

## **The complaint**

Mr E complains about FAIRMEAD INSURANCE LIMITED's (Fairmead) handling and settlement of a claim made under his home insurance policy.

Where I've referred to Fairmead, this also includes any actions or communication by agents acting on their behalf.

## **What happened**

In November 2022 Mr E noticed water coming through the ceiling of his property, so he contacted Fairmead, his home insurer, to make a claim.

Fairmead appointed an agent to inspect, but as they were unable to determine the cause of the water ingress a leak detection specialist was appointed. The specialist said further investigation was required, but they also identified that there could be asbestos in the ceiling which needed removing first.

Ultimately the ceiling was later removed, and the leak detection specialist carried out further investigations. They believed that there was a leak from a rainwater pipe, alongside an ingress from along an external wall. Fairmead subsequently declined the claim on the basis of an exclusion for leaks from rainwater pipes, and wear and tear. However, Fairmead offered a cash settlement for reinstating the ceiling that had been removed when tracing the cause of the water ingress.

Mr E was unhappy with this. He also said that the removal of the ceiling had caused further leaks and damage, and he wanted Fairmead to cover the associated repairs. However, Fairmead didn't agree.

As Mr E remained unhappy with Fairmead's handling of the claim and the claim decision, he approached the Financial Ombudsman Service.

One of our investigators looked into things and she upheld the complaint. She initially said that Fairmead had unfairly said there wasn't a storm and recommended they reassess the claim against that insured event under the policy. She also said the exclusion Fairmead had relied on wasn't in the policy terms so they couldn't decline the claim on this basis.

The investigator said Fairmead should reinstate the ceiling rather than cash settle it, but if they did cash settle then she said this would need to be based on costs to Mr E rather than Fairmead's. She also recommended £400 compensation as she said the claim had been unfairly dismissed and the ceiling not being replaced had caused further damage.

Fairmead responded but they didn't agree. They noted that they'd previously sent the Financial Ombudsman Service the incorrect policy terms and attached the correct ones, which did include the exclusion they relied on. They also said the ceiling was removed under trace and access cover to determine the cause of ingress and this couldn't be reinstated by their supplier. This was because they said Mr E needed to rectify the cause of damage first because that part of the claim had been declined, so this is why they were cash settling the

ceiling reinstatement. Fairmead also didn't agree that ceiling removal was the cause of the additional water ingress and they also maintained the ceiling cash settlement should be at Fairmead's cost.

The investigator maintained her view that the claim should be reassessed against the storm damage cover as Fairmead hadn't yet done this, and she maintained that Fairmead should reinstate the ceiling or if cash settling, it should be at Mr E's, not Fairmead's cost. Her view also remained that the delay in reinstating the ceiling had caused additional damage.

Fairmead responded agreeing with the recommendation to reassess the claim against the storm damage peril. They also said that if the cash settlement was being chosen by Mr E then it would be in line with the policy terms to cash settle at their cost, but they accepted it wasn't Mr E's choice, so they agreed it would be fair for it to be cash settled at Mr E's costs if he provided an estimate.

However, Fairmead maintained that the removal of the ceiling wasn't the cause of the second leak or associated damage, so they maintained that wasn't their responsibility to resolve.

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

I reached a slightly different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial 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.*

*I'm minded to reach a slightly different outcome to our investigator, so I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.*

#### *The claim decline*

*Following Mr E's discovery of an ingress of water and reporting this to Fairmead, leak detection specialists were appointed. On first inspection they weren't able to determine the cause of the leak as this was a non-invasive visual survey. They recommended further investigation, but asbestos was identified in the ceiling which required removal before this could be carried out.*

*After removal of the internal ceiling to allow better access, investigations were carried out into the potential cause, which included using dye to test for leaks. The leak detection specialist concluded:*

*"Based on the above findings we believe that an escape of water from a leak on the rainwater pipework is contributing to the water damage to the bedroom.*

*Based on the above findings we believe that an ingress of rainwater from the balcony back wall is contributing to the water damage to the bedroom."*

*From this report, they concluded there were two likely causes of the water damage. One was an escape of water from pipework, and the second was water ingress from the roof above. But to determine how the water ingress from the roof above was being caused, they also recommended:*

