DRN-3336578

The complaint

M, a company, complains on behalf of Ms A about the way that Fairmead Insurance Limited trading as Legal and General dealt with her home insurance claim for flooding.

What happened

In early February 2020 Ms A suffered flooding at her home. When the flood happened, she instructed M to carry out mitigation works and it installed temporary piping and a pumping system. There was a further flood in late February. Ms A reported the damage online on 27 February, and then M on her behalf reported the claim to Fairmead in early March. From that point M made it clear that it was acting on Ms A's behalf, and that any correspondence had to be by email, as Ms A suffered from verbal impairment and wasn't able to discuss matters over the telephone.

Fairmead appointed loss adjusters who made a site visit on 11 March in the presence of a representative from M. It was noted that substantial strip out and flood mitigation work had already been carried out by M, for which it presented costs of over £19,000. The loss adjuster noted that it was caused by a blocked culvert and that the internal damage affected three rooms on the ground floor. He reported back to Fairmead and indicated that he had spoken to M's representative who had told him that Ms A didn't at the time require alternative accommodation (AA) as she preferred to stay in the property. This was later denied by M. The loss adjuster also reported that the property looked as if it was built in the late 1800s but the build date on the insurance schedule was 1950. Fairmead corresponded with M about this but Ms A had communicated with Fairmead prior to her renewal in 2017 and advised that she was unaware of the exact date the property was built. Fairmead had continued to renew the policy.

M complained about the delay and about the demands made on Ms A by the loss adjusters' emails. It also pointed out that Ms A hadn't been offered AA and that Fairmead hadn't accepted liability or paid her costs. Fairmead responded in early May 2020 and said it would pay Ms A compensation of £100 for the distress and inconvenience caused to her. In respect of the work already carried out, it sent through its contractor's assessment and said it wouldn't pay for preventative work, and the damage to the electric gates wasn't covered under the policy. With regard to AA it said it would consider that once liability was accepted but in the meantime asked for details of any costs incurred.

Fairmead became concerned that it was receiving communications purporting to be from Ms A but drafted in the confrontational style used by M. It also said that Ms A's email address wasn't registered on its database. It also was concerned that M was running the claim but didn't appear to be in touch with Ms A. It sought legal advice from its solicitors who advised that an ID check needed to be carried out to ensure that Ms A was aware of the claim and of the actions of M. It appointed a firm, C, who carried out private investigations, to do this but Ms A didn't want to meet anyone from that firm. Eventually it was agreed that a meeting would take place at her property and she would then present ID documents to Fairmead's representatives. This meeting took place in early September (having been postponed from a few days before). After this meeting Fairmead was satisfied that liability could be accepted.

M initially complained to this service in September 2020.

Having established that Ms A wanted to use her own contractors Fairmead set about reviewing the matter so as to provide a cash settlement. After a site visit took place in late September, Fairmead's surveyor assessed the claim to be worth around £22,900 plus VAT. However it wasn't satisfied that M had provided the necessary information concerning the loss or damage to the contents, so put forward an offer of around £15,500 which was rejected. Through its solicitors Fairmead asked for further documentary evidence of M's costs. For the most part M declined to provide this, asserting it was an unreasonable request. Fairmead reconsidered the matter and decided to accept the claim for a new boiler.

In May 2021 it made a final offer of £32,374 which included VAT, the cost of a new boiler, a replacement stair carpet, and a disturbance allowance of £840. The latter figure was based on the number of days it considered that it would take for the building work to be completed, at a rate of £10 per day. M estimated the damages to be around £200,000 but nevertheless appointed a surveyor as a result of which it claimed costs of £98,665. M rejected the settlement offer on Ms A's behalf but nevertheless Fairmead paid this directly into Ms A's account in early June 2021.

Fairmead sent a further final response letter in November 2020. It didn't offer any further compensation.

M reported that further flooding took place in November and December 2020, and again in January 2021 which I'll deal with in this decision. I understand that M raised a further complaint about the January 2021 flood which it has dealt with separately. I understand that further flooding occurred after that which will need to be the subject of separate claims.
On referral to this service our investigator said that Fairmead should pay a further £500 compensation for the delays it had caused. She further said that it should pay 8% interest on the settlement from the date of its original offer in December 2020 until its payment in June 2021. But that wasn't agreed and the complaint came to me.

