

The complaint

Ms I's complaint is about ongoing issues with how Fairmead Insurance Limited have dealt with a claim made under a buildings insurance policy.

All references to Fairmead include its appointed agents.

What happened

I'm aware that my summary of events will be in far less detail than that provided by the parties concerned. But I'd like to reassure everyone that I've carefully considered everything that has been provided. I'll set out the events which I find relevant to my decision below.

Ms I made a claim to Fairmead for subsidence damage to her property around 2014. After some time, Ms I raised a complaint about the way her claim had been handled and the delays she said Fairmead has caused. She was also unhappy her policy had been cancelled.

Our service adjudicated the complaint in 2016. The complaint was upheld, and Ms I was awarded £500 compensation for the distress caused by the policy cancellation. Her policy was reinstated, and Fairmead agreed to amend its records to show Ms I had raised one subsidence claim only. Fairmead also agreed to consider further associated costs Ms I may have incurred during the claim.

Following our service's adjudication, Ms I raised further complaints points about Fairmead's handling of the claim. She didn't say whether she accepted our adjudicators findings in relation to the first complaint.

Fairmead provided a final response to Ms I in March 2017. It addressed Ms I's concerns with aspects of the claim, including issues with the damp specialist appointments. Fairmead asked for evidence of the costs Ms I had incurred and awarded £100 compensation for the distress and inconvenience it had caused for some further delays in the claim. It advised Ms I that she needed to refer any complaint to our service within six months of the date of the letter.

Around February 2018, Fairmead wrote to Ms I and made an offer to cash settle the claim. It also addressed the areas of damage in Ms I's property and explained what it was liable for. Ms I says the cash settlement was rejected by her son – who at the time was dealing with the claim on her behalf. Fairmead has said there is no evidence of the offer being rejected.

Instead, Fairmead says it chased Ms I to see how she wished to proceed with the claim but received no response. Following a period of some months and further chasers, Fairmead closed the claim around December 2018.

Around August 2020 Ms I raised a further complaint to Fairmead. In summary she said:

- She was unhappy with the terms of the cash settlement made in 2018.
- The property needed urgent repairs and was uninhabitable.
- That Fairmead needed to take further action against the water board for the damp related issues.

Fairmead appointed a loss adjuster to visit Ms I's property to inspect the damage and provide a report to respond to her concerns. Fairmead then provided its final response in November 2021.

Fairmead maintained its position that the cash settlement offered in 2018 was correct based on the evidence it had reviewed. It said that the claims related damage did not render the property uninhabitable. And it said that the damp issues weren't claims related, so it was unable to assist with this matter.

Fairmead concluded that there was significant damage being claimed for that predated Ms I's policy. And it said that the appropriate repairs remained outstanding which in turn had caused the existing damage to deteriorate. So, it said it would be unable to consider this under the terms of Ms I's policy.

Ms I disagreed with Fairmead's response and referred the complaint to our service. In summary she said:

- Fairmead hadn't done anything in regard to the 2016 adjudication by our service. And her policy had now been cancelled for a second time.
- The cash settlement offered wouldn't be sufficient to fix the external cause of the subsidence, so there was little point in rectifying the internal damage until this had been fixed.
- The property had been rendered uninhabitable following assessments by the local fire brigade and housing standards officer
- The cause of subsidence was linked to an escape of water, which should be the insurers responsibility to investigate.
- She had attempted some repairs such as that to the front door but that due to the ongoing movement this was no longer possible.
- The overall effect of this claim on her physical and mental health had been stressful and traumatic.

The complaint was referred to me and on 21 January 2022 I set in my provisional decision what I thought Fairmead needed to do to put things right. I've repeated an extract below:

"This claim has spanned many years and has clearly been stressful for Ms I based on the detail in her submissions. I understand how keen she is for a resolution to the matter. So, I've first looked at whether our service can consider the aspects of Ms I's complaint to which Fairmead responded in March 2017.

Fairmead's March 2017 final response

The rules applying to this service state that, unless the business agrees, I can't consider a complaint referred to us more than six months after the date it sends the consumer its final response letter, telling them they can refer their complaint to us. This is set out in Dispute Resolution ('DISP') rule 2.8.2R(1), which can be found online in the Financial Conduct Authority's handbook. Or we can provide a copy on request.

I've seen a copy of Fairmead's final response letter, which is dated 9 March 2017. And I can see it clearly states Ms I needs to refer the complaint to our service within six months of the letter. I've checked our records and the evidence provided by Ms I and I'm satisfied that Ms I first contacted us about her intention to complain in August 2020. This means it wasn't referred to us within the six-month time limit.

I've considered whether Ms I was delayed in referring the complaint to us as a result of exceptional circumstances. Ms I says she was unwell during this period so her son took over dealing with the claim. And I can see that around October 2017 he contacted Fairmead to advise he was dealing with the claim on her behalf.

