

The complaint

Mr N has complained that Fairmead Insurance Limited declined a claim he made on his buildings insurance policy.

Reference to Fairmead includes its agents and representatives.

What happened

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

- Mr N owns one flat in a block of four. He's responsible for his flat and 25% of the common areas of the block.
- In January 2023, the wall head gutter and cornice were damaged, fell off the building, and damaged other parts of it – the portico, balcony and balustrade.
- Mr N got in touch with Fairmead. It said the damage hadn't been caused by subsidence, but by wear and tear, and declined the claim.
- Mr N took professional advice from D, an engineer. D said the damage to the gutter and cornice had been caused by storm, which had gone on to cause accidental damage to the other areas of the building. Fairmead considered this, but it maintained the damage had been caused by wear and tear and wasn't covered.
- Mr N said the building had been regularly maintained for many years, so the damage wasn't wear and tear. He complained and Fairmead maintained its position.
- Our investigator was satisfied it was reasonable for Fairmead to decline the damage to the gutter and cornice as she didn't think the evidence showed that had been caused by a one-off storm. However, she thought the resultant damage caused when those parts fell may amount to accidental damage, so Fairmead should consider this aspect of the claim. She also said Fairmead should reimburse Mr N what he'd paid for D's professional advice, plus interest.
- Fairmead initially agreed to consider the accidental damage claim further. It then said it didn't think this point should fall within the scope of this complaint. And it suggested the policies may not have been setup correctly – and this could impact the claim.
- Mr N thought the gutter and cornice damage should be covered. He said there were a number of named storms in 2022 and one or more of them could have caused the damage, noting water ingress at a neighbour's home in late 2022.
- Our investigator wasn't persuaded to change her mind, so the complaint has been passed to me.

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 caused to the building in a number of ways. Relevant to this claim, that includes:
 - Subsidence
 - Storm
 - Accidental damage, which is defined as “damage caused suddenly and unexpectedly by an outside force”.
 - The building is defined to mean, amongst other things, the home and its fixtures and fittings for which Mr N is legally responsible within the address named on the policy document.
- This cover is subject to a number of terms and conditions. The one Fairmead has relied on says, in summary, the policy doesn't cover damage that happens gradually over time or damage caused by wear and tear.
- Fairmead initially considered whether there was any subsidence damage and concluded there wasn't. I don't think this point is in dispute but, for completeness, I'm satisfied that was a reasonable position to reach.
- The policy covers damage caused by storm. Whilst the word 'storm' isn't defined in the policy, the term Fairmead has relied on means storm damage is only covered by the policy if it happens suddenly. It's not covered if it happens gradually over time.
- It's not in doubt there were storm conditions at various times in 2022 – the question is whether any of those conditions suddenly damaged the wall head gutter and cornice. Fairmead said the damage had been caused gradually and/or amounted to wear and tear, whereas Mr N said the damage had been caused by one or more storms.
- In my view, the most persuasive evidence about the cause of the damage is D's report. D is a chartered structural engineer and a member of a number of relevant professional bodies. So their professional opinion carries a great deal of weight.
- Having read D's report, I think they identified storm damage of a gradual nature. D thought storms dating back to 2021 had contributed to the damage and described the “cumulative effects of damage from successive storms” in 2022. They also said “storms progressively loosened the bond between masonry units and allowed water to penetrate and further accelerate deterioration”. And they noted it was unknown “to what extent one, more or all of [the storms] might have triggered the [damage]”.
- In these circumstances, I'm not satisfied it's been shown there was sudden storm damage. It seems more likely the damage was caused gradually over time, as a result of successive storms. I agree with Mr N that means the damage doesn't amount to wear and tear – but Fairmead also said the damage was gradual and I'm satisfied that's likely to have been the case based on what D said.
- Gradual damage isn't covered under any part of the policy. So I consider it was reasonable for Fairmead to decline the claim for damage to the wall head gutter and cornice under all parts of the policy.

- It's not in dispute the wall head gutter and cornice fell and consequently damaged the portico, balcony and balustrade. Our investigator said that damage may amount to accidental damage, as defined under the policy, so it should be considered by Fairmead. It initially agreed to do so, but then later changed its position and went on to say this point fell outside the scope of this complaint. Fairmead's approach to this point is very disappointing, for a number of reasons.
- D's report clearly set out the circumstances of this resultant damage and even described it as accidental. So I would have expected Fairmead to have considered the accidental damage section when responding to the claim and complaint. That it didn't take the opportunity to do so doesn't mean this point falls outside the scope of this complaint.
- Fairmead initially seemed to recognise that because it agreed with our investigator to consider the matter further. It later reversed that position, saying it had concerns about the way the policy was setup. These are concerns that it could, and should, have raised at a much earlier stage of the claim. But it didn't do so then and it hasn't formally raised them since. So I see no barrier to Fairmead considering the accidental damage claim. I'm satisfied that's what it should do. I'll explain why.
- Fairmead argues that because the wall head gutter and cornice were damaged gradually, that was the proximate cause of damage to the portico, balcony and balustrade. But these areas were only damaged when the wall head gutter and cornice fell on them – which was sudden and unexpected. I haven't seen any evidence to suggest the portico, balcony and balustrade suffered any direct gradual and/or wear and tear damage. So I'm not persuaded by Fairmead's argument.
- That means the damage to these areas amounts to accidental damage under the policy – and the term Fairmead raised doesn't apply. Mr N has shown he's responsible for a share of the portico, balcony and balustrade. So, on the face of it, he's covered for that share of the cost of putting right the accidental damage. But I think Fairmead is entitled to consider this matter further in light of its potential concerns about the way the policy was setup. So I'll require it consider the claim.
- D's professional advice was important evidence and has led to Fairmead considering the accidental damage claim. Our investigator said Fairmead should reimburse Mr N the cost of the advice, which was £585, plus interest. Fairmead didn't challenge this, so I assume it's in agreement. But nonetheless, I'm satisfied it would be fair as the advice has had a material impact on the claim.

My final decision

I uphold this complaint.

I require Fairmead Insurance Limited to:

- Consider the claim for accidental damage to the portico, balcony and balustrade.
- Pay £585 for professional advice.
- To that payment, add interest at 8% simple per annum, from the date(s) Mr N paid it to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 July 2024.

James Neville
Ombudsman