I issued a provisional decision. In it I largely agreed with the investigator's view, but I thought that interest should be paid on the whole amount of the eventual payment, and for a longer period.

Fairmead accepted my provisional findings.

Ms A didn't accept, I'll set out her views, as expressed on her behalf by M, in my findings below.

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.

With regard to M's comments on the background of my provisional decision, I have largely used it again above. I've set out the facts of the matter presented to me from the documents provided by both parties. I've altered a couple of points to make the position clearer. But my comments on M's response will be confined to the findings, and I'll deal with those below. M has sent in a detailed response. And although I appreciate Ms A's desire to raise every point, I confirm that I've considered every point M has raised in response but in this decision I will just highlight the points I think need a reply, again in accordance with our approach to complaints.

scope of this decision

In my provisional findings I said:

"*I should set out what my position is here. This service offers an alternative dispute resolution service. Our function is to try to resolve informally complaints between businesses and customers. This means that we will take a holistic approach, we don't forensically examine each and every detail of the complaints. And I won't go through every piece of evidence or every letter of complaint in this decision, although I can assure Ms A I've considered them.*

I should also add that how a business handles its complaints is not a regulated activity. So I have no jurisdiction to consider Fairmead's complaints handling procedure. This includes any allegation that Fairmead didn't answer each and every complaint or that its CEO didn't get involved in the complaints process. I should emphasise that this just concerns the complaint handling process. I'll deal with the allegations that Fairmead failed to respond to emails concerning the claim in my findings below.

Any complaints that Fairmead or its agents breached the Data Protection Act don't fall within my remit. Those should be referred to the Information Commissioner.

In connection with each of its points of complaint M says that Ms A was treated unfavourably because of her race and her sex. M hasn't particularly raised the issue of disability but if I understand it right Ms A suffered from a "verbal impairment" which may be a disability. These are protected characteristics under the Equality Act 2010, and I shall set out my view in respect of each complaint and where relevant as to whether I think Fairmead breached that Act, either in respect of the service it provided or in failing to make reasonable adjustments. This is in addition to the overall consideration as to what was fair and reasonable in the circumstances of the case."

M says that when Fairmead raised questions, Ms A responded to each and every question it raised. Yet it refused to answer each and every point M raised in its emails with Fairmead – it considers this to be a one sided approach.

I think this is a question of degree, I don't think it would have been reasonable to expect Fairmead to answer each and every point made in M's emails. And I don't think a failure to do this stopped the claim from progressing. I've set out below what I considered reasonable to ask of Ms A or her representatives.

M says Ms A was suffering a disability, due to her impairments and Covid self-isolation.

I'll accept that and I've taken it into account.

communication issues

In my provisional findings I said:

"*When Fairmead first attended the property its adjuster was met by a representative of M, and told that Ms A had a verbal impairment. The adjuster recorded that he was unable to meet with or speak to Ms A, but M had sent her written authority for it to act on her behalf. M advised that she was able to communicate by email and it required all communications to be by email.*

There was some confusion over who was able to make decisions about the claim. Ms A was given the impression that the loss adjuster who visited was able to make those decisions

when he was not in fact able to do so in view of the size of the claim. She was also contacted by telephone on one occasion when M had said this wasn't to happen.
I can understand why Ms A was confused at first. M had already carried out substantial stripping out and flood prevention works for which it had billed over £19,000 and she was understandably anxious to have that paid.

I do think though that Fairmead clarified the position to Ms A. And its adjuster apologised for attempting to speak to her over the telephone. I think they were reasonable responses. Thereafter Ms A was contacted by email, and it was made clear to her the liability for the claim couldn't yet be agreed. Firstly Fairmead required to do a financial check on Ms A, then following the visit to the property it raised the issue of the age of the property (which I'll deal with in more detail below). Over this period M sent through a substantial amount of emails, raising a number of points. M complained on Ms A's behalf that a number of its points weren't replied to. It also alleged that the emails sent to Ms A by the loss adjuster were 'controlling and threatening.'

In respect of the telephone call, I agree that this shouldn't have happened. However the loss adjuster apologised for this and I can't see that there was any deliberate failure here. There were no further calls so I'm satisfied that Fairmead made reasonable adjustments for Ms A. As to the content of the emails, I have looked at them objectively and taken into account what would be fair and reasonable to expect the insurer to do in this case. The loss adjuster was attempting to progress the case but he had to do so in the context of what Fairmead required to establish its liability for the claim. On that basis having considered the emails I don't find them to be controlling or threatening. I think Fairmead acted fairly and reasonably and I don't think there was any breach of the Equality Act.

