

The complaint

Mr B complains Fairmead Insurance Limited unfairly avoided his home insurance policy and declined his claim.

Fairmead's been represented by an agent for the claim and complaint. For simplicity I've referred to the agent's actions as being Fairmead's own. Mr B's been represented for the complaint. For the same reason, in places, I've referred to the representative's actions as being Mr B's own.

What happened

In September 2022 Mr B took out a Fairmead home insurance policy. Cover started in October 2022. The policy was arranged by a broker acting on behalf of Mr B.

In early April 2023 Mr B made an escape of water claim against the policy. His property suffered significant damage following a burst pipe. After some investigation Fairmead concluded Mr B was significantly underinsured. It assessed the total rebuild cost for the property as £752,000 against Mr B's policy building sum insured (BSI) of £525,000.

Fairmead was provided with a 'Home Report' Mr B had commissioned in July 2022. That was two months before the sale of the Fairmead policy. The report valued the property at £720,000. It also recommended a reinstatement cost (or BSI) of no less than £740,000.

In August 2023, Fairmead found Mr B responsible for a reckless misrepresentation by selecting a BSI of £525,000 - rather than one closer to the £740,000 recommended in the Home Report. It said the Consumer Insurance (Disclosures and Representations Act) 2012 (CIDRA) entitled it to avoid his policy (treating it as though had never existed), refund his premiums and decline the claim.

Mr B complained about that decision. Fairmead responded in November 2023. It said the details had been reviewed, but the decision to avoid was reasonable. It said it wasn't aware of any reasonable explanation as to why Mr B didn't select a BSI in line with that recommended in the Home Report. It didn't agree to reinstate the policy or pay the claim.

In February 2024 Mr B referred his complaint to the Financial Ombudsman Service. He explained he hadn't been given an opportunity by Fairmead to explain why he had chosen a BSI lower than that recommended in the Home Report. He explained he wasn't aware of the BSI recommendation at the time. He said he'd been offered no assistance, leaving him and his family homeless with an unrepaired property. To resolve the complaint, he would like Fairmead to reinstate the policy, pay his claim and compensate him for trouble and upset experienced.

Our Investigator wasn't persuaded Mr B had deliberately underinsured the property. She was of the opinion the £525,000 BSI reflected an amount he genuinely thought to be the true rebuild cost. She considered he had reached this estimate on a reasonable basis. She felt he could have easily overlooked the rebuild information in the Home Report. Ultimately, for

these reasons, she didn't consider it fair for Fairmead to avoid the policy and decline the claim.

The Investigator recommended Fairmead reinstate the policy, removing records of its avoidance externally and internally and consider the claim against the remaining terms of the policy. She said if it could demonstrate it would have charged a higher premium for a higher BSI it could settle the claim proportionality. She also felt it should pay Mr B £300 compensation to acknowledge the trouble and upset the policy avoidance had caused him.

As Fairmead didn't accept that outcome the complaint was passed to me to decide. It maintained that Mr B was aware, having commissioned the Home Report, of the 'value' of his property when taking out the policy.

I issued a provisional decision. In it I explained why I intended to require Fairmead to reinstate the policy and remove any internal or external record of the policy avoidance, reconsider the claim against the remaining terms of the policy (settling proportionately at 90% if it chooses to) and pay £1,000 compensation. The provisional decision's reasoning forms part of this final decision so is copied in below. I invited Mr B and Fairmead to provide any comments or evidence they would like me to consider before issuing this final decision.

what I've provisionally 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 this is an informal service I'm not going to respond here to every point or piece of evidence Mr B and Fairmead have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Fairmead has said, as Mr B deliberately or recklessly misrepresented, CIDRA allows it to avoid the policy and decline the claim. It's also referred to a term in his policy that allows it to do the same if it establishes, he deliberately or recklessly, provided false or misleading information.

I don't consider CIDRA to apply. The rebuild cost of a home can vary depending on the opinion of the person assessing that cost. Because questions like this are a matter of opinion rather than fact, CIDRA isn't relevant. Instead, I've considered what's fair and reasonable in the circumstances - including the principles of misrepresentation.

However, regardless of whether CIDRA applies, I apply the principles of misrepresentation or I consider the policy terms, my intended outcome is the same. Fairmead, having failed to reasonably establish Mr B deliberately or recklessly provided an inadequate BSI, unfairly avoided his policy. I return to the key consideration of deliberate or reckless later. First, I consider if Mr B provided a reasonable answer in relation to the BSI - and if any failure to do so had an impact on Fairmead.

Did Mr B provide a reasonable BSI?

