

The complaint

Ms H is unhappy with the service she's received from Fairmead Insurance Limited trading as Legal and General (Fairmead) when she made a subsidence claim under her insurance policy.

What happened

In September 2016 Ms H reported cracks and damage to her property to Fairmead, the provider of her home insurance policy.

Fairmead appointed specialists to investigate the cause of the cracking and damage. Investigations were carried out, which included analysis of the ground, and it was determined that clay shrinkage subsidence was causing the property to move and crack.

As Ms H had only been insured with Fairmead for a short time, they attempted to identify her previous insurer, to request a contribution towards the claim. This took some time, and in November 2017 Ms H's previous insurer agreed to contribute.

Fairmead believed the subsidence was due to vegetation owned by the local authority, and wanted it removed in order to mitigate further movement to Ms H's property. Following correspondence, the local authority didn't agree that Fairmead had demonstrated their vegetation was the cause and asked for monitoring to take place.

Monitoring was carried out however the local authority didn't agree to remove vegetation. They said sufficient evidence hadn't been provided by Fairmead in support of their request. A repair method was proposed which Ms H didn't agree with. She wanted the property to be underpinned and arranged her own survey.

Fairmead obtained further root samples and mitigation was again started with the local authority, requesting vegetation removal, along with further monitoring.

The claim is currently still ongoing, and Fairmead are yet to receive confirmation from the local authority whether the vegetation will be removed. Consequently, Fairmead are unable to confirm the repair method or commence works until this time, as it will be dependent on whether the vegetation is removed.

Ms H raised several complaints during the course of her claim about Fairmead's handling of it and the delays. As she remained unhappy, she approached this service.

One of our investigators looked into things and upheld the complaint. He acknowledged that Fairmead had paid a total of £350 compensation for the service Ms H had received, but he didn't think that was enough. He said there had been avoidable delays of around three years caused by Fairmead as a result of how the claim had been handled, and this led to Ms H suffering distress and inconvenience over a prolonged period. He also thought that the service Ms H had received, including a lack of updates on the claim, had been poor. So, he recommended Fairmead should pay a further £1,500 in addition to the £350 they'd already offered.

Due to the poor communication Ms H had received throughout the claim, our investigator also said Fairmead should provide monthly updates to Ms H going forward about what was happening with her claim, and a timeline of proposed actions and next steps. He also noted that Fairmead had their own concerns that they didn't have recent monitoring results, which the local authority might ask for. Therefore, he said they should complete monitoring of the property (which had already started in the interim) to pre-empt the results being requested by the local authority in support of Fairmead's latest request for vegetation removal.

Fairmead agreed with all the recommendations except for the level of compensation. They thought £1,000 (including the £350 already offered) was a fairer amount.

Ms H also didn't agree overall. Ms H said she thought Fairmead wouldn't comply and would push for a repair method she doesn't think will be effective, after they've received an updated position from the local authority.

Our investigator explained to Ms H that as the claim was ongoing, and the local authority decision wasn't yet known but would impact on the type of repair, he said he couldn't recommend a specific repair type at this stage. But he also said that once the claim has moved on and the local authority position is known, if Ms H is unhappy with the proposed repairs, we may be able to look at this as a separate new complaint.

As an agreement couldn't be reached overall, an ombudsman was asked for a final 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.

Where I've referenced actions by Fairmead, I'm also referring to other agents appointed by, and acting on behalf of, Fairmead during the claim.

Firstly, it's important I outline here that at this stage I'm not going to direct Fairmead on the specific type of repair that needs to be carried out in the future. This is because it depends on the local authority agreeing to vegetation and root removal which impacts on the type of repair required. And as the local authority decision isn't yet known as the claim is still ongoing, the final repair method hasn't yet been decided either, albeit there have been some initial discussions. But, as outlined by our investigator, when that point is reached and if Ms H remains unhappy with the proposed repair method, we may be able to look at that as a separate new complaint.

Subsidence claims, due to their nature, can take some time to investigate and carry out repairs. This is for a number of reasons, which can cause the process to be relatively long. For example, trees causing subsidence can be owned by other parties, and an insurer can't then remove them without requesting agreement or permission. And often detailed evidence is required to support that request. As subsidence can cause a property to crack and move over a period of time, including based on seasonal changes, it's not unusual for monitoring to be carried out, over an extended period of time, in order to determine whether a property is still moving or has settled before repairs are carried out.

However, having said that, although generally it's not unusual for subsidence claims to take some time, Ms H's claim was first raised in September 2016 when cracking was noticed, and remedial works still haven't been completed - over five years later. Generally, this does appear to be a long period of time for a subsidence claim to still be ongoing without repairs being started.

I'm considering what's happened during this time, including whether Fairmead has caused any avoidable delays and whether they've acted fairly and reasonably in all the circumstances. But as the claim duration is prolonged and over five years, I don't intend to comment on every event, or action, individually. I don't mean this as a discourtesy to either party, but they are already aware of the full claim history. So instead, I'll focus on events which I think are important in reaching a final decision which is fair and reasonable in all the circumstances of the case.

