

The complaint

Mr D and Mr A have complained about Fairmead Insurance Limited as two claims on the policy Mr D holds with it haven't been accepted or settled, and Fairmead says that if they are, settlement will be proportional because the property is underinsured.

I am aware that Fairmead has had no direct contact in respect of the claim and complaint; everything, including its complaint response, has been handled by a company (P) acting on its behalf. But as Fairmead is the insurer, and is ultimately responsible for P, I have only referred to Fairmead in the body of my decision.

What happened

The property in question is a two-storey terraced house, comprising a double-height extension at the rear and a converted loft, with the loft and two main floors (complete with their extensions) divided into three separate flats. Mr D owns the building and flats 2 and 3 (3 being the loft conversion). Flat 1, on the ground floor, is owned by Mr A.

Mr D had a policy with Fairmead for the property as a whole, arranged via a broker. The policy had last renewed on 23 January 2021 with a sum insured for rebuilding the property of £214,554. In February 2021 the tenants of flat 3 moved out – they had reported a damp patch on the hall carpet, when this was investigated significant water damage was found and the tenants of flat 2 also reported water came into their flat. Initially discussions on the cause of the leak suggested there might be an issue with the shower in flat 3, but Mr D said the tenants at the property had said the water ingress seemed to occur when it rained. Mr D engaged a roofer who he says completed some temporary repairs, including to slipped tiles, and the water ingress ceased. But the roofer stopped communicating with Mr D, didn't send a bill and wouldn't return his calls.

Meanwhile the residents of flat 1 also reported water ingress. Investigations found a failed seal to pipework coming from the sink of flat 2. The pipework was fixed but the water damage to the room below in flat 1 was fairly extensive.

Claims for both incidents were made to Fairmead. A loss adjuster visited the property on 15 March 2021. He thought the sum insured was too low. He noted the size of the property as totalling 226 square metres. He calculated the rebuild cost to be £377,304. Fairmead noted that if that sum insured had been set at that value, a premium of £411.40 would have been charged, instead of the £233.94 which was charged. It said that was 57% of the higher figure and the policy allowed it, where there was underinsurance like this, to settle claims based on the portion of the correct premium which had been paid. Mr D was unhappy and challenged the findings of the adjuster. A surveyor was appointed who felt the level of underinsurance might be even more. Fairmead decided to discount the surveyor's findings and rely on those of its loss adjuster.

Mr D maintained that the property had not been significantly underinsured. He said architect's plans showed that the size of the ground and first floor flats is 111 square metres. He explained that, using this figure, the rebuild would cost (at most) about £265,000. He explained this had been worked out using an industry calculator to determine what it would

cost to rebuild a two-storey property, of that size, comprising four bedrooms (each flat had two) and two bathrooms (up to £232,000), plus the cost he had incurred to convert the loft (£26,500, plus fees).

Fairmead didn't respond to Mr D's concerns about the underinsurance and didn't make any offer to settle either of the claims. It later confirmed that it would progress the claim for flat 1, and that regarding the claims for flats 2 and 3, it wanted further evidence from Mr D. Mr D felt that was unfair as he felt the claim was clear – that the roof had obviously been damaged by a storm which had resulted in internal damage. And that this had been evidenced as the tenant of flat 2 had tested the shower in flat 3 and couldn't recreate a leak and, in fact, no further water had entered either flat 2 or 3 since the roof had been fixed.

Following a complaint being made to this service, our investigator felt Fairmead hadn't done anything wrong. She felt the loss adjuster and surveyor had agreed on the size of the property and that the rebuild cost was significantly more than the sum insured. So it was fair, in her view, for Fairmead to rely on that detail and say Mr D was underinsured. She didn't think there had been any avoidable delays as it had been reasonable for the underinsurance to be investigated.

Mr D said he felt his evidence in respect of the size of the property had been ignored. He said he thinks there may have been a typing error in the surveyor's report, which could potentially have skewed their findings. Mr A said he was most concerned about getting the claim for flat 1 paid. The complaint came to me for an ombudsman's consideration.

I felt Fairmead should have looked to settle the claim for flat 1 earlier. So I said it should add interest to any settlement paid for that claim. But I felt it had acted fairly and reasonably regarding the underinsurance, as well as in respect of the claims for flats 2 and 3. And I wasn't minded to say it should pay compensation for upset.

Aviva said it had nothing further to add. Mr D received my findings but didn't comment on them. Mr A said he felt the outcome was "*reasonable and proportional*".

