

The complaint

Mr K complains that Fairmead Insurance Limited declined a claim he made under a buildings insurance policy for damage to his garage.

Reference to Mr K includes anything said or done by his representative.

What happened

As the circumstances aren't in dispute, I'll summarise the main points:

- Mr K noticed a problem with his garage door and got in touch with Fairmead. It appointed a surveyor, G, to inspect the problem and carry out investigations.
- G thought the damage had been caused by consolidation or settlement of the garage – and not subsidence. It said this had occurred over a long period of time and commenced prior to the start of the insurance policy. It declined the claim.
- Mr K complained but Fairmead didn't change the position. It said there was no evidence to show an insured event had caused the damage and the problem had been ongoing for a number of years.
- Our investigator thought the complaint should be upheld. She said the policy covered damage caused by settlement, so an insured event had caused the damage. She noted the policy excluded damage caused by 'normal settlement' but didn't think it would be fair to apply that policy term in these circumstances. She asked Fairmead to accept the claim.
- Mr K agreed with our investigator. Fairmead didn't. It accepted that 'normal settlement' would usually refer to settlement no more than ten years from construction – and it had been much longer than that in this case. However, it maintained that the damage likely commenced prior to the policy. It said without documentation such as a pre-purchase report or maintenance inspections, there was no evidence to suggest the damage began after the policy did.

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.

The policy covers damage to the buildings caused by settlement. G said the damage was caused by settlement and this hasn't been disputed. So I don't understand why Fairmead said the damage wasn't caused by an insured event. I'm satisfied it was.

It then falls to Fairmead to accept the claim – or rely on an exclusion to decline it. When relying on an exclusion, the onus is on Fairmead to show it would be fair to apply it.

Fairmead seems to have accepted our investigator's view that it would be unfair to rely on the exclusion for damage caused by 'normal settlement'. It says this phrase refers to the type of settlement that commonly occurs soon after construction as a building 'settles' onto the supporting ground – and suggested ten years was 'normal' for this process. It's not in dispute that the garage was built around 50 years ago and is well outside the timescale for 'normal settlement'. So I'm satisfied the settlement it's experiencing isn't 'normal' and the exclusion doesn't apply.

The only other reason Fairmead raised for declining the claim is related to when settlement began. The policy excludes any damage occurring *or arising from an event* before the start of the policy. The onus is on Fairmead to show the settlement likely began prior to the policy. And even if it can do that, I must also be satisfied it would be fair and reasonable in all the circumstances for Fairmead to rely on the exclusion to decline the claim.

The policy began in mid 2018 and Mr K discovered the garage door problem around three years later, making the claim soon after that. To show the settlement problem likely began before the policy, Fairmead has relied on G's view that the consolidation "has occurred over a long period of time" although it hasn't estimated when the problem began. Fairmead says that without documents such as a pre-purchase survey or records of periodic maintenance inspections, it thinks the problem began before mid 2018. The main reason for this is Mr K's recollection that he was aware of a "small crack" in the garage floor in 2017, although G notes he didn't consider it to be significant at that time.

In G's initial report it said a pre-purchase survey was irrelevant because it's unlikely a mortgage would have been granted had the survey identified any subsidence movement. I think the same conclusion can be drawn if any other structural movement, such as settlement, was identified. So even if it was available, it seems likely the survey would show the garage was free of movement at the time the property was bought. But that was in 2011, many years prior to the start of the policy. Settlement could have begun between 2011 and 2018. So I'm not persuaded the survey is likely to be determinative here.

Fairmead suggests periodic maintenance inspections may be helpful, although I can't see that Mr K has ever been asked if he has any. In any case, I understand Mr K lived in the property up until 2018, so there's unlikely to be any reason to record any inspections at or prior to that time. After that the property was tenanted and the policy began soon after. And once a sign of a problem was discovered, Mr K took prompt action to investigate it and raise a claim with Fairmead. He also shared his recollection of the crack from 2017. So again, I think any records of inspections, if they existed and have been retained from many years ago, are unlikely to add materially to the available evidence.

After discovering the problem with the garage door, Mr K asked a drainage company to check the drains. He recalls them saying ground movement had impacted the drains and the garage. Their report sets out some problems with the drainage, but it doesn't give any commentary about what caused the problems or the timing of them. G later also found problems with the drains, but not those close enough to the garage to be thought to be contributing to the movement.

So overall, I think the only evidence Fairmead has to rely on is Mr K's recollection of a crack in the garage floor in 2017. He says he didn't consider it to be significant. And given it was one small crack in the floor of a garage that was nearly 50 years old, I can understand why. In isolation, it's not necessarily indicative of a more significant structural problem. G said the garage showed "very little evidence of structural damage" in 2021. I understand the way it was constructed means it's been able to move without causing significant visible damage.

As a result, I don't think there were clear signs of a settlement problem to Mr K until 2021, when the garage door became difficult to use and he discovered the door frame was distorted. It's possible the crack discovered in 2017 was a sign the settlement began prior to the policy started. But that's the only evidence put forward by Fairmead to support its position and it's not very compelling. And given Mr K wasn't reasonably aware of the extent of movement until 2021, well after the policy had started, I'm not satisfied it would be fair in all the circumstances for Fairmead to rely on the exclusion to decline the claim.

To put things right, I'm satisfied it would be fair and reasonable for Fairmead to now accept the claim.

My final decision

I uphold this complaint.

I require Fairmead Insurance Limited to accept the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 July 2023.

James Neville
Ombudsman