*“We would recommend the following:*

*An approved building contractor/roofing specialist should be appointed to inspect the issues and carry out any necessary repairs.”*

*But Fairmead didn’t then arrange for this to happen. Instead, they declined the claim in full. This was on the basis of the following exclusion:*

*“Loss or damage caused by escape of water from guttering, rainwater downpipes, roof valleys and gullies.”*

*And outlined in the terms:*

*“This policy covers the cost of unexpected loss or damage.*

*It does not cover:*

- Wear and tear.*
- Maintenance costs such as refixing loose roof tiles, repointing brickwork or replacing guttering.*
- Damage that happens over a period of time, for example: damp, rot and damage from vermin.”*

*Mr E, in correspondence sent to this service about a later leak, has said:*

*“....The leak is nothing to do with the wear and tear of the hopper which is the reason behind the initial claim.”*

*So, it seems Mr E accepts that some of the water damage was caused due to escape of water from the rainwater pipes, as a result of wear and tear. And the policy does have an exclusion for this, so if this was the sole cause of damage, then it may have been reasonable for Fairmead to decline the claim in full on this basis.*

*However, there were two separate potential causes identified by the leak detection specialist, first was an escape of water from rainwater pipes, which that exclusion would be relevant for. But the second was an ingress of water from the roof above, which is separate to that. And they recommended further investigation by a roofing specialist as they didn’t determine how or why it was happening.*

*But this wasn’t investigated further as recommended by the leak detection specialist, and it’s unclear from their investigation whether the damage caused as a result of this should be covered or excluded under the policy terms, as Fairmead didn’t get as far as considering this. So, I don’t think Fairmead declining the claim in full at that stage was reasonable.*

*Having looked at the policy terms, there may be cover under Mr E’s policy for damage caused if it wasn’t solely as a result escape of water from the guttering or rainwater downpipes as thought by the leak detection specialist. I’ll consider this separately below.*

*Potential policy cover*

*Mr E's policy covers specific insured events, such as fire, theft or flood. Mr E doesn't have the wider policy cover of accidental damage. So, for Mr E to have a valid claim, the damage would need to have been caused by a specific insured event and not caught by a policy exclusion.*

*Mr E reported damage to his property following bad weather. He said there was a severe storm, and it was this that caused an ingress of water.*

*As noted above, there were two potential causes of the damage, one which an exclusion applies to (leak from rainwater pipes), the other which wasn't considered further by Fairmead (an ingress from the roof above).*

*Given the claim was made following bad weather, and an ingress from the roof above was one of the conclusions reached by the leak specialist, I think Fairmead should have assessed whether there was a potential storm damage claim, which is one of the insured events under Mr E's policy. But Fairmead didn't do this. Instead, they pointed to an exclusion as explained above.*

*Our investigator said the policy didn't define storm based on the (incorrect) terms and conditions sent by Fairmead, so she asked them what they considered storm conditions. Fairmead said:*

*"Our definition of storm is: wind speeds of 47 mph and over (usually accompanied by rain, hail or snow) or rainfall of 30mm over 24 hours (normally applied in claims for rainwater ingress). We also accept rainfall of 10mm in 1 hour as storm rain."*

*However, it was later realised by Fairmead that they had provided this service with the incorrect policy terms for the time, so they provided the correct version. These defined a storm as:*

*"Wind speeds with gusts of at least 47mph/ 75kmh or torrential rainfall at a rate of at least 25mm/one inch per hour or snow to a depth of at least one foot/30cm in 24 hours or hail of such intensity that it causes damage to hard surfaces or breaks glass."*

*So, there is a slight variation between the two, but what Fairmead said they consider storm conditions is more favourable to Mr E in terms of a lower volume of hourly rainfall.*

*I've checked weather records for the time of loss. Firstly, this shows wind conditions on the date of loss reaching 49mph. By Fairmead's own definition, and the policy terms definition, this would be considered a 'storm'. However, the claim arose, and damage occurred, as a result of water ingress. So, wind alone in the absence of rain wouldn't cause the damage being claimed for.*

*I've also looked at the rainfall for this period of time. Checking the weather records, for the nearest weather station, this shows rainfall of 3.4mm per hour. So, this in isolation (if there weren't high windspeeds) wouldn't meet the definition of a storm.*