As for the failure to answer every point in the emails from M or Ms A I think Fairmead had to act proportionately and deal with the points that were needed to progress the claim."

M says that Ms A gave consent for the loss adjuster to enter her home or it would be regarded as trespass. And that the said loss adjuster said he was disappointed with Fairmead's conduct of the claim and left his employment with Fairmead within a year. It also says there were more telephone calls from Fairmead's sub-contractors. It continues to assert that Ms A found the emails to be controlling and threatening.

I have set out what this particular loss adjuster said in his report. As I wasn't there I can't say whether Ms A personally met with him. There's no indication in the papers that the loss adjuster was disappointed with Fairmead's response, although I accept that he wanted to get on with dealing with the claim. If there were further telephone calls I don't know the context of those. But I think it's clear that reasonably quickly Fairmead accepted that all correspondence had to be by email and through M. So I won't take this point any further.

On the subject of the emails, I understand that Ms A felt they were threatening to her. But as I say an objective reading of them doesn't raise that in my mind and I think they were the sort of emails that would likely occur in any regular insurance claim.

work done before the claim was raised

In my provisional findings I said:

"*Ms A says she logged the claim online on 27 February 2020. Fairmead recorded it as having been made on 5 March 2020. I haven't seen the online record of when the claim was made, but it is clear that Ms A contacted M first about the loss and that M immediately carried out various strip out and flood prevention work, before the claim was made. As far as I can see M isn't a claims management company or loss assessor. It is a building contractor*

who took on dealing with the claim for Ms A. However I would have expected M to know that normally the insurer should be contacted first to get its authority to carry out such extensive work. The relevant part of the policy is:

"***We*** *may refuse to agree costs that are incurred by* ***you*** *before* ***our*** *agreed consent is given or for damaged items that are disposed of before inspection.*"

A similar term appears in most home insurance policies.

I appreciate that some work may have needed to be done in an emergency but in circumstances as here where that work was done without authority, Fairmead then had to gather evidence in order to assess what would be fair and reasonable to pay out in respect of those works. And the policy covers damage caused by the flood, not preventative work. So although I appreciate that M carried out some work to prevent future flood damage that wouldn't be covered by the policy.

I think Fairmead acted fairly and reasonably in its questioning over the initial repairs. This would be a reasonable thing to do in any claim, and I don't find that Ms A was singled out because of her race or sex. And again I bear in mind that she was represented on a professional basis."

I understand that Ms A disagrees with this. However I can't see that M has raised any additional points in this that I need to answer.

property build value

In my provisional findings I said:

"*When the loss adjuster first visited the property, he advised that the property was likely bult in the late 1800s. Yet the policy schedule stated that it was built in 1950. Fairmead said it needed to establish when the property was built as this could have affected the claim, and the premium for the policy.*

Ms A had in fact raised this with Fairmead, in 2017. She had emailed it at renewal then to say she wasn't sure when the property was built. Fairmead said it couldn't discuss the issue by email. And there was no indication given by Ms A then that she would have had any difficulty discussing over the telephone. But the matter was just left, and Fairmead continued to renew the policy.

I think it was fair for Fairmead to query the build date of the property. But It knew when it was raised in 2020 that there was no question of Ms A having misrepresented the build date as she had said she didn't know, and Fairmead had continued to renew the policy.

Fairmead continued to try and find evidence of the build date, including obtaining a copy of the land register. It said that it wasn't able to proceed with the claim until it obtained this information. I don't think this was reasonable. It wouldn't have affected the claim, because Fairmead had accepted and continued to provide cover knowing the build date was unknown. So though Fairmead may have wished to continue finding out about the build date, it shouldn't have held up the claim to do so. It first raised this matter with Ms A in early April 2020, and in the course of obtaining advice from its solicitors in early June 2020, it decided not to pursue that point any further.

So I think there was a two month delay here. However even though I've found that Fairmead didn't act reasonably here, I don't think its actions had anything to do with Ms A's race or sex. I think it likely that any consumer with such a query on its policy would have been asked

for that information (and had Fairmead pursued the issue in the same way as it did here, it would still have been wrong to do so, for the same reasons). I bear in mind that it is the policyholder's responsibility to ensure that their policy details are accurate."

