

The complaint

Ms B is unhappy with the way Fairmead Insurance Limited dealt with a claim she made under her buildings insurance policy.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Ms B got in touch with Fairmead when tenants at her rental property discovered water entering the building during bad weather in July and August 2021.
- Fairmead appointed various claim handlers, loss adjusters and contractors to handle the claim. Following an inspection, it accepted the claim for the internal damage and asked a contractor to carry out the repairs.
- Ms B questioned whether the roof would be included within the repairs. The contractor said the problem with the roof was related to maintenance and poor design, so its repair wasn't covered by the policy. A cash settlement was agreed for the internal damage and other points – but not the roof.
- Ms B provided information from a roofer, D, who said the roof had suffered storm damage. She complained that the roof hadn't been covered and about the way the claim had been handled, including the timeframe.
- Fairmead said it was clear the roof had failed due to its condition. It said the damage to the roof had occurred over time and this was wear and tear. It didn't think there had been any unreasonable delays, and noted the timescale had been impacted by Ms B having Covid-19 and the tenant having a baby.
- Our investigator found the evidence provided by Fairmead to be more persuasive than that provided by Ms B and thought Fairmead had acted fairly.

My provisional decision

I recently issued a provisional decision in which I said:

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

This complaint is about Fairmead's decision to decline to cover the roof damage and the way it handled the claim. So that's what I'll focus on.

Roof claim

Ms B's policy provides cover for 'all risks'. This means it covers all damage unless it's specifically excluded by the policy. There's no dispute the roof is damaged and has

let water into the building. If Fairmead thinks a policy exclusion applies, the onus is on it to show that.

I understand it's relying on the following exclusions to decline the roof claim:

Damage caused by or consisting of

...

(b) gradual deterioration or wear and tear

...

(d) faulty design or faulty materials used in its construction

(e) faulty workmanship

The loss adjuster has described 'heavy and torrential rain' at the times water entered the building. The weather records I've seen support that, showing extreme and intense amounts of rainfall in the area of Ms B's property at the relevant times.

Internal photos show recent water damage, but no signs of longer-term staining or mould. If the roof had a problem with the way it had been built – or it had suffered from gradual deterioration or wear and tear – I would usually expect to signs of water ingress over a longer period of time.

Whilst Ms B isn't required to show there was a storm or a sudden one-off event, I think this kind of exceptional weather shows something external acted on the roof. That's not indicative of a problem inherent in the roof, such as wear and tear or some kind of design or construction fault.

D said it had inspected the roof twice prior to the storms – in 2020 and in early July 2021. It reported the roof to be water tight, with no sign of leakage, and the guttering and other drainage free flowing and fault free. This doesn't suggest a wear and tear or design / construction problem either. On the contrary it shows the roof had been regularly maintained and was in good condition prior to the torrential rain events.

D has been clear it thinks the damage to the roof was caused by the rainfall in July. It visited immediately after both periods of bad weather to carry out emergency repairs. So its comments are based on first hand observation of the damage.

Fairmead had a contractor look at the roof several months after the damage was caused and after emergency repairs had been carried out. It said there were areas where breaches and openings in the flashing could potentially allow water to enter the property. It thought this was a sign the roof was suffering wear and tear.

Ms B has questioned these findings and suggested Fairmead's contractor has observed the natural overlapping of the lead flashing and wrongly concluded this is a problem. She also notes D is a specialist roofer, whilst it's unclear what the contractor's position is.

But I think her broader point is that D has seen the property before and immediately after the damage, whilst the contractor has only seen it after emergency repairs have been carried out. And because of that, D's opinion should hold more weight than the contractor's.

I agree with Ms B on this point. I'm satisfied D's opinion is more persuasive than the contractor's given it has greater knowledge of the condition of the roof, before and after the damage.

I also bear in mind that the onus is on Fairmead to show how the roof has been damaged by wear and tear and/or a design or construction fault if it's to decline the claim. Its contractor suggests potential problems that may have led to the water ingress. But the report doesn't explain in detail what caused these problems or provide photos to support its findings. Whilst D's report isn't significantly more detailed and also doesn't have photos, it's Fairmead that needs to show the damage was likely caused in ways excluded by the policy. I'm not satisfied it's done that.

I've seen a report from a contractor, F. It says it had no access to the leaking part of the roof. It made no findings about the cause of the damage. Because of that, I don't think this report adds much weight to the arguments made by either party.

To put things right, Fairmead should accept the claim for the roof. It will need to work with Ms B to decide how to settle this part of the claim fairly.

And I understand Ms B has paid £180 for the roof report. Fairmead should reimburse that cost to her as it's had a significant impact on the claim.