I have no reason to doubt Ms I's testimony here – it's clear from the evidence she's provided that she was unwell. And I've thought carefully about what she's said, but on balance, I don't think she was prevented from bringing the complaint to us in time.

So I'm sorry to disappoint Ms I, but I intend to find that I am unable to consider the aspects of her complaint to which Fairmead responded prior to March 2017 because this part of the complaint was referred too late.

However, to be clear, I do intend to consider the events that Ms I has raised from 10 March 2017 (the day after Fairmead's previous 'final response') to 27 November 2021 (the date of Fairmead's recent 'final response') in order to arrive at a relevant and fair answer.

I'll next go on to consider Ms I's concerns about Fairmead's lack of action since our service's previous adjudication, and her policy cancellation. I'll then consider Ms I's unhappiness with Fairmead's cash settlement offer and look at whether Fairmead is liable for any further damage that Ms I says it is responsible for. Finally, I'll consider if there were any avoidable delays in the period set out above and if so whether this merits any compensation for the distress and inconvenience Ms I says Fairmead has caused.

Claim developments since our service's adjudication in 2016

Ms I says our service's adjudication recommended Fairmead reinstate her insurance and fix the property, but that nothing's happened since. I've read a copy of the 2016 adjudication and I agree that Fairmead were told to reinstate the policy, which it did. But the remaining recommendations were linked to moving the claim forward and reimbursing Ms I for costs incurred. I've included some brief extracts here for reference:

"Looking at the report provided by the damp specialist, I can see that whilst this details the damp present, no opinion is given on what caused this. In this case, I think it reasonable that L&G [Fairmead] should be given the opportunity to determine the cause of the damp issues and assess its liability in this respect, before drawing up an updated scope of repairs."

"I don't know exactly what repairs L&G intends to carry out. So I can't make any assessment in this respect...While I appreciate damage or distortion caused by a lack of lateral restraints isn't something which would be covered by this policy, I would expect L&G to consider all subsidence damage, taking into account the ABI subsidence agreement, as well as our established approach, when drawing up a new scope."

Therefore, I cannot see any evidence that our service directed Fairmead to repair the property at this time. And further, Ms I didn't respond to our service within the timeframe provided at the time to say whether she agreed with the adjudicator's findings. So, the complaint was closed and Fairmead ultimately weren't bound by the findings.

However, I can see Fairmead contacted our service after the adjudication and accepted the findings in principle. And through its actions I am persuaded it was attempting to move the claim forward; it arranged further reports and site visits until a scope of works could be drawn up in February 2018.

So, I'm satisfied from the evidence provided that Fairmead made reasonable attempts to move the claim forward following our service's 2016 adjudication, and I don't intend to uphold this part of the complaint.

Policy cancellation

The policy documents provided show the policy is jointly insured in the names of Ms I and her mortgage lender. The documents also show the policy was taken out by the lender to protect its interest in the property (i.e. the outstanding mortgage balance) in the absence of Ms I providing evidence of any other buildings insurance cover.

Fairmead has provided evidence to show this policy was part of a larger book of policies taken out by the lender. And it has also provided evidence the relationship with the lender came to an end around 2018, when the 'Buildings Only' policies (which included Ms I's) closed for new business, and the policies lapsed in August 2019.

As this decision concerns the actions of Fairmead, I cannot comment on the lender's decision to move this book of policies to a different insurer. Ms I would need to take this up with the lender directly. But I'm satisfied Fairmead wasn't responsible for the decision to cancel the policy, so I don't intend to require it to do anything further here.

Fairmead have continued to deal with the claim for the time Ms I was on cover with them. I think this is reasonable in the circumstances.

Cash settlement

I understand Ms I's concerns about the overall damage to the property, and why she feels Fairmead's cash settlement won't be sufficient to fix all of the damage. But in order to uphold this complaint, I'd need to see firm evidence Fairmead's scope of works was unfairly calculated against the terms set out in the policy and its overall liability on the claim.

I've considered all of the expert reports provided by both parties to get an understanding of the original condition of the property, and to see if Fairmead's scope was fair and reasonable.

Fairmead's loss adjuster wrote to Ms I around January 2018 to set out the limit of its liability under the policy. In summary it said:

- The distortion and some of the crack damage was historic and could be linked to a claim for the same property which was declined in 2003. As such some of the recommended repairs, such as rebuilding part of the structure and installing of lateral restraint ties appeared outstanding from that time and wouldn't form part of the current works.*
- There was a penetrating damp issue in the property, which a damp specialist had confirmed wasn't linked to the drain issue at the front left corner of the property. So the policy wouldn't cover for any damp related treatment or damage remedial works.*
- That it would notify the water company of the issue of settlement in the side alleyway and ask them to investigate as it was most likely linked to recent drain repairs.*
- As such, the scope of works would comprise of robust structural crack repairs and redecoration works to cover the movement and damage which had occurred since the policy started.*

Having carefully considered everything, I am persuaded there is a degree of historic damage present which wouldn't be fair to require Fairmead to cover. I'll explain why below.

