

The complaint

Mr H is unhappy Fairmead Insurance Limited declined a claim he made for subsidence damage to a property he owns.

What happened

There have been several businesses and individuals involved in the complaint – acting as representatives or agents of either Mr H or Fairmead. But for ease of reference, I'll only refer to Mr H and Fairmead by name in this decision – even when referring to the actions or arguments of their representatives.

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, Mr H is unhappy that Fairmead initially accepted a claim he made for subsidence damage to a HMO property he owns, before later declining it based on an incorrect exclusion.

Fairmead accepted that the exclusion it initially relied on didn't apply to Mr H's policy. But it maintained its decision to decline the claim as it says all the damage predates inception of its policy. Mr H feels Fairmead has been deliberately trying to avoid paying his claim from the outset. He's also unhappy that he's been expected to pick up the cost of correcting the investigation works carried out prior to Fairmead deciding to decline the claim.

Our investigator initially said that Fairmead would need to cover any damage which had happened since it had been on risk. And she said it was for Fairmead to demonstrate which damage was pre-inception. However, following her first assessment, Fairmead provided further comments and evidence from its loss adjuster which persuaded our investigator that all of the damage was most likely pre-inception. So, she said Fairmead's decision to decline the claim was fair. But she recommended Fairmead pay Mr H £200 compensation for its poor handling of the claim, including relying on the wrong exclusion to decline the claim initially.

Mr H didn't accept our investigator's findings. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

It's not in dispute that Fairmead initially accepted the claim, nor that it sought to rely on an exclusion not applicable to Mr H's policy to decline the claim in the first instance. What remains in dispute is whether Fairmead's final decision to decline the claim was fair and reasonable, in light of the available evidence, and what a fair amount of compensation should be to recognise the impact of the errors it made during the claims process. I'll address each in turn.

The claim decision

Fairmead declined the claim on the basis that all of the damage at Mr H's property predates inception of its policy. It says the policy requires Mr H to take action to prevent loss or damage, yet he hadn't carried out any structural works in his 33 years owning the property. The policy also contains exclusions for damage which predates the policy and damage which happened gradually, both of which Fairmead says would apply to this claim.

Fairmead's conclusions are based on a combination of the monitoring results taken by Mr H's loss assessor, and the inspections of the damage taken by its appointed engineer and its loss adjuster, who has said:

"The cracking to the walls of the entry staircase were 3 to 4mm wide prior to the plaster being locally removed. This revealed cracks to the underlying masonry of 18mm...

...

We were advised that the entry staircase and entrance lobby were last decorated circa 2015, with the wall paper (sic) being cut to the profile of the distorted door heads to the ground floor flats; flats 1& 2. There are no signs of distress or movement to either the distorted door heads or the wallpaper, suggesting that there has not been any movement since the area was decorated in 2015.

The policyholder advised that he had not undertaken and (sic) structural or replastering works within his ownership of approximately 33 years.

Investigation within the sub-floor void of the entry lobby revealed significant and historic packing on top of the brickwork sleeper walls which support the suspended timber floor...

...

Drainage is situated along the right flank of the property so is not a causal factor.

The decorative history of the entry lobby and staircase, along with the policyholder's confirmation that no structural or replastering works have been undertaken within his ownership, confirm that there is significant historic damage, which predates inception of our policy."

In addition to the above, Fairmead has highlighted that the monitoring results obtained by Mr H's loss assessor showed the property was stable. I haven't seen these results first-hand, but from the contemporaneous evidence I have seen about these results, I'm satisfied that they indicated the property was stable.

I'm aware that Mr H, and his loss assessor, have said the type of monitoring they carried out was basic and that the stability readings could be incorrect if plaster near areas of damage had debonded from the structure or if the monitoring tags were in the wrong locations. But I note it was the loss assessor who carried out the monitoring, so it would have been incumbent upon them to ensure that the plaster was sufficiently bonded in the areas which they decided to monitor. If they weren't satisfied with the reliability of the method, I fail to see why they would complete such monitoring.

If Mr H wishes to, he is free to instruct more detailed monitoring at his own cost. Should this show progressive subsidence movement, he should submit the results to Fairmead and I would expect it to consider the new evidence, and to potentially reconsider its claim decision including whether it should cover the cost of that monitoring. But based on the monitoring readings currently available, coupled with the various other indicators of stability captured in the various reports (and summarised within the loss adjuster's quote above), I'm persuaded, on balance, that the property was most likely stable prior to inception of Mr H's policy and that it remains so.

I also note that an area of damage to the right-hand flank wall was determined, by the engineer, to be the result of a lack of lateral restraint, rather than downward movement of the land beneath the building (subsidence). And damage resulting from lateral movement isn't covered by the policy.

This means I'm persuaded that all the damage being claimed for either isn't covered under the terms of the policy or happened before Fairmead was on risk. Therefore, I consider it is fair and reasonable for Fairmead to refuse to cover the claim.

I'm aware that Fairmead undertook and/or authorised some stripping out and investigative works prior to reaching its claim decision. But given the need for significant structural repairs at the property, which I don't think Fairmead is responsible for, I don't think Fairmead needs to cover the cost of making this right. I say this because, in order for Mr H to properly repair the property, that stripping out work would always have been necessary and so is a cost that Mr H would always have needed to bear.

Compensation

Mr H's claim has taken a significant length of time to reach this point. It was first reported in February 2020, accepted in April 2021 then declined in January 2022. However, some of the time taken has been unavoidable, for example delays due to access issues as a result of the COVID-19 pandemic and the time it took for site investigations and monitoring to be completed. However, I have considered the impact of the overall time taken when deciding a fair amount of compensation.

In addition to the time taken, Fairmead has caused Mr H a significant loss of expectation by initially confirming acceptance of his claim, only to later decline it. However, I'm aware that the decision to decline the claim was only made when new information came to light following the additional stripping of plaster. Fairmead has also caused Mr H understandable distress and inconvenience by relying on a non-applicable policy exclusion to decline his claim in the first instance and maintaining that this was correct until the complaint was referred to our service.

I've thought carefully about the impact of Fairmead's overall handling of Mr H's claim and balanced it against those parts which were unavoidable or not due to an error on Fairmead's part. Having done so, I think Fairmead should pay Mr H £200. I think this amount is sufficient to fairly compensate Mr H for the impact of the issues which Fairmead is wholly responsible for.

My final decision

For the reasons I've explained above, I uphold Mr H's complaint in part.

Fairmead Insurance Limited must pay Mr H £200 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 July 2023.

Adam Golding
Ombudsman