Fairmead said it asked Mr B's broker, for the policy set up, to provide a full reinstatement cost for the building. I consider it was reasonable for the broker to understand, from that, what was required. Fairmead was entitled to accept the BSI

figure of £525,00 it received from the broker on Mr B's behalf. Under misrepresentation principals or CIDRA, if that figure turned out to be unreasonable, or Mr B didn't take reasonable care when providing that answer, it might be acceptable for Fairmead to settle the claim proportionally.

I don't consider the BSI to have been reasonable in terms of quantity. Fairmead's loss adjuster (LA) provided an estimate of £752,000. A post claim assessment, by a surveyor, on behalf of Mr B suggested £702,000. The Home Report recommended £740,000. Mr B's £525,000 was 25% below the lowest of those. It wasn't a reasonable answer, or one within a reasonable range.

Neither do I consider Mr B to have taken reasonable care when providing the BSI. He had, recently, been provided with the Home Report recommending a BSI of no less than £740,000. I'm not considering at this point if he was aware or conscious of that recommendation and if he deliberately ignored it. I'm limiting my consideration here to whether he took 'reasonable care'. The information was available to him as one part of the Home Report. Because of that it's difficult for to say he did take reasonable care when, via his broker, he went for a BSI significantly lower.

So I've established Mr B didn't give a reasonable answer, failed to take reasonable care. The next question, for CIDRA or under misrepresentation principals, is what impact that had on Fairmead?

Fairmead accepts if given a BSI of £740,000, by the broker, it still would have offered cover, but with a premium of £1,336 rather than the £1,201 paid by Mr B. So, if CIDRA applies, there's a qualifying misrepresentation. That would allow an insurer, in these circumstances, to apply a proportionate settlement to the claim. I agree, as the unreasonable BSI made a difference, it would also be a fair outcome when considered against misrepresentation principles.

deliberate and reckless

Where cover would still be offered, but for a misrepresentation, CIDRA allows for an avoidance where an insurer can show the misrepresentation was reckless or deliberate. I might consider it a fair outcome under misrepresentation principles. The relevant policy term requires Fairmead to establish deliberate or reckless behaviour if it wishes to avoid. Deliberate or reckless then, is the key consideration for this complaint.

Whilst I've said it doesn't strictly apply, a helpful and reasonable starting point for consideration of the policy term and misrepresentation principles, is CIDRA's approach to 'deliberate and reckless'.

First, it requires the insurer to show that a misrepresentation was deliberate or reckless. It's a serious accusation with significant consequences for Mr B, so I consider its reasonable for Fairmead, in these circumstances, to show he was deliberate or reckless - rather than it being for him to show he wasn't.

CIDRA finds a misrepresentation to be deliberate or reckless if the consumer knew it to be untrue or misleading or did not care whether or not it was untrue or misleading, and knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

So I've considered if Fairmead has shown Mr B, when providing the BSI, acted in the manner described above. It's said it has clear and irrefutable evidence that Mr B was

aware of the value of his property prior to taking out the cover, and therefore acted deliberately and recklessly by opting for a lower BSI in order to benefit from a cheaper premium.

The evidence Fairmead refers to is, presumably, the Home Report. It has said Mr B commissioned the report for one of only three purposes - to value his home for consideration of sale, for remortgaging or to inform insurance requirements. Fairmead considers it unlikely that, having paid for the report, he failed to read its principal findings. It asks why, if he was aware of the value of the property, he went on to later insure it for much less.

In response to Fairmead, Mr B's representative has said a finding of recklessness requires it to be established what was in the mind of the subject at the material time. Access to a document (the Home Report), it has said, doesn't confirm an individual was fully aware of all its contents. The representative makes a fair point here.

The representative makes a further reasonable point, when stating a prudent insurer would seek an explanation from a policyholder in these circumstances. It's disappointing that Fairmead failed to ask Mr B for an explanation of his actions.

This Service has discussed the matter with Mr B directly. He denied deliberately or recklessly underinsuring the property. He discussed having applied an inflationary increase to previous years BSI. He described his actions as naïve, rather than deliberate. He asks why he would take the risk of underinsurance to save a small amount in premiums. Mr B said he hadn't noticed the Home Report's recommended BSI, so wasn't aware of it when taking out the policy.

According to Mr B the Home Report was commissioned for a potential sale of the property. An internet search supports the property having been listed for sale. A Listing shows it in a pre-loss condition. It asks for offers over £720,000 - the 'market value' provided by the Home Report.

It's worth setting out the purpose of a 'Home Report'. I say that as, it appears from Fairmead's correspondence with this Service that might not understand the nature of these reports. Neither does it appear to appreciate the difference between a market valuation of a property and reinstatement cost.

I say that as Fairmead has repeatedly conflated the two. As an example, when discussing Mr B's awareness of the Home Report's recommended BSI, Fairmead said if Mr B was selling the property he would be fully aware of its value as something playing a part in his decision to sell. However, unlike the market value of a property, I consider it unlikely a recommended BSI plays a significant role in such decisions, including Mr B's. As the difference between 'market value' and BSI is important to the complaint, I will set that out that as well.

