

The complaint

Mr T has complained about his holiday home insurer FAIRMEAD INSURANCE LIMITED (Fairmead) regarding a claim he made to it when a water leak occurred.

What happened

Mr T does not live in the UK. In December 2022 there was a leak at Mr T's property (from a pipe on the first floor), noticed and reported to him by a neighbour. The water at the property was switched off and a claim was made to Fairmead. It was January 2023 before a loss adjuster viewed the damage.

The loss adjuster wanted to be sure that certain policy conditions had been complied with. Over the next few months Mr T was asked to provide various details, which he did. Mr T asked the loss adjuster what to do about mitigating the water damage and it seems he was told that he could do whatever was necessary. Mr T had the property stripped and dried. He also provided details to the loss adjuster about the plans and costs for the further reinstatement works which he wanted to proceed with – a contractor who had returned the lowest estimate for around £100,000. The loss adjuster didn't reply, or, with the property then being dry, take the opportunity to re-visit.

In September 2023 Fairmead decided the policy conditions it had been concerned about had been satisfied. It asked the loss adjuster to arrange to visit the property again to see if it was still wet (which it felt was unlikely given the time which had passed since the leak) and compile a scope of works. The loss adjuster noted that Mr T had nearly completed the full reinstatement of the property so told Fairmead that further checks were not appropriate. The scope the loss adjuster had compiled during his visit in January 2023 was then used to create a cash settlement for Mr T.

Fairmead said it would pay Mr T £16,464.76 for contents items (Mr T had no issue with that) and £41,313.55 for buildings – which was the cost for it completing the work set out in its scope, including VAT, but net the £450 policy excess. It felt entitled to do this because it hadn't approved the costs for or authorised the work Mr T had had completed. It said there were costs for site security, waste and project management – costs which wouldn't have been agreed to by it for the work being undertaken. But it accepted there had been some delays, for which it said it would pay £500 compensation.

Mr T was unhappy. He complained to the Financial Ombudsman Service.

Our Investigator felt Fairmead had failed to communicate effectively with Mr T and, as a result, had prejudiced his position. She felt Mr T had mitigated the situation for both parties reasonably in the circumstances. She didn't think it was fair that he was left out of pocket as a result. Our Investigator recommended that Fairmead cover the cost of any work which Mr T's contractor said had been needed to resolve insured damage. Also that it pay a further £250 compensation, making total compensation £750.

Mr T said he was happy with the outcome. Fairmead said it disagreed with it.

Fairmead said anybody would understand that they have to get approval for insured works – so whilst it hadn't communicated well with Mr T, he should have known he couldn't just go ahead and get the work done. It emphasised that the policy says the most it will pay for any claim is what it will cost it to do the work. Fairmead said the works Mr T had completed had included additional works not related to the claim. It said £30,000 had been spent for site security, project and waste management. It said the 'sub-floor', made of plywood was replaced during the works and that hadn't been necessary. Fairmead maintained that its settlement was fair and reasonable.

The complaint was referred to me for an Ombudsman's decision. Having considered it, I was minded to uphold the complaint. But I felt fair redress was slightly different to that our Investigator had proposed. So I issued a provisional decision, my findings of which were:

"Having done so I agree with our Investigator. She, in my view, expertly and accurately summarised matters in an email to Fairmead as follows: "Fairmead has missed the point that Mr T did submit estimates and didn't receive a response. Fairmead has prejudiced its own position in its lack of action and communication. Mr T mustn't be at a loss as a result." To ensure that does not happen then, I think it's time to say exactly what Fairmead must pay to fairly and reasonably settle Mr T's claim and, thereby, fully resolve his complaint. For that reason, I am issuing a provisional decision which both parties will have a chance to respond to before I make a final decision.

The policy Mr T has with Fairmead, like many, does allow Fairmead to settle in cash for the cost to it of undertaking the work. But Fairmead knows it has a duty to use and rely on the policy terms in a way that treats its policyholders fairly and reasonably.

Here, Fairmead wasn't prepared to undertake work at Mr T's property. That was because it was undertaking liability enquiries. It was reasonable that it undertook those enquiries. But when Mr T asked about mitigating the water damage, he seems to have been told to do whatever was needed. And then, when he asked about going ahead with further works, even submitting estimates to the loss adjuster, he wasn't told not to go ahead. The loss adjuster didn't ask to visit to reassess the damage now the property was dry. Nor did he tell Mr T that if he did go ahead, Fairmead's limit of liability, if it accepted the claim, would only be around £40,000. The loss adjuster had completed the scope months before, so he knew Mr T's estimates were far in excess of what Fairmead would pay to do the work. By not putting Mr T on notice, the loss adjuster failed to treat him fairly and reasonably. Mr T's position was prejudiced and he shouldn't be left out of pocket as a result.

So I've considered what Fairmead needs to pay to resolve matters.

I've reviewed the estimates and a spreadsheet Mr T has provided setting out all of the costs. Between the work starting and finishing, the cost for insured works only increased by a few thousand pounds. That doesn't seem unreasonable to me. Mr T set-aside the cost of additional works he had done, they only totalled around £6,000 and did not form part of the circa £100,000 he asked Fairmead to pay.

