

The complaint

Mr and Mrs C are unhappy with Fairmead Insurance Limited's (Fairmead) handling of a subsidence claim made under their home insurance policy.

What happened

In January 2020 Mr and Mrs C noticed their porch had started to sink and the roof was leaking. They reported this to Fairmead, their home insurance provider.

Fairmead appointed specialists, and following investigation, a claim was accepted for subsidence under Mr and Mrs C's insurance policy. This included repairing damage to the drains associated with the subsidence.

Mr and Mrs C were also asked to pay a further excess for additional drain repairs, which weren't deemed to be connected to the subsidence damage or claim.

Mr and Mrs C are unhappy that they've been asked to pay multiple excesses and make separate claims. They think that all the damage should be considered under the one subsidence claim. And they think additional damage to their property should also be covered under the subsidence claim, but Fairmead says it's not connected.

Mr and Mrs C have since paid to have some drain repairs completed privately but are unhappy with the service they've received from Fairmead, so they raised a complaint.

Fairmead didn't uphold the complaint. They said some drain damage was unconnected to the subsidence claim, so would be considered under the accidental damage to underground services policy cover, so a further excess was due. Mr and Mrs C remained unhappy and approached this service.

Our investigator looked into things and upheld the complaint in part. He said that drain repairs needed as a result of the subsidence damage should be considered under the one subsidence claim, rather than as a separate accidental damage to underground services claim. So, he said that should be considered as one claim and Fairmead should refund the £200 excess paid by Mr and Mrs C, and 8% interest should be added from date of payment to date of settlement.

The investigator also said that Mr and Mrs C had reported that the drain issues remain after some of the repairs were carried out, so Fairmead should investigate this further. And that some slabs were damaged too, so he said they should also be covered under the claim. He also said Fairmead hadn't acted unreasonably by not covering alleged patio damage as this was likely due to settlement, rather than subsidence.

Our investigator said that he noted Mr and Mrs C had paid for some of the drain repairs themselves, but based on the information provided, these repairs were unconnected to the subsidence. And he noted there were some drainage design issues and cracking above the windows due to a lack of lintels. He said that the policy doesn't cover defects caused by faulty design or workmanship, so it wasn't unreasonable that Fairmead didn't include these within the claim.

However, the investigator recognised that Mr and Mrs C had experienced poor communication during the claim along with some delays, so he said they should be compensated.

In summary he recommended:

- A further site investigation be completed to assess if further works are required to the drainage repairs connected to the subsidence claim. And a lasting and effective repair should be completed if required
- Continue with monitoring and the remaining subsidence repairs
- Refund the £200 policy excess paid by Mr and Mrs C with 8% interest added from date of payment to date of settlement, as the drains damage caused by the subsidence and subsidence repairs to the property should be one claim
- Pay Mr and Mrs C £500 compensation.

Fairmead responded and agreed in part. They said that the drains connected to the subsidence damage and within influencing distance were repaired under one subsidence claim. So, they say they have met their liabilities under the subsidence claim. But as there is suggestion there is a defect with the repairs they've completed, they'll need to investigate this further.

But Fairmead said a separate claim was set up to deal with the drainage repair to the unrelated and unconnected area, but this was withdrawn by Mr and Mrs C and they settled costs for repairs privately. Fairmead say dealing with this separately was the right process as they did not affect the property or cause the subsidence movement. But as the claim was withdrawn by Mr and Mrs C, no excess was paid by them in any event so there was no excess to refund.

Fairmead also said they'd review the slabs near the kitchen when the alleged drainage repair defects are investigated. They said that if they have been damaged by the same ground movement that has affected the main property, then they agree they should meet the cost of relaying them. But if they haven't moved, or it's not as a result of the subsidence, then the policy wouldn't cover the cost of relaying them.

Fairmead also said they agreed in part with our investigator that the communication should've been better.

Mr and Mrs C responded and they didn't agree with the investigator's view of things or recommendations. They said only part of the drain repairs have been completed. They said that as subsidence has caused the land to drop on three sides of the property, anything connected with that should be covered under the subsidence claim regardless.