Claim handling

I won't go over each and every interaction Ms B has had with the various contractors during the claim. In summary, the claim began in September 2021 and it took until June 2022 to settle the accepted aspects of the claim.

That's an unusually long period of time, especially considering the loss adjuster accepted the internal damage claim promptly. Part of the problem seems to be that the roof wasn't considered initially and it's only when Ms B questioned it that Fairmead began looking into it. I don't understand why the roof was overlooked when it was clear from the outset it was the source of the water entering the building.

So there were clearly delays, including significant periods of time that I'm satisfied should have been avoided by Fairmead.

I take into account that the claim was paused when Ms B had Covid 19 and the tenant had a baby. So some of the delay was outside of Fairmead's control. But the time this took is minor in comparison to the avoidable delays Fairmead is responsible for.

I've seen from correspondence on file that the claim process didn't always go smoothly. It seems to have required lots of contact from Ms B at various stages of the claim to move things forward. I don't think this was helped by the number of agents working on behalf of Fairmead to carry out different parts of the claim.

Taking all of this into account, I think Fairmead should pay Ms B compensation to reflect the distress unnecessarily caused by delays and poor communication. I'm satisfied £250 is reasonable in the circumstances.

Responses to my provisional decision

Ms B said she agreed with my provisional decision. She shared again her invoice for around £3,000 plus VAT for the roof repair.

Fairmead said it didn't agree with my provisional decision. It made a number of comments. I'll summarise the points I consider are most relevant. Fairmead said:

- The policy doesn't cover damage to the roof simply because it had failed. And nor does a large amount of rainfall automatically mean the damage was caused by a one off storm. For a storm claim, Fairmead would expect to see clear evidence of damage caused by a storm, such as tiles blown off or flashings lifted.
- The type of roof Ms B has is prone to leaks as a result of wear and tear and its style and design.
- The reports show the damage occurred over time. Just because there had been no sign of prior damage internally, it doesn't mean the roof hadn't been deteriorating over time. The heavy rainfall could have been the first point at which the roof damage became clear.
- I had stated there was no evidence of deterioration of the roof over time, that the loss adjuster hadn't explained the cause of damage, and no images had been provided. This suggests I haven't considered the evidence it had supplied in any depth.
- For example, F's report contains images which make it clear the roof was in a poor state of repair and had suffered problems with gradual deterioration. Evidence from the loss adjuster supported this and showed the damage wasn't caused by storm.
- I haven't considered that D isn't entirely independent. Their findings don't match the images of the roof's condition. And I've referred to a report Fairmead hasn't seen.
- I've focused on the unusually long period of time it took to progress the claim without considering in any real tangible way the lengthy delays caused by Ms B and her tenant. Removing these events would show the claim was settled in a reasonable timescale. I should highlight specific periods of delay if I disagree.
- My findings differ significantly from the investigator's, which is unusual.

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.

When a complaint is referred to an Ombudsman, their role is to look at all the evidence afresh and reach their own opinion about what a fair outcome is – independent of the opinion of the investigator. That sometimes means the Ombudsman reaches an entirely different outcome to the investigator. Given the subjective nature of many of our cases, reaching a different outcome isn't uncommon. Fairmead ought to be aware of this.

It's clear Fairmead feels very strongly that my findings don't treat it fairly and I haven't considered all the relevant information. I can assure both parties I've carefully considered all the information they've provided and thought about the impact that has on the overall complaint. I won't comment on each and every piece of information. Instead, I will focus on the points I consider most relevant to explain my outcome.

What does the policy cover?

Fairmead has questioned my interpretation of the policy cover, so I think it's important to start by explaining my opinion about this again.

The policy schedule Fairmead has provided for Ms B says: “Cover Option A – All Risks applies”.

The corresponding policy wording provided by Fairmead says: “Cover Option A – All Risks ... we will indemnify you in respect of damage to the property insured.”

It goes on to say: “The following Exclusions apply to Cover Option A – All Risks”. It lists a number of exclusions, including those Fairmead have relied on.

Another section of the policy – Cover Option B – provides cover for a defined list of causes, such as storm. But this isn’t the cover Ms B has, so it isn’t relevant.

The cover Ms B has bought is effectively for any damage – subject to the exclusions and other policy terms and conditions. That means the damage doesn’t need to be caused by a one off storm in order to be covered. If Ms B can show there’s damage to the roof – which she has, that’s not in dispute – it then falls to Fairmead to accept the claim, or seek to show a policy exclusion or other term means it would be fair to decline the claim. The onus is on Fairmead to show this.

Fairmead has sought to rely on the following exclusions to decline the claim:

Damage caused by or consisting of

...

(b) gradual deterioration or wear and tear

...