*However, the weather station this data was taken from was five miles away from Mr E's property. So, I've also looked at radar data, which gives an overview of the exact location of Mr E's property. This indicates that the rainfall levels were significantly higher than those recorded at the weather station five miles away.*

*According to the radar data, the rainfall in the early morning on 3 November 2022 (which was when the ingress occurred), was in the range of 16-32mm per hour. So, this is significantly higher than the data from the weather station five miles away, and shows it was likely within both the policy terms and Fairmead's own (lower mm per hour) definition of a storm. Therefore, both the windspeed and rainfall, separately and combined, would be considered storm conditions by the policy and Fairmead's own definitions.*

*But just because there were storm conditions doesn't automatically mean there is a valid claim. The policy also has exclusions.*

*When we consider complaints about storm damage claims, we take into account the following questions, and if any of the answers are no then it's likely a claim won't succeed:*

- Were there storm conditions?*
- Is the damage consistent with storm type damage?*
- Was the storm the main or dominant cause of the damage?*

*The answer to question one, I can reasonably conclude, is 'yes' based on the weather data, both for wind and rainfall, separately and combined.*

*However, due to Fairmead not following through on the recommendations of the leak detection specialist (appointing a roofing specialist to determine the cause of ingress), there isn't enough evidence at this stage for me to conclusively decide the answers to question two and three for both internal and external damage either as 'yes' or 'no'. And it isn't my role to validate claims on behalf of Fairmead, when it hasn't yet done this itself.*

*Therefore, I agree with our investigator that Fairmead should reassess the claim against the storm damage peril of Mr E's policy to decide if he has a valid claim against this (or any other) insured peril which hasn't yet been considered by Fairmead. Fairmead will also need to take into account what I've said above about the weather conditions at the time, which I think already demonstrates there were storm conditions.*

*But to be clear here, in order to decide if it should be covered as storm damage, this will likely involve further investigations by Fairmead, and they'll also need to liaise with Mr E. So, I'm not asking Fairmead to do this before responding to my provisional decision.*

*Instead, I'm asking Fairmead (and Mr E) to respond to my provisional decision confirming if they are in agreement with the claim being reassessed under the storm damage cover as the next step. If my final decision remains the same as my provisional decision (and Mr E accepts it), Fairmead will then need to reassess the claim against the storm damage part of Mr E's policy (and any other insured events).*

*Once Fairmead has done this, and if Mr E remains unhappy with the decision Fairmead ultimately reaches on this, then he'd be free to raise a new separate complaint with Fairmead, before referring it to this service in line with our usual rules and timescales.*

*Second leak due to ceiling removal*

*Mr E says that due to the removal of his ceiling, a second leak was caused. Fairmead disagree. They say that the leak is more visible because the ceiling was removed, but this isn't the cause of the leak.*

*Whilst I recognise Mr E noticed the leak after the ceiling was taken down, based on the information provided, I'm not persuaded it's been shown that this itself caused the leak. The ceiling was attached to the joists but wasn't part of the external structure or critical for this.*

*So, I think on balance, its likely that the ingress was visible because the ceiling had been removed rather than being caused by its removal. Therefore, I don't think Fairmead need to deal with this solely on the basis the ceiling was removed and not reinstated.*

*However, it could be that there was external damage which was caused on the original date of loss by the storm conditions – but that's not yet been considered as outlined above, and that's what I intend on directing Fairmead to reassess.*

*After that, if it is concluded that there was storm damage, which resulted in the first ingress, then its likely due to Fairmead's failure to consider or deal with that at the time which has led to the second ingress. Therefore, Fairmead would need to consider whether that additional ingress and damage should be covered too. And if Mr E is unhappy with whatever decision is reached by Fairmead on that, and/or the additional damage, then he'd be free to raise that as a separate complaint with Fairmead.*

*But based on what I've seen so far, I'm not persuaded it's been shown the ceiling removal was the cause of the additional damage, so at this stage I don't intend on directing Fairmead to do anything further regarding the second ingress (aside from ceiling reinstatement which I've considered below).*