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 provisional findings were:

“underinsurance

Mr D has presented some detail to challenge Fairmead's view that the property was underinsured. But, I'm not persuaded, by the evidence he has presented that Fairmead's valuation, as put forward by its loss adjuster, is flawed. For the avoidance of doubt, I've discounted the surveyor's findings because Fairmead hasn't relied upon them.

Mr D has presented architect's drawings completed in 2015 of all three floors. He has said it is obvious from these that the floor area of the ground and first floor flats is 111 square metres. But the drawings don't give totals for the rooms or floor sizes. Later Mr D presented plans, which, I understand, he had created from those drawings, which showed the total square metre size of each room. There was also a summary page giving the total area for each floor. Whilst I appreciate Mr D presenting this detail, I'm not sure its persuasive. Some room sizes on Mr D's plan don't seem to match the total of the measurements on the architect's drawings. And whilst Mr D initially said the architect's drawings showed an obvious total size for the ground and first floors of 111 square metres (which he used for his re-build calculation), the total on the plans Mr D created is 129.6 square metres (67.37 and 59.53 square metres respectively). So I'm not persuaded, from the evidence Mr D has presented, what size is of the property and/or flats.

Mr D has presented a rebuild calculation for a two-storey property and says it makes sense to use this and then add on the cost of converting the loft space. But, this is based on a size of 111 square metres (discussed above) and doesn't allow for things like there being two kitchens in the "two-storey" property (before the converted space in the loft, comprising a third kitchen, is added on). Or that the two main floors are self-contained flats. I'm also mindful that calculating the re-build cost in this way doesn't seem to sit with how I'd expect a property like this to be re-built. So I think that looking at the cost for re-building in that way doesn't present a fair and reasonable assessment of what the most likely re-build value would be.

But there is a further issue with looking at this based on the architect's plans. Plans like this are often accurate – but they show what is, at that moment in time, intended for a property. They aren't always representative of how a property actually is. So, in my view, the most reliable indicator of a rebuild price usually comes from an appropriate expert assessing the property in question.

Fairmead's loss adjuster is, in my view, an appropriate expert. A loss adjuster often completes work such as assessing rebuild costs. They're familiar with measuring properties, taking into account the fixtures of a property and using the industry guides, whilst putting all that together to create a rebuild valuation (which invariably refers to the size of the property). And Fairmead's loss adjuster did visit the property in person and was, therefore, able to measure it and see how, as well as to what standard, it was constructed and finished. From there he produced his rebuild valuation. I can assure Mr D that I've carefully considered the evidence he has presented. But, having done so, and for the reasons explained, I'm not persuaded it shows that Fairmead's loss adjuster's calculations are in any way unreliable or likely flawed.

Mr D used to be a property developer and, because this is a let property, the insurance policy is a commercial one. As such the relevant legislation to consider is the Insurance Act 2016. In line with that it was always up to Mr D, as represented by his broker, to make a fair presentation of the risk to Fairmead, both when arranging and renewing cover. And I note that the detail provided by the broker to Mr D explains very clearly that the policy is based on the sum insured given, which is the rebuild value for the property, and this is a "major material fact" which Mr D was responsible for ensuring was correct. Also that if it was wrong, any claim made might be affected. So Mr D knew he should present a correct value, but didn't do so. Therefore, in line with the relevant legislation, Fairmead was entitled to act as it would have done if the correct information had been given. In this case Fairmead has shown that it would have charged a higher premium. In that instance the Act then allow Fairmead to settle the claim proportionately in line with the portion of the correct premium that was paid. This is also reflected in the policy wording that applied to the cover Mr D held.

So it seems to me that Fairmead has reasonably shown that Mr D was underinsured. And as a result, it has looked to implement a remedy that is both available to it in legislation and reflected in its policy wording. Furthermore, which Mr D was clearly warned about at each renewal. As such I think Fairmead has acted fairly and reasonably and I'm not going to direct it to do anything differently.

claims for flats 2 and 3

A policyholder, when making a claim, generally has to show, at least on the face of it, that they have a claim which the policy should respond to. What that means in practice will depend upon the specifics of the relevant circumstance. Here I can see there are some conflicting views about whether damage to the roof or a leak from the shower might have caused water damage. But, due to the fact the resident didn't report the damage when first noticed, it isn't clear when any damage to the roof may have occurred. And Mr D has been unable to show that there was damage to the roof which was fixed, because a temporary repair was done which wasn't billed for and the contractor is unresponsive. And whilst he says the tenants have reported no damage since, and that they've been unable to recreate a leak from the shower, that evidence is anecdotal in nature. In the circumstances, I think it was entirely reasonable for Fairmead to want more evidence before agreeing to progress a claim for storm under the policy.