(d) faulty design or faulty materials used in its construction

(e) faulty workmanship

I’ve considered the available evidence to decide whether it would be fair for Fairmead to rely on any of these exclusions to decline the claim.

What does the evidence show?

I’ve considered the evidence provided by both parties. In particular, the reports written by D, F, and Fairmead’s contractor and loss adjuster. I haven’t seen any reason to question the independence of any of the authors of these reports. I’m satisfied they’ve all given their genuine, professional opinion about the damage.

Fairmead says I’ve relied on a report from D that it hasn’t seen. But it provided a copy of D’s report to us in its file submission, so I’m satisfied it’s had the chance to see the report. All the comments I made about D’s findings are taken from that report.

I’m usually more persuaded by comments within reports about the specific damage claimed for than general commentary. What may sometimes happen to a roof similar to Ms B’s is less relevant in my view than the evidence about what likely happened to Ms B’s roof itself. So whilst I take into account Fairmead’s comments that the design and style of Ms B’s roof *can* lead to damage and water leaks as a result of wear and tear and/or faulty design / materials / workmanship, I don’t think it would be fair for it to decline the claim unless it can show this is what *likely* happened in the particular circumstances of this case.

I’ve looked again at the key reports.

D said it had inspected the roof twice prior to the bad weather – once shortly before and once over a year before. It had found no problems with the roof. Following the bad weather,

it thought all the roof damage was caused by a storm, including lifted lead flashing and broken mortar. It found no evidence of wear and tear or design or installation problems.

Fairmead says this is inconsistent with photographic evidence, including that from F. I noted in my provisional decision that F said it was unable to access the leaking part of the roof. Whilst it took photos of other areas, I don't think they're relevant. I accept what Fairmead says about the moss build up in a section of guttering – that's clearly shown in a photo. But as F said this wasn't where the leak was, I don't think it shows the leak was caused by gradual deterioration as a result of moss build up. Fairmead says F's photos don't show any obvious storm damage. Since F couldn't access the leaking part of the roof, I don't think its photos are likely to show the damaged area. This is why I didn't place much weight on F's report in my provisional decision.

Fairmead's contractor inspected the damaged area. It said lead flashing required re-dressing, there were potential routes to breach the lining, and the mortar needed repair. I think this assessment of the problems broadly corresponds with what D said. The contractor said that 'maintenance related repairs due to general wear and tear' were needed to put things right. As a result, the loss adjuster thought the damage was excluded from cover.

Turning back to the policy cover, the onus is on Fairmead to show the damage was caused by one of the exclusions noted above. That means the contractor's opinion that the damage was caused by wear and tear needs to be more persuasive than D's that it was storm.

In my provisional decision, I explained that both reports were similarly detailed and neither had the benefit of photos within them – although there are photos available. The contractor labelled the damage wear and tear but didn't explain why they reached that conclusion – or how the photos supported their opinion.

Bearing in mind D had seen the roof prior to the damage – and immediately afterward – whilst the contractor only saw it months later, I was satisfied D's view was more persuasive than the contractor's. Fairmead's response hasn't changed my mind.

I agree with Fairmead that a lack of older, longer-term internal damage doesn't mean the external damage *must* have been recent. But given the internal damage was recent, I didn't think it supported Fairmead's view that there had been a long-standing problem with the roof.

Claim handling

I explained in my provisional decision that I had taken into account that the claim was paused when Ms B had Covid 19 and the tenant had a baby. I noted this was outside of Fairmead's control and didn't hold it responsible for the time involved.

Fairmead says I haven't sufficiently taken this into account. When thinking about delays, I looked at the timelines provided by both parties. Fairmead's suggests around a month when Ms B had Covid and similar again when the tenant had a baby – so around 2-3 months.

The claim overall took around 9 months to settle the internal damage. Shortly after that Ms B had the roof repair carried out. It will be around 15 months from the start of the claim when she's paid for it. In the circumstances, I remain satisfied it's fair to say that the majority of the claim duration was within Fairmead's control. Whilst some of that would always have been necessary, I can't see why it should reasonably take at least 6 months to reach a conclusion to a relatively straightforward claim.

As I noted in my provisional decision, the compensation figure was also for poor communication during the claim. Fairmead hasn't challenged that point.

Overall, thinking about all the evidence again and the points Fairmead made in response to my provisional decision, I remain satisfied it unfairly declined the roof claim and caused avoidable distress and inconvenience in the way it handled the claim. I'm satisfied the remedy I outlined in my provisional decision remains the fair one to put things right.

My final decision

I uphold this complaint.

I require Fairmead Insurance Limited to:

- Accept the roof claim
- Pay £180 for the roof report
- Pay £250 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 January 2023.

James Neville
Ombudsman