They also reiterated they had paid for private drainage works to Fairmead's agent, and they are also unhappy with the drainage works carried out under the claim. And they also said the actual subsidence repairs to their home also haven't been completed either.

Mr and Mrs C asked for reimbursement of the private drains works they paid for and for Fairmead to cover the cost of them obtaining an independent drainage specialist survey. They also said Fairmead should cover the cost of the slabs outside the kitchen to be entirely relayed.

As an agreement couldn't be reached, the case has been passed to me to decide.

I issued a provisional decision. I reached broadly the same outcome as our investigator, but there were some additional reasons. I also didn't think Fairmead's response to our investigator's assessment was entirely correct or reflected the actual position based on what I'd seen. So, I issued a provisional decision to give both parties an opportunity to comment on my provisional findings, before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, I note that Mr and Mrs C are unhappy with an increase in their insurance policy premiums after they made the subsidence claim. This was considered as a separate complaint by this service, so doesn't form part of my consideration here. This complaint solely relates to Fairmead's handling of Mr and Mrs C's subsidence claim.

I'm issuing a provisional decision. I've reached broadly the same outcome as our investigator, but there are some additional reasons. I also don't think, based on what I've seen, Fairmead's response to our investigator's assessment is entirely correct or reflects the actual position based on the information both parties have provided. I asked Fairmead for their comments on this, but they didn't respond. So, I'm issuing a provisional decision to give both parties an opportunity to comment on my provisional findings, before I reach my final decision.

The drain damage and repairs

Mr and Mrs C noticed their porch was sinking and the roof was leaking. Fairmead appointed their agents to carry out investigations into the cause. Drain surveys were carried out, which concluded some drains had been damaged as a result of subsidence. They also noted that some of the drain defects were unrelated to the subsidence as they were deemed to be outside the area of influence.

Ultimately, repairs to the drains determined to be as a result of subsidence damage were covered under Mr and Mrs C's policy by Fairmead. I'll talk about what part of the policy and the applicable excess further below.

However, Mr and Mrs C have said these subsidence related drain repairs haven't been correctly completed, and this is why our investigator said a further site visit should be carried out to establish if a lasting and effective repair has been completed. Fairmead also responded to the investigator's view agreeing they'd need to consider the repairs already completed to establish if they were defective. And I think this is reasonable in the circumstances.

I note Mr and Mrs C have said they'd like Fairmead to pay for an independent inspection of the drains. But I'm not minded to direct Fairmead to do that at this stage. In the first instance, Fairmead needs to have the opportunity to inspect works they carried out, and to rectify them if needed. So, if my final decision remains the same as my provisional decision, then I'm minded to direct Fairmead to carry out a site investigation to establish if there are issues with the drain repairs completed, and if so, to carry out a lasting and effective repair.

However, some additional drainage works needed were not deemed to be as a result of the subsidence. Therefore, Fairmead said an additional claim would need to be made and an additional excess would need to be paid by Mr and Mrs C. Whilst I note Mr and Mrs C are unhappy with this, in the absence of any expert reports which show this was damage to those drains caused by the subsidence (or contributing to it), I'm unable to conclude these repairs should be included as part of the subsidence claim.

I understand that Mr and Mrs C have since paid to have some drain works privately completed. And in the absence of expert evidence demonstrating subsidence caused this damage (or it was contributing to it), Mr and Mrs C not making a claim or paying the excess for it, I'm not minded to direct Fairmead to reimburse the £325 Mr and Mrs C have paid for the repairs.

In addition, Fairmead's agents have also said that a drainage channel to front of the property has a faulty design and have recommended Mr and Mrs C complete private works to direct ground water away from their property. And they also concluded damage above the windows was due to the absence of lintels, so faulty design and workmanship too. But that's not covered under Mr and Mrs C's policy. So, I don't think Fairmead has acted unreasonably by not covering either the redesign of this part of the drainage or installing lintels above the windows.