That's not to say there is not a valid claim, I am not assessing the validity of the claim. Rather Fairmead has confirmed that the claim wasn't and hasn't been declined, and it has asked Mr D for more evidence to consider it. I think that position is fair and reasonable in the circumstances and so the fact that the claims have not progressed to settlement is not, in my view, due to any fault of Fairmead's. Therefore, whilst Mr D reports financial and non-financial loss as a result of the delay, Fairmead, in my view, is not responsible for those losses. I'm not going to make any award against it in respect of these claims being delayed.

claim for flat 1

Here the cause of damage was established early on and the detail was shared with Fairmead. And the loss adjuster's view on underinsurance was also known around the same time. Fairmead was entitled to complete further investigations, but it should, I think, have also been looking to progress this claim in the meantime because it knew this was a potentially valid claim under the policy (unlike the claims for flats 2 and 3 discussed above). And if it had progressed it and looked to settle it, that would always, I think, likely have been done on the basis, due to the underinsurance, of it paying cash for its proportion of liability for repairs. I think a reasonable period for that to all have happened would have been six weeks. I can't be sure about the time frame but I think six weeks is a reasonable period as that would have allowed ample time for any negotiations over price to proceed, as well as time for further quotes to be obtained and assessed. Activity like that is not unusual in a situation where an insurer is looking to settle a claim in cash proportionately. And I've seen nothing else that makes me think the settlement (if such is paid) would or should otherwise have taken longer.

So in respect of the claim for flat 1, I think Fairmead did cause an unreasonable delay. I think that it should have progressed it and, if it had done (and assuming it ultimately settles it), that settlement should have been made by 1 May 2021. Therefore, when settlement for this claim is made (assuming it is), Fairmead should add 8% simple interest to anything it pays, applied from 1 May 2021 until settlement is made.

other consequences of delay (financial and non-financial)

As I understand it, Mr A does not live in flat 1. Nor does Mr D. I understand it would be frustrating for them to know the claim remained outstanding through all of this time. However, as they don't live in the property, I can't reasonably award compensation to them for any upset that the residents might have felt or experienced by either using their home in its damaged state, or indeed because they couldn't use it, because of delays.

Whilst I note Mr D and Mr A say they'd like compensating for alternative accommodation costs for the residents, I've not seen that such were incurred, or that such were incurred due Fairmead's delay. And I note that whilst reference was also made in respect of costs incurred on a credit card for repairing the property, Mr A has confirmed that no repairs have been completed. So I'm not persuaded that I can fairly make any award against Fairmead in respect of costs incurred for either alternative accommodation or paying for repairs on a credit card, due to its delay.

It is also reported that damage occurred to soft furnishings and the like in flat 1, on account of mould growth. But I haven't seen that Mr A is responsible for providing the soft furnishings at the property. And, even if he is, Mr A has indicated that he was always happy to try and more ahead with repairing the flat, but that in November 2021 it still hadn't been repaired as another contractor had let him down. I'm not persuaded that any delay by Fairmead has caused Mr A to suffer a loss regarding damage to the soft furnishings at the property.

poor communication

Mr D has reported that communication with Fairmead was poor. He's explained that several of his emails and letters were ignored. Whilst I can see that would be frustrating, it isn't apparent to me exactly which correspondence he feels was ignored. And I note that by the end of March 2021, Fairmead was dealing with Mr D's concerns as a complaint. I can't look at how an insurer handles a complaint (as opposed to a claim) as the rules which govern our service don't extend to that. And the claims were only made in February 2021. So if, as Mr D has said, between February and the end of March 2021, Fairmead, including its agents, ignored communication from Mr D, I'm not persuaded that requires an award of compensation. I'm not convinced that any delay was caused due to a lack of communication and sometimes frustrations like this can occur when dealing with a financial business. This isn't something I'm minded, in these circumstances, to award compensation for."

As the parties have not raised any objection to my provisional findings, with Mr A agreeing with them, I've no need to add to, or change, them. They are now the findings of this, my final decision.

Putting things right

I require Fairmead, if it settles the claim for flat 1, to add 8% simple interest* per annum to the sum it pays, applied from 1 May 2021 until settlement is made.

*HM Revenue & Customs requires Fairmead to take off tax from this interest. If asked, it must give a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint as far as I've explained above. I require Fairmead Insurance Limited to provide the redress set out above at "putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mr A to accept or reject my decision before 10 June 2022.

Fiona Robinson
Ombudsman