

The complaint

Mr S complains about his insurer, Fairmead Insurance Limited (Fairmead). His complaint relates to the decline of a claim under his home insurance policy for damage to a wall at his property in bad weather, as well as the time taken to assess the claim.

Fairmead use agents to administer the policy. Reference to Fairmead includes these agents.

What happened

In January 2021 a section of a wall at Mr S's property collapsed. At the time of the collapse there had been bad weather, including significant rainfall. Mr S contacted Fairmead about the damage and in the initial discussion Mr S was offered a choice of either appointing his own contractor to provide an estimate of the cost of repairing the damage, or Fairmead would appoint their own contractors. Mr S chose the first option. Mr S also then indicated he would engage a structural engineer (to check the foundations). Fairmead said it would be helpful if one of the contractors could provide a report on the cause of damage to the wall, although Mr S thought Fairmead would assess the damage. Mr S subsequently obtained an estimate in March 2021 from a builder that the rebuild cost of the wall would be £12,900.

Mr S engaged a structural engineer (O) who visited the property in May 2021 and produced a report in July 2021 (there was some delay due to illness of O). The report concluded a period of heavy rainfall in the two weeks preceding the collapse had caused the retained soil behind the wall to become saturated, overloading the wall and leading to the collapse. The build-up of water hadn't been able to drain away because of the continuous rainfall, but also because of the type of soil behind the wall (relatively impervious clay) and the absence of weepholes in the wall that would have provided a means of drainage.

Having received O's report, Fairmead appointed their own loss adjuster (D) to assess the claim and estimates of the cost of repair, as well as inspect the damage. Following their visit in late July, D declined Mr S's claim in September 2021. In declining the claim, D said the wall was in a poor condition and based on a combination of construction techniques D considered weren't good practice (the absence of weepholes or other drainage, as well as the absence of a substantial foundation). Based on this, D concluded the damage wasn't caused by a storm, but had occurred over a long period of time, as evidenced by the general condition of the wall and by wear and tear. D also noted a comment from Mr S during their visit that the wall had been affected by movement for around twelve years.

Unhappy at the rejection of his claim, Mr S complained to Fairmead. They rejected the complaint, confirming the decision to decline his claim. Fairmead confirmed their view the damage hadn't been caused by the insured peril of a storm, but had occurred over a long period, evidenced by the general condition of the wall. On the time taken to assess and decline the claim, Fairmead concluded it was Mr S's decision to appoint his own contractors and structural engineers, and the cause of damage report wasn't received from the latter until July 2021. Based on this, Fairmead concluded they'd handled Mr S's claim correctly.

Mr S challenged Fairmead's findings, who considered matters further. They concluded there was some initial confusion about who was being appointed, so they accepted a loss adjuster

could have been appointed earlier. They also thought, as they didn't think storm conditions were present, they could have advised Mr S more clearly that cover for the claim wasn't confirmed and was dependent on receiving the structural engineer's report. In recognition of the poor service and inconvenience, Fairmead offered Mr S £100 compensation.

Mr S then complained to this service. The main issue was that Fairmead shouldn't have declined his claim. He was also unhappy at the time taken to assess the claim, particularly the length of time before Fairmead sent a loss adjuster to inspect the damage.

Our investigator upheld the complaint, concluding Fairmead hadn't acted fairly. On the decline of his claim, the investigator concluded there was significant rainfall at the time of the wall's collapse that would constitute storm conditions. However, he thought the damage to the wall wasn't the result of a one-off storm, rather it had been ongoing for some time. As the policy excluded damage from wear and tear, he didn't think Fairmead had declined the claim unfairly. But the investigator thought Fairmead should have appointed a loss adjuster sooner, meaning the decision to decline the claim would have been made sooner. This meant Mr S then had to repair the wall himself, at a time where weather conditions made it more difficult. The investigator didn't think the £100 compensation awarded by Fairmead fully recognised the trouble and upset to Mr S from the decline of his claim not happening sooner, thinking £300 would be fairer.

Mr S disagreed with the investigator's conclusions and requested an ombudsman review the complaint. He said that while £300 for the delay in assessing and then declining his claim wasn't unreasonable, it didn't recognise the financial loss and distress to him by having to repair the wall during the winter. He also thought D sending their contractors to survey the site in the summer gave him the impression that Fairmead were going to accept his claim.

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 Fairmead has acted fairly towards Mr S.