#### *Decoration and ceiling reinstatement*

*Mr E says he was originally told that a decorator would be attending to redecorate the bedroom walls. Fairmead don't agree and say instead that a decorator solely attended to remove the ceiling wallpaper to aid investigation and drying.*

*Based on what I've seen, there hasn't been sufficient evidence provided which persuades me that Mr E was told his property would be decorated. Having said that, if the claim is accepted as covered under storm damage, then Fairmead would need to consider any damage caused by that which would likely include the redecoration. But at this stage, I'm not minded to direct Fairmead to redecorate.*

*Mr E has also been offered a cash settlement of £739.28, based on Fairmead's rates, to reinstate the ceiling. The ceiling was removed under Mr E's trace and access cover as part of the initial leak investigation. Whilst the claim was ultimately declined for the damage caused by the leak, the reinstatement of the ceiling would be covered either way under trace and access.*

*However, Mr E is unhappy that he has been offered a cash settlement for this. Fairmead said it was offering a cash settlement on the basis it had declined the damage claim, and it was for Mr E to arrange the other repairs first and following this he could then arrange the ceiling reinstatement with the cash settlement.*

*I don't necessarily fully agree the approach Fairmead took at that time was fair.*

*However, as outlined, I'm minded to direct Fairmead to reassess whether Mr E has a valid storm damage claim. This may well change things in that Fairmead may be dealing with the other repairs if they accept the claim for this, in which case they may no longer be intending for the ceiling reinstatement to be cash settled.*

*However, whether the claim is accepted or not, the ceiling reinstatement is covered either way. So regardless of this, if Fairmead is forcing a cash settlement, then it isn't fair or reasonable for them to base settlement on the commercial rates they would be charged by their supplier. This is because Mr E wouldn't be able to access these rates himself. Instead, if Fairmead is forcing a cash settlement, then it needs to be at the cost Mr E is able to have the ceiling reinstated for.*

*At this stage though, there may be a valid storm damage claim, which may mean Fairmead is carrying out repairs – which might also include the ceiling. But if Fairmead maintains that it is cash settling the ceiling reinstatement, then this will need to be at a cost Mr E would incur, and Mr E would need to provide quotes to demonstrate this.*

### Compensation

*Our investigator recommend Fairmead pay Mr E £400 compensation. This was on the basis she said Fairmead had unfairly applied exclusions that weren't in the policy (this was incorrect as they were in the policy as outlined), a storm claim hadn't been considered when it should have been, and because the ceiling removal caused a new ingress of water.*

*However, as explained, the exclusion regarding escape of water from rainwater pipes is actually in the policy and it appears that it is accepted by Mr E that this was part of the reason for some of the ingress. And I also don't think the ceiling removal was the sole cause of the additional ingress either.*

*However, I agree that Fairmead should have considered whether Mr E had a valid storm damage claim at the time, but instead they didn't and they didn't carry out further investigations as recommended by the leak detection specialist.*

*Whilst I'm intending on directing Fairmead to do this now, I don't yet know whether this will change the overall claim outcome. But I agree that Mr E has been caused additional distress and inconvenience by Fairmead not doing this at the time, and I'm minded to award £200 compensation for this.*

*But I'll also add that if Fairmead does ultimately accept the storm damage claim, they will also need to consider at that stage whether further compensation is warranted for the wrong claim decision."*

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

- Reassess whether Mr E has a valid claim under his policy terms for storm damage (or any other insured event)
- If Fairmead ultimately cash settles the ceiling reinstatement, this would need to be at the costs Mr E would incur rather than Fairmead's rates – subject to Mr E providing evidence such as quotes to support this
- Pay Mr E £200 compensation

### **The responses to my provisional decision**

Fairmead responded and agreed with the provisional decision, they didn't provide any further comments.

Mr E responded and provided a detailed response. In summary, he said (and provided):

- Images of the wet beam inside the roof void, and externally of the roof after he carried out temporary measures to stop water ingress
- An image of a yellow weather warning from the Met Office, and from his phone weather application, for rain at the time
- A video of water coming through the ceiling
- He explained that the drainpipe runs from the roof through the roof void to the drain at the front of the property. He said he never accepted wear and tear was the initial cause, and there was a storm on the day the damage occurred, and no leaks occurred before then so this should be covered
- Further leaks and damage were caused after the internal ceiling was removed by Fairmead
- There were delays during the claim investigations and he shouldn't have to get quotes for replacing the ceiling, instead, Fairmead should deal with this
- The redecoration should be part of the claim
- He's asked if the £200 compensation is in addition to the £400 recommended by the investigator, and if not, why has it been reduced by 50%

### **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 provisional decision I reached, and the responses to it. Having done so, my final decision remains the same as my provisional decision, and for the same reasons.

