

## **The complaint**

Mr S complains that FAIRMEAD INSURANCE LIMITED (Fairmead) hasn't accepted a claim made under a landlord insurance policy for a flat he owns.

Where I've referred to Fairmead, this includes any actions or communications by agents acting on their behalf. I'll also refer to Fairmead throughout despite recognising the policy was under the name of a different insurer previously. This is because that insurer was acquired by another insurance group and the name was changed to Fairmead.

## **What happened**

In 2014, Mr S made a claim for storm damage to a flat he owns. Ultimately the claim wasn't pursued at that time and following sporadic contact with Fairmead over the years since 2014, Mr S sought to pursue the claim in 2022.

Fairmead said that given the time that had passed since the claim was first made, in order to consider the claim further, Mr S would need to provide a cause of damage report which showed it was storm damage or caused by another insured event. Fairmead also said they'd been awaiting this since 2014 and had told Mr S this when he'd contacted them since then. Mr S is unhappy with Fairmead for various reasons. This includes:

- that the claim was transferred between different claims agents of Fairmead originally
- Mr S was asked to provide evidence of the damage to the roof which was shared and inaccessible
- no risk assessment was carried out on the roof by the insurer when the policy was taken out
- Fairmead was now asking for additional information to progress things when the claim was already validated and accepted in 2014
- whether the damage was caused by a storm or not is subjective
- the absence of storm conditions when it was reported doesn't mean a storm didn't cause the damage at some point before then
- Fairmead doesn't have a copy of the policy terms from 2014
- Fairmead has caused delays during the claim
- Fairmead has caused significant distress due to the amount of time the claim is taking

Ultimately Fairmead said that as there were no storm conditions at the time, Mr S would need to provide a cause of damage report in order for them to consider things further, and that they'd asked for this a number of times over the years since 2014. Fairmead said that without this, they'd be unable to review the claim further.

As Mr S remained unhappy, he approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint in part. He said that some of the complaint points Mr S had raised were outside our jurisdiction as they occurred more than six years ago, and Mr S would've been aware he had cause to complain then.

For the more recent events, the investigator said there was no evidence to support that Mr S was told his claim had been validated and accepted, and Mr S had been repeatedly asked for a cause of damage report because it hadn't been. And the investigator said that there were no storm conditions at the time of the claim, so he didn't think Fairmead was acting unfairly by continuing to ask for evidence to show how the damage had been caused.

The investigator also didn't think it was unreasonable that Fairmead no longer had policy documents from 2014, but he said it wasn't his role to comment on if Fairmead breached legal obligations under data protection and retention laws and if Mr S wanted this deciding, only a court could determine whether Fairmead had broken the law. He also suggested Mr S might want to contact the Information Commissioners Office (ICO) as they are responsible for data protection.

However, whilst the investigator didn't uphold the majority of the complaint, he did recognise that there had been some delays at points since 2020, and he recommended Fairmead pay £200 compensation, which Fairmead agreed to. Ultimately Mr S remained unhappy, so the case was passed to me to decide.

To be clear, this decision focuses solely on the parts of the complaint that are within my jurisdiction to consider. I'll issue a separate decision to explain which of the complaint parts are outside my jurisdiction and why.

### **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.

Having done so, whilst I appreciate it'll come as a disappointment to Mr S, I've reached the same overall outcome as our investigator.

Mr S has raised an extensive number of detailed points and arguments in communication with our investigator. I'll explain that I don't intend on commenting on every point or argument that has been raised. Instead, I'll focus on the points I consider key when reaching a final decision which is fair and reasonable in all the circumstances of the case. I don't mean this as a discourtesy, instead it reflects the informal nature of this service and my role in it. But I'd like to reassure both parties that I've considered all the information they've provided when reaching my final decision.

Ultimately the crux of the complaint is that Mr S is unhappy that Fairmead is now asking for further information in order to consider his claim further, when he says this was previously validated and accepted in 2014.

### Did Fairmead previously say the claim was validated and accepted?

Having reviewed all the information provided, I'm not persuaded it's been evidenced that Mr S was told Fairmead had validated and accepted his claim in 2014, or since then.

When the claim was first made, an asbestos test was carried out. Mr S has provided an email from Fairmead's agent at the time which he says shows the claim was accepted and validated. I've seen this email, but I don't agree. This is because it says with regards to the temporary emergency works, now the asbestos test is complete, there isn't anything stopping works being carried out to the property. It then says a local contractor can attend to make the property secure to stop further water ingress. So, this is in relation to the emergency works needed. The email goes on to say that after this either quotes could be obtained for the other works, or the insurer can appoint someone.

However, I don't think this conclusively demonstrates the claim (beyond temporary emergency works being permitted as the asbestos test was negative) had been accepted or validated, or that they agreed there was a storm or it was storm damage. In fact, the notes from 2014 indicate that Fairmead's agent hadn't validated the claim as they were unable to reach the roof with a camera due to the height, and Mr S was unhappy with this and that he was asked to provide a cause of damage report.