M says this was a deliberate act on the part of Fairmead to delay the claim, and avoid paying the claim. It points out that it didn't receive a response to its email sent in May 2020 until September 2020.

M has its opinion on this. I don't think this was a deliberate attempt to delay the claim by Fairmead. I stand by my findings here. I don't think that Fairmead acted fairly here in pursuing the issue of the build date, although it had valid reasons for initially querying it.

verifying Ms A's identity and checking her welfare

In my provisional findings I said:

"*As I've said, when the loss adjuster first visited the property he recorded that he wasn't able to speak to Ms A, and M made it clear that no telephone contact was to be made. Fairmead became concerned about the claim and decided to appoint C to assure itself of the bona fides of the claim. It became concerned for the following reasons:*

- *Emails were sent purportedly in Ms A's name though written in M's confrontational style, raising suspicions that they were written by M.*
- *M had billed over £19,000 of work it had carried out or instructed contractors to do so, and then dealt with the claim in the aforesaid confrontational style in such a way that raised concerns of a conflict of interest.*
- *Ms A's email address wasn't verified or linked to her account.*
- *M indicated that Ms A wasn't contactable but continued to correspond on her behalf.*

I should make it clear that if an insurer becomes concerned about the bona fides of a claim or of a consumer's representative, it's entitled to take such action as it deems necessary. This may include instructing an independent investigator. But this would be frustrating to the consumer, as Fairmead, to ensure the validity of any outcome, couldn't reasonably disclose the nature of its investigations.

Fairmead decided, after taking legal advice that it needed to verify Ms A's identity. Ms A opted (reluctantly) to do this through a personal visit, but wanted Fairmead to appoint a female employee to do this.

I think that Fairmead's decision to verify Ms A's identity was reasonable, but in my view it should have done this after the first visit on 11 March 2020. I say that as in my view there were already sufficient concerns at that stage. It had been corresponding via the unverified email address so I can understand why Ms A was distressed that two months into the claim Fairmead needed to verify her ID. The ID check itself took three months to carry out, but that was partly because of Ms A's refusal to meet with anyone from C, and the availability of Fairmead's and C's employees. There was a visit scheduled for late August 2020 but that had to be postponed. I should make it clear that I think the postponement of that visit was reasonable (because the employees were tied up after a particular storm struck).

In July 2020 Fairmead contacted the police as it was concerned for Ms A's welfare. A police officer visited the property. M has said this was unnecessary and caused great distress to

Ms A. Whilst I can understand Ms A's point of view, I can't say that Fairmead acted unreasonably. The police officer satisfied himself as to her welfare but that doesn't mean the visit wasn't a reasonable action to take. Fairmead, in my view, had a duty of care to Ms A, and it discharged that duty reasonably, on this occasion, by involving the police.
I also don't think the requirement for an ID check or asking the police officer to visit were breaches of the Equality Act. I think Fairmead had genuine reasons for its actions which weren't linked to Ms A's race or sex."

M believes this was part of a vendetta on the part of Fairmead to prevent it from acting as Ms A's representative. It reiterates that the loss adjuster was met at the property by Ms M, and if he was dissatisfied should have chased it up. It says that without a forensic report on the content of Ms A's emails any evidence on this point is inadmissible. It points out that Ms A registered her email through Fairmead's secure portal (after Fairmead raised the question of her identity) and that the issues of her identity could have been sorted out in 2017. Finally it points out that C raised concerns that Ms A was being "kidnapped" or "cuckooed by a drugs criminal syndicate" which was used as a pretext for getting the police involved.

I have to assess the evidence objectively and determine in that context what is most likely to have happened. I accept that Fairmead had concerns about M and that M viewed those concerns as unreasonable. But, just because those concerns may not have been borne out, doesn't mean they weren't genuine concerns. The need to verify Ms A's identity came about through Fairmead taking legal advice, and that meant getting up to date verification of her identity. I don't have access to police records or to their view of the matter so I can't answer the point about the reason given to the police for their involvement. I understand that it was a female police officer who attended, and I'm happy to correct that.

alternative accommodation (AA)

In my provisional findings I said:

"*M asserted that Ms A needed AA, and that Fairmead failed to provide it for over seven months. When the loss adjuster visited in March he recorded that he was told by M's representative that Ms A didn't need AA. However M then did say that Ms A needed AA and criticised Fairmead on number of occasions for not providing it. Later, as part of the settlement Fairmead paid £840 (84 days at £10 per day) as a disturbance allowance (DA) which is sometimes paid by an insurer in lieu of a policyholder moving into AA.*
I think Fairmead summed up the position concerning AA in its first final response letter of 12 May 2020:

- *It was more than happy to fund this element of the claim if liability was accepted.*

- *During the period the home was made uninhabitable by the flood it was happy to fund the cost of AA. Alternatively it could pay a daily DA.*

It asked for details of any AA paid for to date, which M didn't provide until some time later. And Fairmead's solicitors made it clear that only the cost actually incurred would be paid. That is normal – if the consumer stays in their home an insurer won't pay for AA they didn't use. I'm unclear about whether Ms A actually stayed in AA during the initial months before liability was accepted. I also haven't seen evidence that the property was uninhabitable i.e. without washing and/or cooking facilities, such that might require AA or a DA to be provided (where the home continues to be lived in) during this time. M said Ms A was without heating or hot water, the notes on the claim indicated that the heating was only partially out of action. In its second final response letter of 5 November 2020 Fairmead said:

"*In order to ensure any accommodation arranged on behalf of our mutual client is comparable, we are entitled to request details of the property and you will need to provide this information to* [loss adjuster] *for his consideration. You will also need to demonstrate that the insured property was uninhabitable during this time.*"

M presented an invoice, on its headed paper for the cost of AA. Fairmead requested details of the property, or at least the area, together with an invoice from a landlord or agent. I think that was reasonable. M didn't own the AA, and despite its reluctance to disclose the address I don't think that its invoice was satisfactory evidence that the AA had been paid for. It is normal, in any insurance claim to expect consumers to produce documentary evidence of any cost actually incurred. If M can produce evidence that Ms A (or M on her behalf) actually paid for AA it should produce that to Fairmead. It was accepted by Fairmead that during the works, AA would be paid for (if taken up), but if Ms A had opted to stay, DA was provided for in the settlement.

I think Fairmead acted reasonably here. And I don't think it unfairly singled out Ms A because of her race or sex."

M says I have overlooked the fact that Fairmead has saved itself thousands by not paying for AA. It says it has provided us and Fairmead with numerous documented emails that the house was uninhabitable, and still is. Ms A currently has no cooking facilities and Fairmead refuse to resolve the matter. In respect of property invoices, it says the onus is on Fairmead to provide evidence that any said invoices provided to it are incorrect or false, and it has not. Therefore, Fairmead should still be liable for a property since the claim started, and if I do not agree the courts will, as this is a basic contractual agreement and Fairmead's obligation.

While M has asserted and continues to assert that the property was uninhabitable, I'm not satisfied that it was. In particular M arranged to carry out work to repair the property, as Ms A had opted to use her own contractors. – I accept that during a reasonable period for the repairs to take place Ms A would have been entitled to AA or DA, which is what was provided

I disagree however that M's invoice for AA was satisfactory evidence. On the basis that any reasonable home insurance claim for AA would involve evidence from the landlord or a letting agent that such costs were incurred, the onus is on the policyholder to produce evidence of loss. I don't accept either that Fairmead would be liable for the likely costs of such AA even if Ms A didn't use it. On the point that the house is still uninhabitable, Ms A has had her repair settlement which should have been used to ensure the property was habitable.

amount of settlement

In my provisional findings I said:

"*Claims are dealt with according to the terms of the policy. The relevant term is:*

"***We*** *may offer repair or replacement through* ***our*** *approved suppliers. If* ***you*** *prefer to use* ***your*** *own tradesman, or receive a cash settlement for replacement goods instead,* ***we*** *will need to agree this with* ***you*** *beforehand. Any payment will generally not exceed the discounted amount* ***we*** *would have paid to* ***our*** *chosen supplier.*"

I think that Ms A made it clear through M that she didn't want Fairmead's contractors to carry out the work. And as she had already contracted M before the claim I think it was reasonable for Fairmead to cost the work and pay a settlement according to what it would have paid its own chosen supplier.