Having said that, I'd like to reassure both parties that I've considered all the information they've provided when reaching my final decision.

The claim was first raised in September 2016. Specialist reports were completed after this including soil samples and a report by an arborist to determine the cause of the subsidence. These reports and investigations were completed by February 2017. At that time, the damage to Ms H's property was said to be slight. Monitoring was concluded as not required, and vegetation owned by the local authority was believed to be the cause of the subsidence.

I don't think the claim handling by Fairmead up to that time was unreasonable or delayed, and things progressed as I would've expected them to. However, it's a further five years since that point, the local authority negotiations haven't yet been finalised, and repairs still haven't been completed.

I've looked at what's happened and there do appear to have been a number of avoidable delays during the course of the claim, and actions or claim handling by Fairmead which have caused those delays. I'll expand on some of these points below. The information provided by Fairmead also indicates they already recognise delays in the claim, and they offered a total of £350 compensation. I'll consider if, in all the circumstances, that amount is fair.

As I said, between the claim being raised and the reports being completed in February 2017, I think the claim was handled reasonably in terms of progressing. During this period, Fairmead identified that Ms H had made some previous insurance claims, which they weren't aware of. This needed consideration whether it would have any impact on Ms H's policy and/or the claim. It was confirmed by October 2016 that it wouldn't, and the claim could continue as normal. I don't think this specifically impacted on the length of the claim or caused any delays.

But, at the time of the claim in 2016, Ms H had only been insured with Fairmead for a few months. As subsidence can take time to occur, in specific circumstances a previous insurer may pay a contribution toward the claim and repairs alongside the current insurer. This is due to the Association of British Insurers (ABI) domestic subsidence agreement.

This agreement was in place at the time of Ms H's claim. And the agreement outlines which insurer is responsible for dealing with and settling a claim and at what point, and whether any contribution is due from a previous insurer. And during consideration of this, I think Fairmead caused avoidable delays in the claim. I'll explain why.

Fairmead carried out a Claims and Underwriting Exchange (CUE) check at the time Ms H made the claim. CUE is a database of information which may be relevant to other insurers and can show events such as previous claims and policy cancellations. This check is how Fairmead identified the previous undisclosed claims that I've mentioned above. This also outlined Ms H's previous insurer (for several years) was a company I'll call insurer Z. Fairmead attempted to contact Ms H to clarify and obtain a policy number for Z so they could see if Z would contribute toward the claim under the ABI subsidence agreement. But I can see from the file notes that they had issues reaching Ms H.

It does seem that some of these calls were made outside hours when Ms H was available, which Fairmead were already aware of, but letters and emails were also sent and messages were left. However, these weren't returned by Ms H. But, although there were issues with reaching Ms H, Fairmead's own internal communication shows they recognised this wasn't chased frequently enough and overall was chased for far too long before considering other steps.

But, Fairmead were already aware that, on balance, the insurer was Z from the earlier CUE check. Whilst there was a gap between policies, it doesn't show any other company insuring Ms H for that time. So, this indicates, on balance, that it was likely the same insurer Fairmead had already identified. Albeit that when it was eventually confirmed as Z, several months later, they did say the policy was in joint names, and so they had difficulty locating it at first.

However, during this time of trying to identify the previous insurer and confirming a contribution, there was no other action on the claim. No monitoring was completed as it was deemed this wasn't needed, but despite this, repairs also weren't completed either. And it took more than eight months from when all reports had been completed in February 2017 before confirmation of a contribution was agreed with insurer Z. It wasn't until internal referral that resulted in Fairmead identifying the delays this was causing, and how the lack of chasing was prolonging matters, that they actually considered next possible steps, and the claim remained essentially on hold during this time.

So, the focus during this period appears to be solely Fairmead trying to secure pre-agreement to a contribution from Ms H's previous insurer, rather than, or even alongside, actually moving her claim forward. All investigations had been carried out prior to this, and reports obtained, and no monitoring was being carried out, but no repairs were completed either. Fairmead were always going to need to deal with the claim either way, and later recover the contribution from the other insurer, or be responsible for all of it if there was no recourse to the previous insurer. So it seems the delays here were solely due to Fairmead focussing on seeking a contribution, to the detriment of Ms H's claim actually moving forward, which didn't happen until this was then completed in November 2017 - over a year after the claim was first raised.

This wasn't the only area where I think delays in the claim could've been avoided though. The original soil reports said the subsidence cause was likely to be local authority owned vegetation. However, the report also said that roots were not identified at that time and the opinion it was local authority vegetation was based on proximity to the damage. And monitoring was deemed unnecessary at that time.