Fairmead has provided evidence to show the movement happened as far back as 2003. And the report from the time states "This movement would appear to have occurred over many years and to have largely stabilised at the present time". In addition, there is evidence a surveyor was instructed by Ms I around 2007 who recommended repairs which weren't done. So, I am persuaded Fairmead can fairly turn down any damage relating to this movement due to the historic nature and lack of mitigation by Ms I.

Having read the damp specialist reports provided from 2016 and the more comprehensive report from 2017, I am persuaded the issues of damp identified don't fall under an insurable event of Ms I's policy. I say this because the 2017 report states, "The moisture profile was typical of rising dampness, penetrating dampness and interstitial condensation...". I've not seen any firm evidence to dispute the damp issue is persistent due to identified defects in the report. So, I don't intend to require Fairmead to contribute to the cost of these repairs either.

I've considered Ms I's comments about the cause of the subsidence being linked to an escape of water. I can see Fairmead notified the water company of a localised settlement issue, but the reports I've read instead link the subsidence to historic ground movement based on the soil composition and lack of lateral restraint to the wall. So, I can't agree that the escape of water from a local drain was the main cause of all the movement, and I don't think Fairmead needs to investigate this further.

I've next considered the scope of works Fairmead has provided. I can see the scope covers the identified crack repairs and redecoration costs for the affected rooms and is linked to the movement measured since Ms I raised the claim. Overall, I am satisfied the scope fairly sets out the damage Fairmead is responsible for under the policy terms.

Given the evident complications of completing an effective and lasting repair in light of the historic movement and damp problems, I'm satisfied Fairmead's decision to cash settle the claim is reasonable in the circumstances and an option available to it under the terms of the policy.

Additional damage

Ms I says there is additional damage which has now rendered the property uninhabitable, and I was sorry to read of her situation here. And I understand she has attempted some repairs to the property. But in order to uphold this point in Ms I's favour, I would need to see some firm evidence that Fairmead's actions directly contributed to the further damage and deterioration of the property.

Following Ms I's complaint, Fairmead reengaged with the claim and sent a surveyor to the property to inspect the damage. The surveyor concluded that "Further subsidence to the gable and some of the internal walls, and lateral movement to the gable has occurred over the last three years...In respect of the separate issue of damp ingress, the damage to the fabric is extensive and appears to have deteriorated further."

I've taken into account Ms I's comment that her son rejected the cash settlement but I've not seen any evidence of this – the last correspondence I've seen indicated her son was pursuing legal advice on whether to accept the cash settlement or not. I'm satisfied Fairmead made reasonable attempts to chase the matter with Ms I and only closed the claim following an extended period of no response.

I've not seen any evidence of Ms I rejecting the cash settlement directly until the matter was raised with Fairmead in 2020. So, I don't find the delay or associated damage here was as a direct result of Fairmead's actions.

Therefore, I find it reasonable for Fairmead to make the original cash settlement payment as set out in the 2018 scope of works. I think it reasonably calculated its liability at this time and has carried out extensive investigations to determine the cause and scope of damage at the property.

I don't intend to make an additional interest award in this case for the time Ms I was without the funds as I don't find Fairmead responsible for the additional damage or delays being complained about.

Conclusion

I appreciate Ms I will most likely be very disappointed that I am not upholding the majority of her complaint. But having carefully considered the evidence provided, I am not persuaded that Fairmead is liable for all of the repairs she claims. And I am not persuaded it is responsible for any unavoidable delays in the claim for the period I've considered.

Whilst I don't doubt the claim and overall experience has caused Ms I a great deal of upset, again I cannot fairly attribute this to Fairmead's actions for the period I've considered. So, I don't intend to make any further award for compensation here.

How I propose Fairmead should put things right

To put things right for Ms I, Fairmead should:

- *Pay the cash settlement of £7,002.17 subject to the remaining terms and conditions of the policy (such as an excess).*

Developments

Fairmead responded to my provisional decision and confirmed it didn't have anything else to add. Ms I also responded to my provisional decision and said she didn't have any further evidence to submit.

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.

In the absence of any new evidence or arguments I've reached the same conclusions I reached in my provisional decision, for the same reasons.

I therefore uphold Ms I's complaint in part.

Putting things right

To put things right for Ms I, Fairmead should:

- Pay the cash settlement of £7,002.17 subject to the remaining terms and conditions of the policy (such as an excess).

My final decision

My final decision is that this complaint is upheld in part. Fairmead Insurance Limited must put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 22 March 2022.

Dan Prevett
Ombudsman