Firstly Fairmead said it wouldn't pay for any preventative work. This included putting in temporary piping and pumps to clear the water away. It also wouldn't pay for the replacement of the back door with a flood proof door, nor for the moving of the air bricks. As I've said generally the insurer will pay for any damage caused by the flood but not any work required to prevent future flooding. That's generally regarded as property maintenance. To take the simple example of a leaking pipe – the policyholder has to pay for the replacement or repair of the pipe and the insurer will pay for the damage caused by the leak. So it applies to the preventative work here – Ms A would be required to pay for that herself and it wouldn't be covered under the terms of the policy."

Fairmead also wouldn't pay for the following work:

- *Replacement of boiler housing – it said M had provided no evidence as to how this came to be damaged in the flood.*

- *Damage to the electric gates – these are an exclusion under the policy.*

- *Renewal of the electrical installation.*

- *Renewal of the jacuzzi bath.*

- *Renewal of the CCTV installation.*

With regard to the last three items, M produced a report from an electrical contractor dated some six months after the claim. Fairmead noted that these weren't the contractors who had invoiced for the work. They didn't explain how the armoured cable supplying the electrics could have been damaged by flood water, nor did they specify how junction boxes were damaged. Fairmead pointed out that in light of the date of the report M couldn't have relied on it to justify carrying out the repairs. I'm not satisfied that M has produced sufficient evidence to justify the repairs to those items.

As to the rest of the work, Fairmead reviewed M's costs according to reasonable contractors' rates. It was also allowed as per the policy term I've referred to, to factor in any discount it would have received from its supplier. This resulted in its assessing of a substantially lower payment than claimed by M (£21,774 against £98,665 claimed). It offered around £15,500 in December 2020. But through its solicitors it asked for more information regarding the boiler and the cost of the work. Specifically this was:

- *Purchase orders for materials confirming who purchased the materials utilised for the reinstatement works, including quantities and specifications.*

- *Serial numbers for any building items/equipment purchased from suppliers/manufacturers.*

- *Certificates of completion for any works directly from the subcontractors utilised.*

- *Documentary evidence of the damage sustained to items not included in the claim settlement payment.*

- *Documentary evidence that the above damage was caused by the ingress of flood waters.*

M said it couldn't supply the information saying it was an unreasonable request and that

contractors shouldn't be required to provide personal data. My view is that the request relates to actual works carried out and items bought for which Ms A was billed. I wouldn't expect this to include any personal data, so equipment owned and used by contractors would not come within this. That said, given the vast difference between the costs claimed and those assessed by Fairmead I think it was reasonable for it to ask for further documentary evidence and I don't think it was too onerous to expect contractors to supply documentary evidence of what they had expended on the items claimed.

The only further evidence supplied by M was the specification of the model the boiler and Fairmead assessed that it was possible that this particular boiler was close enough to the floor to have been affected by the floods.

Fairmead offered £32,374 which included VAT, the cost of a new boiler, a replacement stair carpet, and a disturbance allowance of £840 in May 2021. It subsequently paid this to Ms A's account. M then produced a report by a surveyor setting out costs of £71,149. The report itself didn't say who was the author of the report. However Fairmead in conjunction with its solicitors assessed that it involved little to no validation of the work required, lacked the detail it would expect to see in a proper quantity survey (QS) report and included elements which fell outside the policy. In particular the exclusion of costs for repairs to the gate had been explained right from the start, as had the reasons as to why it would not pay for the flood door or moving the air bricks. There was no explanation as to the groundworks costs, and the claim for a replacement boiler had been wrapped up in other costs and increased. The preliminaries, profits and overheads appeared to have been counted once at £12,954 and then again at £18,499.

M has also supplied bills for its correspondence with Fairmead. I should clarify that Ms A was free to appoint whoever she wanted to deal with her claim. But the administrative costs of such a representative aren't covered under the policy. Again this is something which is universally applied in insurance claims. And this service doesn't usually require an insurer to reimburse such costs.

Having assessed Fairmead's contractors' review of the work carried out, the appropriate rates to charge and the evidence asked for but not supplied by M, I think that Fairmead made a reasonable payment for the building works. I don't think it was unreasonable to ask for further evidence, and bearing in mind that Ms A had professional representation I don't think she was singled out unfairly. This is the sort of information frequently asked for in insurance claims where a consumer uses their own contractor. So I don't think there was any breach of the Equality Act in Fairmead requiring the evidence before it could consider increasing the pay-out."

M continues to assert that these were excessive demands, and that the sub-contractors couldn't be expected to produce personal information about each and every tool and item of equipment they used. Also the sub-contractors weren't prepared to supply evidence of the discounts they got from their suppliers.