The claim was transferred to another agent at that time, and the information indicates they were also waiting for information from Mr S. There are references to Mr S mentioning he and the other property owners had contacted the council, and they'd also appointed a local quantity surveyor and would report back to Fairmead after.

The notes also indicate Mr S contacted Fairmead (their agents) several times over the following years, including 2017 and 2018, but there is no reference to the claim being accepted or validated at these times either.

In 2022 Mr S contacted Fairmead (the agent) again and it was explained that they'd need:

- A copy of any report on the damage to the roof
- Photos of the roof
- Confirmation if any neighbours had made storm damage claims

And the agent advised that based on the photos provided, they didn't think these demonstrated storm damage and they said they'd still need a report to allow them to consider the claim further.

Ultimately, I haven't seen firm evidence to support that Mr S was told his claim had been accepted and validated. Consequently, I don't think Fairmead is acting unfairly, given the time that has passed, by requesting evidence to demonstrate the cause of damage and that an insured event has occurred.

### Has Mr S evidenced he has a valid claim?

It's not my role to validate claims on Fairmead's behalf. And Fairmead, as explained above, hasn't validated the claim yet as they require more information from Mr S to be able to do so. Mr S believes he has provided sufficient evidence already.

Mr S argues that whether or not the damage has been caused by a storm is subjective, and a storm could cause damage at an unknown time, but it might not become evident until sometime later.

However, for a storm damage claim to be made, a storm needs to have occurred and the storm needs to have caused the damage being claimed for. It isn't simply enough to say water is entering, so a storm, at some point, must be responsible for that. Water could enter a roof for a number of other reasons, such as wear and tear, poor workmanship etc.

Mr S has referred to previous correspondence where it was noted a couple of slates had moved. And he's provided a video of water coming through the ceiling. However, weather records for the time don't show there were what I would deem to be storm conditions at the time the claim was reported, or shortly beforehand. I acknowledge Mr S has challenged this, and the data source. And he said his video showing water entering casts doubt on the weather records. However, the fact remains that Mr S hasn't shown a storm occurred, and just because water entered through a ceiling, doesn't automatically mean it is storm conditions which would be an insured event.

As I'm not persuaded there were storm conditions at the time, or shortly before, and Mr S hasn't provided evidence which supports an identifiable one-off storm caused the damage, I don't think Fairmead is acting unreasonably by asking for further information from him in support of his claim.

If Mr S obtains any additional information in support of his claim, he should submit this to Fairmead for consideration. But based on what I've seen, I don't think they've acted unfairly by not accepting the claim at this stage.

#### The policy terms

Mr S is unhappy that Fairmead no longer has the 2014 policy terms. He says they can't fairly not accept his claim in the absence of these.

However, given Mr S ultimately pursued his claim eight years after making it, I'm not entirely surprised Fairmead no longer have the terms. But that doesn't automatically mean they need to accept Mr S' claim just because they are no longer available. The onus is on Mr S to demonstrate he has a valid claim in the first instance.

Fairmead has provided the oldest terms they hold which are from 2020. Although I accept these aren't the relevant terms from the time of the claim, the remaining information on file shows that Mr S held an insured perils policy. This means specific insured events are covered, and I'm not satisfied Mr S has shown what the cause of damage was, storm or otherwise, so he hasn't shown a specific event has occurred. And Mr S didn't have the wider cover of accidental damage, so he'd need to show a specific event, such as a one-off storm, had caused the damage he's claiming for.

In the absence of a policy definition of 'storm', I've also considered whether a storm occurred based on what this service might consider storm conditions and I'm not persuaded storm conditions occurred when the claim was made, or shortly before. Whilst there was some rainfall it wasn't particularly intense or heavy, and the wind speeds reached weren't, what I would consider to be, storm force.

Whilst Mr S has said Fairmead have broken the law by not retaining the terms from 2014, only a court can make a finding in law. So, it would be for Mr S to decide whether he wishes to pursue this point elsewhere, and as advised by our investigator, he may wish to contact the ICO as they are responsible for data protection.

### The service received

Mr S says Fairmead have caused years of mental anguish and stress by the delays in their claim handling. And he's referenced the Financial Conduct Authority requirement to treat customers fairly.

I don't agree that it is Fairmead that has caused years of delays as alleged, as I don't agree that the evidence supports Fairmead validated Mr S' claim in 2014 or that they should have been dealing with it since. Each time Mr S has contacted them, sporadically and years apart since 2014, they've explained what they needed from him, which is still outstanding. So, I don't think Fairmead caused the overall timescale, or that they've treated Mr S unfairly in relation to the claim, as he's not yet provided sufficient evidence for them to be able to validate it.

However, I do recognise there were some delays in later stages including a delay in locating the file between November 2020 and March 2021, from May to September 2022 when the loss adjuster didn't respond, and delays in migrating the claim on their system due to its age. And I agree with our investigator that £200 compensation for this is reasonable, so that's what I'll be directing Fairmead to pay.

### **My final decision**

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

- Pay Mr S £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 September 2024.

Callum Milne  
**Ombudsman**