I have no idea where Fairmead gets the figure of £30,000 from for site security and project and waste management costs. They were charged to Mr T at £1,000 (reduced from the initial estimated price of £3,250). Fairmead has said it wouldn't have paid for these items. Regarding site security I might agree. But I think it likely would have had its loss adjuster overseeing or managing the work at a cost, with skips and the like, as well as on site sanitary provision for its workers also being arranged by it at a cost. I can't see those things coming in under £1,000. So I'm not persuaded that Mr T has 'overspent' in this area, even though Fairmead may not have paid to secure the site. In any event, the time for Fairmead

to have challenged the content of the estimate/the prospective costs for the work was spring 2023. It didn't do that.

Regarding the sub-floor, Fairmead said it was plywood rather than chipboard, meaning its less susceptible to moisture damage – it being shown to be wet isn't enough to say its damaged. It said "ultimately evidence of moisture would have been easily achieved at the time of year within a property that hadn't been lived in". It noted that its adjuster had not included the plywood in its scope.

I have difficulty with Fairmead's argument regarding the plywood, not least in its continued attempt to rely on its adjuster's scope of work. That scope was completed during a non-invasive initial assessment of the property. No referral to a drying contractor was made such as would usually be the case, given they are the experts at determining what is required to strip and dry a water soaked property. And the further usual course of a claim like this is for a loss adjuster or an appointed contractor to return to the property after it's been dried, to fully scope for repairs. That is because it's generally accepted that the full likely extent of damage, and therefore, necessary repairs, can't be fully determined until the drying process has completed. As set out previously, Fairmead's loss adjuster did not return to the property once it was dried. I'm not persuaded, by what Fairmead has said, that the plywood floor did not need replacing. Or to put it another way, that Mr T completed works, which he is asking Fairmead to pay for, that were not necessary to resolve the insured damage.

So nothing Fairmead has said has convinced me that any of the costs Mr T incurred, and which he has asked it to pay, are unfair or unreasonable in the context of the claim. As such I can't see any good reason for applying any deduction to the sum Mr T has evidenced he paid his contractor for completing insured works. That sum was £100,955.82 including VAT. Fairmead, so far, has paid Mr T £41,313.55 for the building work, which was net of a £450 policy excess. I've, therefore, taken Fairmead's full cost for repair of £41,763.55 from Mr T's cost for work of £100,955.82. Which leaves Fairmead with £59,192.27 to pay Mr T.

To that it will have to add interest from the date Mr T paid for the work until settlement is made. I know the work was near completion in autumn 2023, so I'd expect Mr T's final payments to have been made around then. If Mr T can show me the dates of payment in response to this provisional decision, I'll add an exact date into my final decision.

I can see that this claim, due to Fairmead's failures, was stressful for Mr T. It didn't communicate well with him which in itself was distressing and inconvenient. But it also caused him to have to take on the work himself and I bear in mind that meant he had a significant outlay – the majority of which Fairmead, to date has refused to reimburse him. I'm satisfied that a total of £750 compensation is fairly and reasonably due. If the £500 Fairmead offered before has already been paid by it, it will now only have to pay a further £250."

Fairmead said it had nothing further to add. Mr T said he was pleased by the decision – but wanted to clarify that Fairmead had not made any payment to him, not even the settlement for the contents claim (which he had not disputed). He said he had made the last payment to his contractor in August 2023.

I reviewed Mr T's reply. I sent the following further findings to both parties:

"Following a response from Mr T, it is now clear that Fairmead has not paid either the buildings settlement offer, or the contents offer – which I had believed had both been paid. Further it is also clear that Mr T actually paid for the work in August 2023, rather than autumn 2023 as I had believed. This was before Fairmead had accepted liability for the loss (in September). With Fairmead's offer of settlement for both claims being made in November 2023.

It would be unfair, I think, to make Fairmead pay interest from a date when it was still reasonably considering its liability for the loss. But I also think it's unfair that once it had accepted the loss, and determined its liability for both claims, it didn't pay Mr T what it accepted it was liable for.

So I'm minded to amend my award to reflect that Fairmead must now pay the whole building repair sum of £100,955.82 and the contents settlement sum of £16,464.75. To both sums simple 8% interest will have to be applied from 14 November 2023 until settlement is made."

Fairmead said it accepted my findings. Mr T said he agreed with my findings.

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.

As Fairmead did not object to my initial findings and both parties are in agreement with my amended redress proposal, I've no need to change anything. As such, I can confirm that my provisional findings, as amended by my redress proposal, are now the findings and redress of this, my final decision.

Putting things right

I require Fairmead to pay Mr T:

- £100,955.82, plus interest* from 14 November 2023 until settlement is made.
- £16,464.75, plus interest* from 14 November 2023 until settlement is made.
- £750 total compensation, but if £500 has already been paid then the amount now due is £250.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Fairmead to take off tax from this interest. If asked, it must give Mr T a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require FAIRMEAD INSURANCE LIMITED to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 August 2024.

Fiona Robinson
Ombudsman