 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 after P/Fairmead issued its final response to Mr and Mrs S's first complaint on 21 November 2019 and the date it partially settled the buildings aspect of their claim on 16 September 2020.

For the sake of completeness only, I note that whilst this second complaint was awaiting allocation to an ombudsman Mr and Mrs S continued to keep our investigator up to date about the claim and the ongoing issues they continued to experience with P/Fairmead. Specifically, they forwarded our investigator an 18-page letter they'd sent Fairmead's chief executive in March 2021 setting out a complete account of everything they had experienced in the last two years. In that letter they also asked Fairmead to pay the balance of their buildings claim settlement and the cost of their alternative accommodation. I'll refer to this letter as Mr and Mrs S' third complaint.

In response to their third complaint, P wrote to Mr and Mrs S to say it was prepared to pay them a further £56,402.16 for their buildings claim, another £12,441.56 to reflect inflationary cost increases during the claim and £50,000 for alternative accommodation. In total, P has offered Mr and Mrs P an additional £118,843.72 in full and final settlement of their claim.

A senior complaints consultant at Fairmead then began to look into Mr and Mrs S's third complaint, writing them an interim letter on 15 April 2021 addressing many of the questions they had raised over the preceding two years. Fairmead's final response to this complaint is still pending.

These are issues that, if not resolved by Fairmead to Mr and Mrs S's satisfaction, will need to form part of a third complaint to this service. I'm afraid I can't look at them here.

It is however, clear to me that P/Fairmead failed Mr and Mrs S between November 2019 and September 2020. I can see that P wrote to the loss adjuster on 26 November 2019 informing him there would be no policy avoidance and that the claim was to proceed to settlement on best terms. The loss adjuster then proceeded a fourth interim report for P on 17 December 2019 settling out the calculation for the contents settlement. Fairmead appeared from an email exchange to have agreed the payment in late January 2020 and told P to pay it. P then forgot to do so until 6 February 2020.

The next report from the loss adjuster wasn't until 5 May 2020 stating the estimated building repair costs had been negotiated and further information from the surveyor had been requested. No mention was made of why it had taken six months since the underinsurance matter had been resolved to get to this point nor was there mention of when the claim would be paid or the works start. Mr and Mrs S have said that agreement regarding the buildings aspect of the claim had been agreed with the loss adjuster on 17 January 2020. I can see that the loss adjuster told them in May 2020 that this agreement was subject to Fairmead's approval.

What isn't clear to me is why it took between November 2019 and January 2020 for an agreement to be reached regarding the buildings settlement (the tenders having been with Fairmead for some time by this point). Nor is there any explanation for why it took from January 2020 to May 2020 to request further information from the surveyor. And it is unclear why Mr and Mrs S had to repeatedly chase Fairmead via the loss adjuster from May through to September 2020 to try and ascertain the status of their claim. The delays with their claim seem to me – even allowing for Fairmead to take some time to check a few matters prior to paying the claim – to be entirely unreasonable.

Mr and Mrs S repeatedly made P/Fairmead aware of the distress and inconvenience they were being caused by having to remain in their damaged and, (throughout the winter) cold home and how hard it was for them to care for their mothers in such circumstances. Yet despite doing so I've seen no evidence of any urgency on the part of P/Fairmead to move the claim forward or bring it to full and final settlement since the loss adjuster's December 2019 report which indicated work would start following a meeting with the contractor.

I can see – as set out above – there were certain other costs (VAT, contingency, cost increases etc.) that Fairmead wanted and needed clarifying before finalising settlement. And of course, it is entirely reasonable for an insurer to want to check such costs before settling the claim. But is only fair that a reasonable amount of time is taken to do so. Given the circumstances of this claim, and the point it had reached by December 2019, I don't think Fairmead taking a further 9 months to part-settle the buildings aspect of the claim was fair or reasonable. And all the while Mr and Mrs S were largely in the dark about the status of the claim and the reasons why it was all taking so long.

From the evidence I've seen, Mr and Mrs S have shown great patience, fortitude and tolerance throughout their claim. Unfortunately for Fairmead, its customer service standards have been poor throughout and it's my view that its treated Mr and Mrs S unfairly and unreasonably by delaying their claim, not communicating with them adequately and causing them significant, un-necessary and avoidable trouble and upset in the process. I think that the trouble and upset Mr and Mrs S had already endured during the first eight months of the claim meant the trouble and upset they endured during the next ten months through to September 2020 was exacerbated. And I've borne this in mind when thinking about the amount of compensation they should fairly be awarded for this, their second, complaint. I think that Fairmead should pay Mr and Mrs S £1,500 for the significant shortcomings in its customer service during the period November 2019 to September 2020. That the claim wasn't moved forward in a timely manner meant Mr and Mrs S remained in a house exposed

to the winter weather and which remained a somewhat hazardous place to live. On top of the delays caused by Fairmead in the first 8 months of their claim, I can see that this has caused them increased, additional, avoidable distress and inconvenience.

### **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 that it pays compensation to the consumer. I've thought about the avoidable trouble and upset that Fairmead and P put Mr and Mrs S to after Fairmead confirmed the claim would be moving forward in November 2019. I agree with our investigator, for the reasons I've set out above, that Fairmead should be required to pay compensation to Mr and Mrs P of £1,500 for the distress and inconvenience it caused to them from November 2019 to September 2020. This is in line with awards made by our service in similar circumstances.

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 compensation of £1,500 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**