Mr E has provided images of weather warnings from the time. However, as outlined in my provisional decision, I already said that I think there was a storm. I also explained how and why I'd concluded that, and specifically commented on the rainfall.



But I also explained how we approach storm damage cases, and just because there was a storm, this doesn't automatically mean a claim would be covered. Instead, we'd also need to consider two other questions. However, Fairmead hadn't followed the recommendation of the leak detection specialist (appointing a roofing expert to determine the cause of the ingress). Therefore, there wasn't enough for me conclusively reach a decision on the remaining two questions and it wasn't my role to validate claims on behalf of Fairmead when it hadn't yet done this itself.

So, I said that I was minded to direct Fairmead to reassess the claim against the storm peril (and any other peril under the policy cover) in order to reach a claim decision. And nothing has been provided in response to my provisional decision that changes my thoughts on this, so that's what I'll be directing Fairmead to do. And as I said in my provisional decision, once Fairmead has done this, and if Mr E remains unhappy with whatever decision is ultimately reached, he'd be free to raise that as a new separate complaint.

Mr E also says he never accepted that wear and tear was the initial cause of the pipework leak, and he says this should be covered. He explained the rainwater pipework goes through the roof void to the drain at the front of the property. To confirm, I was already aware of the location of the pipework, and I quoted in my provisional decision what Mr E had said about this, where he appeared to agree wear and tear was the cause. But in any event, whilst Mr E has focussed on disputing wear and tear and that exclusion, this this wouldn't be covered under the terms either way as the policy also excludes loss or damage caused by escape of water from guttering, rainwater downpipes, roof valleys and gullies.

Mr E provided images of a wet beam in the roof void, and he says this was caused by the ceiling removal. However, my thoughts on this point remain as outlined in my provisional decision. I'm not persuaded that removal of the ceiling *caused* a second leak, instead I think it meant it was more visible.

But, as I said in my provisional decision, it could be that there was external damage caused by the storm on the original date of loss. But that's not yet been considered by Fairmead. So, when Fairmead considers this, if they accept the original event of storm damage, then they would also need to consider whether the additional ingress and damage should be covered too. But based on what I've seen, I'm not persuaded that the ceiling removal *caused* the second ingress or damage or that Fairmead should deal with this solely on that basis.

Mr E also maintains that it should be Fairmead which deals with the ceiling reinstatement, rather than him. And he says the redecoration should be covered under the claim. However, my thoughts on this remain the same as my provisional decision and for the same reasons, so I won't repeat that again here. But to also add to the ceiling reinstatement point, the policy terms give Fairmead the choice to either repair or cash settle a claim.

Mr E has also questioned if the £200 compensation outlined in my provisional decision is in addition to the £400 recommended by our investigator. However, to confirm, it is instead of the £400 recommended by the investigator.

I explained the investigator had recommended £400, partly, on the basis Fairmead had relied on exclusions that weren't actually in the policy, and they had caused additional damage when removing the ceiling. However, I don't agree on either of those points for the reasons explained above, so these weren't taken into account when reaching my provisional decision on a suitable amount of compensation.

And having considered everything again, including Fairmead's handling of the claim, I'm still satisfied a total of £200 compensation is fair and reasonable in all the circumstances of the case.

## **My final decision**

It's my final decision that I uphold this complaint in part and direct FAIRMEAD INSURANCE LIMITED to:

- Reassess whether Mr E has a valid claim under his policy terms for storm damage (or any other insured event)
- If Fairmead ultimately cash settles the ceiling reinstatement, this would need to be at the costs Mr E would incur rather than Fairmead's rates – subject to Mr E providing evidence such as quotes to support this
- Pay Mr E £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 May 2024.

Callum Milne  
**Ombudsman**