The policy excesses

As I've outlined above, I don't think it's unreasonable for Fairmead to ask for another claim to be raised and a separate excess to be paid for accidental damage to drains unconnected to the subsidence.

Fairmead has said that the drain damage, which was caused by the subsidence, and/or contributing to it, was covered as part of the one subsidence claim. The internal notes in places reflect this position, such as:

"payment approved – the drainage repairs required to mitigate the subsidence damage are covered under this claim. The leaking drains remote from the property / not influencing the movement of the property are to be dealt with as a separate claim subject to the policy excess accordingly."

However, having reviewed all the information provided, I'm not persuaded, based on what I've seen, that it was actually considered under the one subsidence claim as the notes and Fairmead's response to the investigator view allege. Instead there appears to have been a separate subsidence claim and a separate accidental damage to underground services claim at the same time, and separate excesses applied to each, despite them both being for the subsidence related repairs.

I say this for several reasons, based on the information both parties have provided.

Firstly, Mr and Mrs C have provided two receipts from Fairmead's drain specialist which show two separate amounts of £200 paid. One payment was made in April 2020, and one in May 2021. I understand the May 2021 payment relates to the claim which was withdrawn by Mr and Mrs C. And they paid an additional £125 to the drainage company for the private repairs to be completed. But as I said above, I'm not minded to direct Fairmead to reimburse that £325.

However, Mr and Mrs C also paid the drain specialist separately a £200 excess in April 2020 and have provided a receipt for this. This was at the same time as the subsidence claim (which carries a separate excess of £1,100). So, it does appear a second claim and excess were applied for the drains part of the subsidence claim, alongside the actual subsidence claim itself.

The costings breakdown in the interim reports from the loss adjuster from this time also show a £200 excess was paid for accidental damage to undergrounded services, along with an excess being due for subsidence, and the notes from them also reflect this, for example:

"...I would like to explain that the cost for the drainage repairs were split into two sections. One that was deemed local tot eh (sic) area of subsidence movement by the engineer and the other that was not. The one that was deemed to be subsidence related was done under AD on the subsidence claim with a policy excess.

Insurers had advised that the remaining which is not subsidence related would need to be dealt with under a new claim which would require a different excess."

So, this shows a separate accidental damage excess was charged for the drain repairs which were actually related to the subsidence damage. And a note from July 2020 also says:

"The second quotation is for drainage works that are required that are beyond the area of possible influence in relation to the subsidence issue...relining of this section of the drain is deemed not to be related to the current subsidence claim and therefore we have not included it within the mitigation purposes for the subsidence claim. We request clarification whether these works are to be funded by the Policyholder on a private basis or alternatively whether a second drainage claim should be instigated with regard to this aspect of works or alternatively whether these works should be undertaken within the previous claim with the Policyholder already having paid the Policy Excess of £200."

So, whilst Fairmead says it was all considered under the one subsidence claim, the information provided conflicts with this and it does look like a separate excess was paid for the drain repairs associated with the subsidence - as I've outlined above.

I can see from the internal notes there has been some internal discussion as to what drain repairs should or shouldn't be considered as part of the subsidence claim. And I think the end point reached (and mentioned in Fairmead's response to our investigator assessment) is fair and reasonable – that the drain damage associated with and contributing to the subsidence should be considered under the one subsidence claim, and the drain damage unconnected should be separate. But this doesn't appear to be what has actually happened here.

With this in mind, if my final decision remains the same as my provisional decision, I'll be directing Fairmead to reimburse the £200 excess paid by Mr and Mrs C in April 2020, with 8% interest added from date of payment to date of settlement. In addition, if this is currently recorded internally and externally as two separate claims for that same event, Fairmead will need to amend its records internally and externally to reflect the one subsidence claim and repairs.