In respect of the surveyor's report, it points out that the report had a heading in the name of the surveyor's firm, and was drawn up by a chartered surveyor. It says the figures in the report clearly add up.

In respect of the information asked for by Fairmead's solicitors, I don't think this was asking for personal details of the contractors' own tools and equipment, and I accept that M asked its contractors if they would be prepared to supply the other information. M having instructed contractors to carry out the work and then presented to Fairmead costs for payment, Fairmead would be expected to pay a reasonable amount, but in doing so is entitled to

calculate what that is . And I accept that M has set out why it believes that the items that were rejected should be paid.

I gain refer to the term in the policy concerning this. As these costs weren't agreed before carrying out the work, the onus was on Ms A to show that she had incurred those costs and that they were reasonable. And, whilst accepting that the evidence was hard to produce some time after the event I go back to what would be expected of a policyholder, in terms of proving their claim. I note M refers again to the electrical report which it says Fairmead asked for, but then rejected. In respect of the gates it says these were damaged because the internal electrics were damaged in the flood and mentions the rise in groundwater as well as the flooding from the overflowing culvert. I note its points, but I don't think that Fairmead was unreasonable in rejecting payment for these. I would observe that a rise in groundwater is excluded under the policy.

As regards the surveyor's report M obtained, I set out Fairmead's response to this, and its reasons for standing by its own calculations of the costs of repair. I would observe that the report, as would normally be the case, isn't personally signed by a surveyor. From Fairmead's solicitors' research I accept that the firm is run by a chartered surveyor. Having looked at the report again, I don't think that Fairmead made a valid point about preliminaries, profits and overheads having two different figures but I stand by my view that Fairmead has justified its own assessment of the costs and has paid a reasonable sum in that respect.

contents

In my provisional findings I said:

"*In respect of the contents, Fairmead hasn't to date made a pay-out. Ms A made a claim for £12,400. She was asked to supply a schedule of the items damaged with evidence of their replacement costs. It said that the photos supplied didn't show any damage. Fairmead also asked for schedules estimating the total value of the contents. M said that Ms A didn't ned to supply this. Fairmead was also refused permission to view the contents as a whole including the undamaged contents. And M refused to allow it to inspect the contents in storage. I've also noted that in the early days of the claim, despite liability not yet being accepted Fairmead said it would appoint its disaster recovery specialists. However Ms A didn't want those specialists as they contacted her without her permission. They could have recovered and assessed the damaged contents, though I appreciate that M did a lot of recovery of contents.*

I go back to what would normally happen in a claim involving damage to contents. Where there is a large claim, as here, it would be normal for the loss adjusters to assess the value at risk (VAR). This would be so that they could assess whether the value of the contents insured is sufficient. If it's not then the value of the claim could be reduced. This wasn't something Ms A was singled out for – it's generally what happens in large claims. Similarly it is for the policyholder to show that they have a claim. So it was reasonable to ask Ms A for further details of her losses. If she is prepared to provide the further evidence asked for then Fairmead should consider it.

Again as this is something any policyholder in Ms A's position would be asked for then I don't think Fairmead acted unreasonably nor that they singled Ms A out."

I understand that Ms A is unhappy with the approach taken, but I can't add anything to what I've said. It's still open to Ms A to produce an itemised list of her contents and the costs claimed. The policy clearly covers contents and it does appear likely that some were damaged in the flood.

M refers to another visit to the property when it says the loss adjuster was abusive and inappropriately attempted to take photos of Ms A, which was reported to the police. I assume this was the visit in August 2021 – I've seen the report, and it refers to M's representative being aggressive when asked questions. The report includes photos of some contents and parts of the building. However I can't comment on the allegations by either side but if the matter's been reported to the police, I think it should be left up to the police to decide want action to take.

further floods

In my provisional findings I said:

"*I understand that there were further floods. M asserted that these caused further damage to the property. Fairmead's solicitors' assessment of those further floods was:*

- *15/11/20 No photographs of ingress of water to the property, but photographs provided of the grounds to the property.*

- *27/12/20 Photographs provided showing water underneath the floor of the ground floor office.*

- *14/01/21 Photographs provided showing water underneath the floor of the ground floor office.*

- *16/01/21 No evidence of ingress of water provided; photographs showing standing water in the neighbouring area.*

So it said that Ms A hadn't supplied enough evidence to show any such further damage. It also pointed out that the photos showed water coming up from below the floor and that there was an exclusion in the policy for "Loss or damage caused by underground water." As the floods didn't appear to be caused by the same overflowing culvert as in the first claim, I think it was reasonable for Fairmead to apply the exclusion and/or say there was no evidence of the inside of the property being affected. Again if M or Ms A are able to supply further evidence to show there is damage and that it's covered by the policy, then I would expect Fairmead to consider it."

