

## **The complaint**

Mr and Mrs B are unhappy with the way Fairmead Insurance Limited has dealt with a claim they made under their home insurance policy.

Mr B has primarily dealt with the claim, so for ease of reading I'll refer to him only.

Reference to Fairmead includes its appointed agents and representatives.

## **What happened**

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

- Mr B's property is on a steep slope. A new home was going to be built on the neighbouring plot of land, downslope. To facilitate that, groundwork began, including excavating into the slope below Mr B's property.
- Around the same time, there was an escape of water from a pipe at the top of the slope which caused water to leak downslope and under Mr B's property.
- There followed ground movement which caused damage to Mr B's home. He got in touch with Fairmead in August 2021.
- Fairmead appointed a loss adjuster who inspected the damage soon after. They took expert advice, as did Mr B. The loss adjuster noted a number of policy exclusions that may apply. They also noted the neighbouring plot of land was owned by a company, H. Mr and Mrs B are directors of H. I understand the neighbouring plot doesn't have buildings insurance. But even if it does, it's not insured by Fairmead. Because of these factors, Fairmead said it needed to consider the position.
- By June 2022, Fairmead hadn't given a claim outcome and Mr B complained. He said he'd spent a lot of money taking expert advice, the house was deteriorating and, noting repairs were likely to be very expensive, he was concerned about whether Fairmead would cover the claim. He was also unhappy with how long things were taking and said there had been a lack of communication by Fairmead.
- Fairmead said this was a particularly complicated case, which meant a large amount of investigation was required. But it agreed there had been some unnecessary delays and a lack of proactive communication at times. It offered Mr B £100 compensation. It also confirmed it had accepted the claim and was preparing a schedule of work. Lastly, it agreed to review the costs Mr B had incurred taking expert advice.
- By January 2023, Fairmead said the schedule of work had been prepared. It included superstructure repair only. Mr B was concerned this wouldn't properly address the problem and referred his complaint to this Service. He thought the house needed to be stabilised. Fairmead said it hadn't ruled out the possibility of stabilisation, although it thought this needed further expert discussion. It accepted there was a delay reaching this stage and offered to increase the compensation to £200.

- Our investigator thought the complaint should be upheld. Because Fairmead had accepted the claim for crack damage was covered by the policy, he said it should carry out a lasting and effective repair. That might involve underpinning, as Mr B has suggested, or it might not, as Fairmead has suggested. But as a discussion about *how* to carry out a lasting and effective repair was ongoing, he didn't think it was appropriate at this stage to make a finding about how to carry out the repair.
- Our investigator also said there had been avoidable delays, distress and inconvenience and asked Fairmead to pay a total of £750 compensation. And he asked Fairmead to assess the costs Mr B had faced for expert reports, pay for any that were integral to, or made a difference to, the claim, plus interest.
- Fairmead didn't agree with our investigator. It said underpinning the property wouldn't stabilise it because it wouldn't prevent slope movement. It set out several options to stabilise the slope, but it said all of them would have to be carried out on the neighbouring plot of land – which isn't insured by Fairmead.
- In May 2023, a meeting between various experts was held at the property. Fairmead said it was agreed between all parties that the slope required some form of support. It maintained Mr B's property didn't need to be underpinned on the strength of the current evidence – but it agreed to pay for further investigations into the ground beneath the property and consider the matter further. Mr B said his appointed experts maintained the property needed underpinning, regardless of any slope stabilisation. But he agreed to Fairmead proceeding with the investigations.

### **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.

- Ordinarily the scope of a complaint would be up to and including the latest final response from the insurer. Here, that was in August 2022. At this time, Fairmead had accepted the claim, but it hadn't set out how it intended to settle it. For example, whether it would repair the superstructure of the building only or whether it would also carry out some form of stabilisation work, to the building and/or the slope.
- Since then, there have been further discussions between the experts about the most appropriate way to put the damage right – but an agreement hasn't been reached. More recently, Fairmead has made an offer to carry out further investigations to help decide what the most appropriate way would be. I think that's relevant to the outcome of the complaint, so I'll expand the scope to include everything that's happened up to and including that offer in June 2023.
- The main point of dispute is what kind of work Fairmead should carry out to put the damage right. The other points in dispute are the reimbursement of invoices Mr B has paid for expert advice and the way Fairmead handled the claim, including the timescale and communication. I'll consider each point in turn.