The subsidence repairs

Mr and Mrs C have said that subsidence repairs to their property, separate to the drains, still haven't been completed. If my final decision remains the same as my provisional decision, I'll be directing Fairmead to carry out a site investigation to establish if the drains have had a lasting and effective repair completed. If Mr and Mrs C accept my final decision, and once Fairmead have done that, and carried out a lasting and effective repair to the drain if required, then Fairmead will then be able to continue with the subsidence repairs to the property.

So at this stage there isn't anything more I can do to direct Fairmead to complete the repairs, as further drain investigations are required in order to establish if a lasting and effective repair has been carried out, before the remaining repairs can be completed.

Fairmead said they'll review the slabbed area outside the kitchen at the same time as the drain repairs being reviewed. They've said that if they have been damaged by the same ground movement that has affected the main property then they'll consider relaying them as part of the claim. But if they haven't moved or the movement is unrelated to the subsidence, then it isn't covered by the policy.

Whilst the outcome of the investigation isn't known until it is carried out, in principle I think what Fairmead has said here might be reasonable, but I can't make a finding on that as it's not yet happened. Once the investigation has actually been carried out, and if Mr and Mrs C are unhappy with the ultimate outcome reached following this, based on that new information, we may be able to consider that as a new separate complaint. But at this stage I'm not able to direct them to carry out those works yet to be inspected.

The service received

Subsidence claims can take time due to their nature. As is the case here, there were periods of monitoring required, along with investigations into the cause and this can take long periods of time to complete. But here it does appear confusion has been caused around what is and isn't being covered under the subsidence claim, and whether an excess or excesses are applicable. And Mr and Mrs C have argued that all the drain repairs should be covered under the same claim, and I'm partly in agreement some should have been, for the reasons outlined above.

And there have been several different parties involved in the claim, and I can't see that Mr and Mrs C were given any clear explanation who was involved or their role until much later into the claim, which has added to their concern and frustration about what was happening and who was responsible for what and who they needed to contact.

It also appears there were delays during the claim, such as the insured drain repairs, further repairs later being discovered and a delay in approving them, albeit some delays were outside Fairmead's control due to wider unforeseen circumstances in the outside environment. But Fairmead also accepts communication could've been better throughout. And as I've mentioned, allegedly the repairs to drains under the subsidence claim still have issues, which has added to the overall timescale in the remaining repairs being able to be completed.

Having considered everything provided by both parties, like our investigator, I'm minded to direct Fairmead to pay Mr and Mrs C £500 compensation."

Therefore, I was minded to uphold the complaint in part and to direct Fairmead to:

- Carry out a further site investigation to establish if a lasting and effective repair has been carried out to the drainage covered under the subsidence claim, and if not, to complete a lasting and effective repair
- Investigate whether the slabs near the kitchen have been damaged by subsidence, and if so, meet the cost of relaying them under the subsidence claim
- Reimburse the £200 accidental damage to underground services excess paid by Mr and Mrs C in April 2020, with 8% interest added from date of payment to date of settlement
- Update any internal and/or external records of the claim (for subsidence and drain repairs associated with that subsidence) so they reflect one subsidence claim
- Pay Mr and Mrs C £500 compensation

The responses to my provisional decision

Fairmead responded accepting my provisional decision. They said they didn't have any further comments to add in response.

Mr and Mrs C responded to the provisional decision. They reiterated they were unhappy with the service received from Fairmead and their agents and are sceptical about the future service they'll receive from them. They also said they are unhappy that Fairmead opened a subsidence and separate drains claim without their consent but recognise that I said in my provisional decision that it should be one claim.

Mr and Mrs C reiterated that they think all the damage to three sides should be covered under the subsidence claim, along with all works to the drains, regardless. They maintain Fairmead should reimburse the £325 they paid for some of the drain repairs, and that all works should be included under the claim.

They've also said that the drain repairs that have been completed as part of the subsidence claim haven't been carried out correctly, and some have been missed. So, they maintain that they should be able to get an independent survey completed of the works that have been carried out.

Mr and Mrs C also added further comments surrounding the slabs and that they have sunk, and their view on the reasons why this has happened. And they think this should be surveyed to establish the cause.