I think Fairmead should've obtained additional root and soil samples at the time. Those they had completed weren't conclusive in implicating the local authority vegetation. But Fairmead still intended to use these alone as evidence to the local authority that their vegetation was causing the subsidence. Inevitably the local authority didn't agree this was sufficient evidence. Instead it wasn't until the request had been rejected by the local authority that Fairmead sought further samples, several years later, before reattempting to obtain agreement from the local authority (which still hasn't been agreed). If comprehensive samples were taken at the time, then this could've been provided to the local authority at a much earlier stage for consideration, rather than providing poor samples, for the local authority to then reject. Inevitably this has caused an avoidable delay in the claim.

In addition to this, it's also not unusual for monitoring to be carried out and used as part of the evidence (including root samples) to present to third parties, such as a local authority, if holding them responsible and attempting to obtain agreement for vegetation to be removed. Here though, despite the poor-quality root samples at the outset, which didn't implicate the local authority vegetation, monitoring also was said to be not required at the time.

It would've been foreseeable that the local authority would require evidence implicating their vegetation from Fairmead. Given subsidence claims can be lengthy, and agreeing with third parties to remove vegetation can take time and negotiation, I think it would've been reasonable for Fairmead to carry out further monitoring much sooner (along with additional root samples), and whilst they were looking into other aspects, such as the previous insurer.

Instead, monitoring didn't start until November 2017, over a year into the claim and this was following an internal review. And following this first internal review, it was a further three months before this was then arranged, following another internal review again highlighting the necessity. Monitoring then ran for more than 18 months. So, I think there were avoidable delays caused by Fairmead here both as a result of the poor-quality root samples and lack of monitoring and it then being completed later than it ought to have been. Added to this, as I've mentioned, focussing solely on obtaining insurer Z's contribution. This has caused overall avoidable delays in the claim duration.

In addition to these key delays, looking at what's happened, the communication between Fairmead and the local authority took time. I can also see that some of the delays were due to Fairmead and the local authority being unable to agree a mutually convenient time to carry out a joint site visit. And when a site visit was then arranged between Fairmead and the local authority, this wasn't productive as access wasn't arranged by Fairmead. So, I do think there were also avoidable delays here caused by Fairmead. But having said that, they weren't solely responsible for all these delays.

Due to the lack of evidence being obtained in the early stages, and the consequent rejection of Fairmead's request by the local authority, the claim effectively had to restart. New monitoring, new root reports and evidence have been presented to the local authority for consideration, which adds to the delays and was due to insufficient evidence being obtained and provided earlier in the claim. And this is in addition to the early stages lack of action on the claim when Fairmead was attempting to secure a contribution from the previous insurer. So, having looked at what's happened overall, in my view on balance, there is a delay period of approximately three years.

Having a claim ongoing for so long has understandably been both distressing and inconvenient for Ms H, and her property has continued to subside and cracks have worsened during this time. She's explained that due to the cracks her home has been cold and suffering with damp issues. And this has affected her on a daily basis, worsening over the last five years since the claim was first made.

As I've noted above, subsidence claims can take time by their very nature, so it would've always taken some time to resolve. But as I've also outlined above, here I think Fairmead's claim handling and actions have resulted in it being avoidably delayed beyond a timescale reasonably expected, in the region of approximately three years.

Throughout the claim I don't think the communication from Fairmead has been reasonable. It's clear from the information provided that Fairmead needed to be repeatedly chased for updates on the claim, and continually asked to outline next steps and when any action would be happening. So not only has it been delayed, but Ms H hasn't been given any clear next steps about what's happening and has had to continually chase Fairmead for information.

Our investigator recommended that Fairmead should give Ms H monthly updates on the claim and provide details and an outline of next steps. Fairmead agreed with this part of our investigator's recommendation. Given the communication so far in the claim, I think this approach would be fair and reasonable in the circumstances.

Fairmead has offered Ms H £350 compensation. Given the length of time the claim has avoidably taken, which on balance I believe Fairmead is responsible for, and the service Ms H has received overall, I don't think this amount is enough. Having taken everything into account, I believe a further £1,500 in addition to the £350 offered, is fair and reasonable in all the circumstances.

As I mentioned above, the claim is still ongoing at the moment and negotiations with the local authority are still happening. Fairmead also identified that they didn't have any up to date monitoring reports to present as further evidence to the local authority if they asked for it in current negotiations. So recently they've been monitoring the property. And our investigator said they should continue with and complete monitoring so they can provide this if requested as evidence from the local authority. I'm in agreement that this is a reasonable approach in anticipation of being asked for further evidence, so as not to cause further delays.

My final decision

It's my final decision that I uphold this complaint and direct Fairmead Insurance Limited trading as Legal and General to:

- complete monitoring to obtain updated results
- provide Ms H with monthly updates on her claim
- provide Ms H with a timeline of proposed next steps for her claim
- In addition to the £350 compensation already offered, pay a further £1,500 compensation to Ms H

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 16 March 2022.

Callum Milne
Ombudsman