*How should Fairmead put the damage right?*

- The policy says “we will pay the **rebuilding cost** up to the **sum insured** shown on **your schedule** to restore, repair or rebuild **your home** following damage to the buildings”. Words in bold are defined in the policy but that’s not relevant here.
- In summary, this says Fairmead will settle the claim by paying to carry out the work required to put the damage right. It’s a longstanding fair and reasonable principle that an insurer should ensure the settlement provides a lasting and effective solution. That means properly putting right the damage for a reasonable amount of time.
- I understand Fairmead accepts that principle. The question is how to fulfil it in this case. In summary, should the building be underpinned and/or the slope stabilised before superstructure repairs are carried out? There are secondary questions about the most appropriate method of each, if they were to go ahead. As I understand it, the relevant part of the slope is on the neighbouring plot of land. Fairmead doesn’t insure that land, and that’s complicated the matter further.
- In brief, the position reached by each party is as follows:
  - Fairmead considers the cause of the damage is the excavation downslope, rather than the water leak from above. It says if the slope is stabilised, the building will stabilise as a result. So underpinning won’t be necessary and superstructure repairs alone can be carried out.
  - Mr B considers the cause of the damage was the water leak weakening and destabilising the ground beneath the building. He thinks the building needs to be underpinned to stabilise it. The slope may also need supporting, but that alone won’t be sufficient to stabilise the building.
- Both parties have taken advice from a number of suitably qualified and experienced experts, including chartered structural engineers and geotechnical consultants. Many of the experts have met each other at the building and discussed the matter in depth. But they haven’t been able to agree how to put the damage right.
- Fairmead’s recent offer is to arrange and pay for significant investigations into the ground beneath the property and use the evidence collected to decide how to put the damage right. I’m satisfied this is a reasonable and pragmatic way to progress the claim. I’ll explain why.
- There’s a lot at stake for both parties. Mr B understandably fears for the stability of his home. He’s concerned it may collapse if damage continues and the structure isn’t strong enough to resist any further movement. And for Fairmead, the claim could potentially be considerably expensive. So I think it’s important the decision on how to put the damage right is taken with the benefit of relevant and reliable evidence. Given there’s a disagreement between the experts, I think more evidence is the most appropriate way to break that deadlock and move the claim forwards meaningfully.
- The investigations should be carried out promptly. I understand the investigations are to be carried out over a period of six months, following which a report, including the results, will be prepared. That should be shared with Mr B. I expect Fairmead to review the report and let Mr B know how it intends to put the damage right. It should bear in mind the principle noted above about providing a lasting and effective repair.

## *Invoices*

- In its August 2022 final response, Fairmead agreed to consider the invoices Mr B had paid for expert advice. However, it doesn't seem to have done that until being prompted by our investigator recently.
- Mr B has submitted nine invoices, totalling around £30,000, and they have been shared with Fairmead. It accepted that many of them were for work that Fairmead would have paid for, had Mr B not done so himself, and indicated it would pay these invoices – although it didn't specify which they were. Nor did it set out why it wouldn't pay the remaining invoices. It suggested it may be pragmatic to pay them all.
- Our investigator recommended Fairmead pay all the invoices unless it could present a compelling reason for not doing so. Fairmead didn't provide any meaningful further comment on this point.
- Fairmead has had plenty of time since August 2022 to gather the invoices, consider each one and agree to pay it or look into what the invoice was for in more detail by speaking with Mr B and/or the expert involved. And if it didn't agree to pay one, it could have explained why. Despite being prompted by our investigator, it hasn't taken any of these steps. Since Fairmead has indicated it agreed to pay most, if not all, of the invoices, and it hasn't raised any specific objection to paying any of them, I'm satisfied it would be fair and reasonable for Fairmead to pay all of them.
- Whilst some of the invoices are relatively recent, others are up to 18 months old. As Fairmead hasn't engaged with the invoices, Mr B has been left out of pocket by a significant amount of money, in some cases for a very long time. To put that right, Fairmead should pay interest on each invoice, from the date Mr B paid each one to the date Fairmead reimburses them.
- I understand Mr B may have more invoices to submit. If he does submit any, Fairmead should consider them promptly. It should either pay them or explain why it won't to Mr B – and again, it should do this promptly.