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.

And I've thought carefully about the conclusions I reached in my provisional decision, and the responses to it. Having done so, my final decision remains the same as my provisional decision.

Neither party disagreed with my provisional findings that the original claim for subsidence and drains should've been considered as one, with one excess. And the information provided, despite Fairmead's assertions, showed that Mr and Mrs C actually paid a separate £200 excess for drain repairs caused by the subsidence, rather than it all being considered under the one subsidence claim.

So, my final decision on this point is that Fairmead should refund the £200 excess paid in April 2020 (with 8% simple interest added from date of payment to date of settlement), and amend records internally and externally to reflect the one subsidence claim and repairs.

I recognise Mr and Mrs C are unhappy it was treated as two separate claims with a separate excess. Along with refunding the excess (with 8% interest added), and recording it as one claim, I've also decided Fairmead should compensate Mr and Mrs C £500 for this, and for the overall service they've received.

Whilst I note Mr and Mrs C have concerns about the future service they may receive from Fairmead and their agents, I can't compensate them for something which may or may not happen in the future. But if there are any new issues, Mr and Mrs C would need to raise these with Fairmead in the first instance, before referring those concerns to this service as a new complaint.

As I outlined in my provisional decision, in the absence of expert reports demonstrating all the drain repairs needed are part of the same subsidence claim and damage, I'm unable to conclude Fairmead has acted unreasonably by considering some of the drain damage and repairs separate. Whilst I note Mr and Mrs C's comments and information provided, in the absence of an expert report specifically demonstrating this, and/or Mr and Mrs C making a separate claim and paying an additional excess, I'm not going to direct Fairmead to reimburse the £325 Mr and Mrs C have paid for those repairs. And I'm also not going to direct them to pay for lintels to be installed, or to rectify a drain which has a faulty design, as the policy doesn't cover faulty design or workmanship.

In my provisional decision I said that Mr and Mrs C allege that the repairs to the drains carried out under the claim haven't been completed correctly by Fairmead. Whilst I note they'd like an independent inspection carried out (or the opportunity for them to obtain one with Fairmead covering the cost), as I said in my provisional decision, Fairmead needs to have the opportunity in the first instance to inspect works they carried out and to rectify them if needed. So, I'm directing them to investigate whether a lasting and effective repair has been completed to the drainage covered under the subsidence claim, and if not, to do so.

Fairmead said they'd review the slabbed area when the drain repairs are reviewed. And if they have been damaged by the same ground movement that has affected the main property, then they'll consider relaying them as part of the claim. But if they haven't moved or movement is unrelated to the subsidence, then it isn't covered by the policy.

In my provisional decision, I said I was minded to direct Fairmead to investigate the slabs movement and whether they had been damaged by subsidence, and if so, meet the cost of relaying them under the subsidence claim. If after that investigation has happened, and if Mr and Mrs C are unhappy with the outcome reached by Fairmead, we may be able to consider that as a new complaint based on that new information. But at this stage I'm not going to direct them to carry out works without reviewing the cause, and instead I'll be directing them to investigate the cause in the first instance as outlined in my provisional decision.

My final decision

It's my final decision that I uphold this complaint in part and direct Fairmead Insurance Limited to:

- Carry out a further investigation to establish if a lasting and effective repair has been carried out to the drainage covered under the subsidence claim, and if not, to complete a lasting and effective repair
- Investigate whether the slabs near the kitchen have been damaged by subsidence, and if so, meet the cost of relaying them under the subsidence claim
- Reimburse the £200 accidental damage to underground services excess paid by Mr and Mrs C in April 2020, with 8% simple interest* added from date of payment to date of settlement
- Update any internal and external records of the claim (for subsidence and drain repairs associated with that subsidence) so they reflect one subsidence claim
- Pay Mr and Mrs C £500 compensation

**If Fairmead Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs C how much it's taken off. It should also give Mr and Mrs C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 3 August 2022.

Callum Milne
Ombudsman