There are two main elements to Mr S's complaint. First, the decision to decline his claim. Second, the time taken for Fairmead to assess the claim and reach their decision to decline it, particularly the delay in their appointing a loss adjuster.

In considering the first issue, I've looked at the three key issues we consider involving damage caused by storms:

- 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, I've looked at the information and evidence about the weather conditions on and around the date of the incident, using data from the nearest weather station from the source of weather data used by this service. I'm satisfied that while there weren't winds of a level that we'd consider storm-force, there was significant rainfall that we would consider to be consistent with that in a storm. I recognise that Fairmead didn't consider there was a storm [event] that caused the collapse of the wall, but the more important question is what caused the wall to collapse (the second and third questions).

Turning to those questions, I've looked at the evidence, including the reports from O and D and photographs of the collapsed wall and the remaining section of the wall. I'm persuaded by the findings and conclusions from both reports. Both point to factors that had been present over time, including the nature of the construction of the wall (including the absence of weepholes and other means of drainage). Also, the general condition of the wall at the time of the collapse and the absence of maintenance. The overall conclusion from D's report is that:

"It is our consideration that while the loss has occurred following sustained and heavy rainfall the damage is due [to] movement over a long period of time exacerbated by poor construction detailing and a lack of maintenance..."

I'm persuaded that the damage is most likely to have been the result of wear and tear issues that occurred gradually. And that the adverse weather conditions (the significant rainfall) would have highlighted the issues, rather than being the main or dominant cause of the damage. Looking at the terms and conditions of Mr S's policy, under a section headed *Making a Claim and Claims, Conditions applicable to the whole of this Insurance* there's a reference to:

"...this Insurance does not cover loss or damage which had been caused purely by wear and tear – it is not a maintenance contract."

Based on this, I've concluded that Fairmead acted reasonably in declining Mr S's claim.

The second issue in Mr S's complaint is the time taken to assess the claim and the decision to decline it, particularly the delay in Fairmead appointing a loss adjuster. I've considered what Mr S and Fairmead have said about this, the email and other contacts, as well as the case notes for the claim from Fairmead. From this, I've concluded that there was some initial misunderstanding between Mr S and Fairmead, particularly on the issue of assessing the claim and whether it would be covered (as opposed to obtaining estimates for the cost of repairing the wall). Mr S thought he was only being asked to obtain estimates for the cost of repair (not assessing the cause of the collapse). But it appears that Fairmead were waiting for the estimates before then assessing the claim. But it also appears that when Mr S told them he was thinking of engaging a structural engineer, they asked if the engineer (or the building contractors) could also supply a cause of damage report.

The case notes and timeline indicate that there were delays in Mr S getting estimates from builders (only one was initially provided) and there was a delay in O being able to inspect the damage and issue a report. But before that point, Fairmead decided to appoint their own loss adjuster, who subsequently inspected the damage and provided his report. Fairmead accept that they could have appointed a loss adjuster earlier than they did, albeit they had thought Mr F's structural engineer would be providing a report on the cause of damage. When this didn't happen, I can understand why it was at that point they appointed their own loss adjuster. But, while I've concluded that Fairmead could have appointed a loss adjuster earlier, I don't think it would have changed their decision to decline Mr S's claim.

However, it did mean delay to the decline of the claim, which I think would have had an impact on Mr S. I've considered what Mr S has said about the impact of the delay. Considering the circumstances, I think £300 is reasonable compensation for the delay. But as I don't think the delay changed the decision to decline the claim, I think Mr S would always have been in the position of having to repair the wall himself, albeit at a time of year that may have been less favourable.

I've also considered Mr S's point about D sending contractors in the summer gave the impression that Fairmead were going to accept his claim. But I don't agree. Appointing a loss

adjuster and their inspecting the damage doesn't, of itself, indicate that a claim will be accepted – rather it means that the claim will be assessed and a decision made as to whether it's accepted or (as in this case) declined.

Taking all these points together, then I've concluded that Fairmead acted fairly and reasonably in declining Mr S's claim on the grounds that the damage hadn't been caused by an insured event but had occurred gradually over time. But I have concluded that they could have assessed and declined the claim sooner than they did, particularly if they'd appointed a loss adjuster earlier. I think £300 compensation for the distress and inconvenience this caused to Mr S is fair and reasonable in the circumstances of the case.

My final decision

For the reasons set out above, it's my final decision to uphold Mr S's complaint in part. I require Fairmead Insurance Limited to:

- Pay Mr S £300 in compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 March 2022.

Paul King
Ombudsman