#### *Claim handling*

- Initially, Fairmead appointed a loss adjuster, who visited and reported back promptly. By October 2021, it was aware of the expert opinions on the cause of the damage and the relevant policy considerations.
- Fairmead accepted the claim in June 2022, although it only seems to have told Mr B that when it responded to his complaint in August 2022.
- I recognise the claim is high value and there were a number of points to consider before accepting it. But I'm not persuaded that meant it was reasonable for Fairmead to take around eight months to accept the claim. I think two would have been reasonable, so there's an avoidable delay of around six months.
- Fairmead has accepted there were further delays in late 2022 and early 2023.
- Since then, there have been numerous discussions and disagreements between the experts about how to put the damage right. It's a complex matter with significant implications for both parties. Although I know the lack of tangible progress with putting the damage right is causing Mr B considerable distress, I think it's inevitable the claim would take some time during this stage. However, Fairmead has often been slow to follow up actions with Mr B, particularly following the meeting in May. It would

have been frustrating for Mr B to think some points of agreement had been reached and a way forward agreed, only to have wait many weeks for an update.

- If Fairmead had been in regular contact with Mr B throughout the claim and managed his expectations about what was happening and how long it was likely to take, he would have been aware of the position. I think that would have reduced the avoidable distress he's suffered during the claim.
- Taking all of this into account, I'm satisfied a total of £750 compensation is reasonable in the circumstances. If Fairmead has paid the £100 and/or £200 it previously offered Mr B, that can be deducted from the total.

### **Responses to my provisional decision**

Fairmead hasn't responded to my provisional decision. I understand that to mean it doesn't wish to challenge or comment further on any of the points made.

Mr B said he agreed in principle with my provisional decision but had some queries. I'll summarise them:

- Who will determine what a lasting and effective repair is?
- Can this case be left open whilst the investigations are carried out and a decision be made by this Service after that?
- The damage to the house continues to worsen. It's causing, amongst other things, problems fully shutting external doors. Mr B is concerned it's becoming uninhabitable and impractical to live in. Can Fairmead carry out temporary repairs?
- The investigations have begun and he thinks they show the movement is more sideways than downward, which means the problem was more likely caused by the water leak than the building work.
- More information has become available about the extent of the water leak, which again he thinks indicates it was more likely to be 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.

Both parties are broadly agreed that my provisional findings are a fair way to break the current deadlock and progress the claim. Indeed, the investigations are already underway.

At this stage, I think it's too early to draw conclusions about what the investigations may show. In my view, it's best to let the investigations continue to their conclusion and for the experts to reach informed opinions with the full investigation results available.

I don't think it will be practical or helpful to keep this case open whilst investigations are ongoing. Once they're complete, Fairmead should tell Mr B how it intends to put the damage right. If both parties agree, the claim can proceed and there will be no need for this Service to be involved. The parties will have decided between them, based on expert advice, what a lasting and effective repair is.

If an agreement isn't reached, Mr B will be entitled to raise a new complaint about Fairmead's decision and refer it to this Service if he wishes. So he won't lose that opportunity because this case has already been resolved. By that stage, it's likely the investigations will have been exhausted, all expert opinions gathered, and so this Service can determine what a lasting and effective repair is, if need be.

Both parties are agreed that paying the invoices, plus interest, and compensation, fairly resolves the other complaint points. So I won't comment further on those points.

It's clear Mr B is concerned about the level of damage at his home. Videos he's shared highlight the difficulties he and his family are facing. I would expect Fairmead to consider this and take the appropriate steps. Initially that means inspecting the problems Mr B has raised and deciding whether temporary repairs can be carried out to keep the home habitable.

The policy covers "the cost of comparable alternative accommodation" if Mr B's home "cannot be lived in following damage covered by the policy". So if temporary repairs can't keep the home habitable, Fairmead should consider alternative accommodation.

I don't think it's appropriate for me to make a finding about that at this stage as Fairmead will need to consider the damage and the impact it's having on Mr B and his family before deciding what steps to take. But it should do this promptly.

Overall, I remain satisfied that my provisional findings are fair and reasonable in the circumstances.

### **My final decision**

I uphold this complaint.

I require Fairmead Insurance Limited to:

- Carry out and pay for the investigations.
- Pay each of the nine invoices.
- Pay interest on each invoice, at 8% simple per year, from the date Mr B paid each invoice to the date of settlement\*.
- Pay a total of £750 compensation\*\*.

\*If Fairmead considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

\*\*Fairmead must pay the award within 28 days of the date on which we tell it Mr B accepts my final decision. If it pays later than this, it must also pay interest on the award from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 18 September 2023.

James Neville  
**Ombudsman**