M believes it has supplied irrefutable evidence of loss. It invited Fairmead to attend the property with Ms A's surveyor with ground radar, but it has declined to do so. Again I don't think that it's for Fairmead to show that an exclusion doesn't apply, that is something the policyholder has to do. Again this is something that applies to all insurance claims.

legal proceedings

In my provisional findings I said:

"*M has questioned why, if Fairmead appointed solicitors to pursue the local authority, it didn't follow this through and take proceedings against the local authority requiring it to carry out flood prevention work.*

Fairmead appointed solicitors to establish whether the local authority may have had some liability to contribute towards Ms A's claim. Again that is a normal part of a claim like this. But it's a matter for the insurer whether it pursues this and if it assesses there is no prospect of success it can decide not to pursue the matter further. And again similar to my other reflections on this point this isn't singling Ms A out – it's what happens in any case like this

where there's a possibility of pursuing a third party. It isn't a part of the policy to require the local authority to carry out flood prevention work. I've noted that Ms A is now pursuing such a claim through her legal expenses insurance which I think is the right approach to take."

M has advised that it has been agreed by Ms A's legal team that there is a valid claim which is currently being pursued. But it says that as Fairmead owed a duty of care to Ms A, it should have pursued this against the local authority.

Fairmead has to comply with the terms of the policy, and in dealing with the claim, has a duty of care. But it doesn't have to carry out work which is outside the terms of the policy, especially where it's covered by the legal expenses part of the policy. Again that's something that applies to any policyholder – Ms A isn't being singled out.

compensation

In my provisional findings I said:

"*I think Ms A should be paid compensation for the distress and inconvenience caused to her by the delays in agreeing liability. I do have to take into account that this claim started just about the time that Covid lockdown started which caused difficulties both for Ms A and for Fairmead and its contractors. Whilst I don't think Fairmead was responsible for the delays in getting the ID check carried out, I think that Ms A would have been distressed to find out that the claim was to be delayed further when Fairmead had been corresponding with her for a couple of months on the unregistered email address. I also think Ms A would have been distressed at the delay in paying the cash settlement to her.*

Taking those matters into account, I think that the right award of compensation to make is £500 – this is in addition to the £100 already paid.

Additionally I think that Fairmead had all the information it needed to make a pay-out to Ms A in December 2020. I understand that it continued to correspond with M about the evidence it needed but I think the amount it finally paid to Ms A in June 2021 should have been paid in December 2021. But I also have to take into account the delays in accepting liability due to the issue of the build date. I think this added a further two months to the claim. I've further noted that, to stop interest running Fairmead could have made an interim payment to Ms A in December 2020. So Fairmead should pay 8% simple interest on the whole settlement, of £32,374.42 from a date two months before it put the proposed settlement to Ms A in December 2020, until the date it made the final payment."

I understand that M, and Ms A disagree, and say that the compensation award should be far greater, and include an amount for inflation.

I have made an award following my detailed assessment of the claim, it is in line with other awards made by this service, and I'm satisfied that the award of compensation is appropriate. The award of interest does take account of inflation.

in conclusion

For the avoidance of doubt, I've also taken account of the fact that Ms A may have had a disability in terms of her verbal impairment and having to self-isolate, but I don't think that Fairmead breached the Equality Act and that it took appropriate account of that disability.

Generally, apart from where I've said otherwise, I'm satisfied by my provisional findings, and those findings are now final and form part of this final decision

Putting things right

Fairmead should pay a further £500 compensation.

It should pay 8% simple interest* on the *whole* settlement, of £32,374.42 from a date two months before it put the proposed settlement to Ms A in December 2020 until the date it made the final payment.

*HM Revenue & Customs requires Fairmead to take off tax from this interest. It must give Ms A a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold the complaint and require Fairmead Insurance Limited trading as Legal and General to provide the remedy set out under "putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 31 March 2022.

Ray Lawley
Ombudsman