Mr B's property is located in Scotland. It is a legal requirement in Scotland, that a home for sale must have a 'Home Report'. The seller must provide a copy of the Home Report within a set timescale - or they risk being fined. The seller commissions the Home Report. It has three main documents: a property questionnaire, a single survey and energy report. Mr B's is 43 pages, so quite a lengthy document featuring a lot of varied information.

It is the 'single survey' that's relevant here. It's based on a visual inspection by a chartered surveyor. It gives details of the property - including condition and required

repairs. The single survey gives an estimated 'market value' of the property. That is how much the property is worth - or might be expected to sell for.

Mr B's Home Report's single survey also provides an 'estimated reinstatement cost for insurance purposes' – or suggested BSI. That's a very different consideration to a 'market value'. As the single survey explains it's the estimate of the cost of rebuilding the premises and bears no direct relationship to the current market value.

I'm satisfied Mr B commissioned the Home Report for the sale of the property - rather than for purposes of informing his insurance needs - as that is the act they are required for. I note its market value and recommended reinstatement costs are found on the same page. So its possible Mr B was aware of the suggested BSI, and deliberately or recklessly, failed to act on it to achieve a lower premium when taking out the insurance.

But Fairmead hasn't persuaded me that's most likely what happened. Beyond the existence of the Home Report, and assertion that Mr B must have been aware, it hasn't provided evidence of deliberate or reckless behaviour. It hasn't shown that Mr B knew that £525,000 was an incorrect or unreasonable BSI to select – or that he didn't care if it was or wasn't. It hasn't provided, as an example of persuasive supporting evidence, that Mr B (or the broker on his behalf) made multiple applications for cover using different BSIs to achieve a cheaper premium.

According to his broker, Mr B's policy for the previous year had a BSI of £500,000. The increase of £25,000 to £525,000, for the policy in question, supports Mr B's claim that he, instead of deliberately or recklessly underinsuring, applied what he considered to be a reasonable inflationary increase.

Considering this, the purpose for Mr B of commissioning the Home Report and having listened to a recording of a discussion with him I find it plausible that he wasn't aware of the £740,000 BSI recommendation when taking out the policy.

The key figure in the Home Report, for someone wishing to sell a property, is likely to be the estimated 'market value'. The recommended 'reinstatement value for insurance purposes' is likely to be of less interest for someone looking to dispose of the property. So, without anything to disprove him, I'm persuaded he wasn't aware of it, or it wasn't in his mind, when he took out the Fairmead policy.

Based on the above, and all the evidence provided so far, I intend to find Fairmead hasn't shown Mr B acted recklessly or deliberately and that it therefore unfairly avoided his policy. That applies under consideration of any of CIDRA, misrepresentation principle or the policy term.

putting things right

I intend to require Fairmead to reinstate the policy. If it refunded any premiums, it can require Mr B to pay the full cost of the policy for the year. Fairmead will also need to remove any internal or external record of the policy avoidance.

I haven't been provided with enough to direct Fairmead to settle the claim. That isn't to say I've seen any reason why it shouldn't be paid. Instead, as far as I've seen, claim investigations hadn't progressed far when the policy avoidance decision was made. Fairmead may wish to undertake further investigations to determine its liability. I intend, then, to limit my direction on the claim to requiring it to consider the loss

against the remaining terms of the policy. It should, considering the circumstances, do so promptly.

Fairmead's referred to a 'proportionate remedy' policy term applicable to underinsurance. It would be reasonable, and in line with CIDRA and misrepresentation principles, for it when settling the claim to do so proportionately - at 90% based on what Mr B paid against what he would have paid for a BSI of £740,000.

I also intend to require Fairmead to compensate Mr B with £1,000 for the distress and inconvenience resulting from the policy avoidance decision. He's been inconvenienced by having to challenge that decision. I'm persuaded he has suffered significant distress, across many months, from being unfairly accused of deliberately underinsuring. In addition, the final outcome of his claim has been unfairly delayed by around 18 months.

For the avoidance of doubt, I've not considered whether Mr B has suffered financial loss or distress and inconvenience resulting from a failure to pay the claim. My decision is that the business should reinstate the policy and consider the claim in accordance with the policy terms.

If Fairmead does settle Mr B's claim and he's unhappy with its approach - or the amount it offers for financial loss or in respect of distress and inconvenience related to the claim - he can make a new complaint to the Financial Ombudsman Service if he wishes to do so.

My intended final decision will be to order Fairmead to reinstate Mr B's policy, and to consider the claim in accordance with the policy terms. I should make it clear that I consider this to be a direction and not a money award. However, the effect of this direction is that the reinstated policy will be subject to this Service's £415,000 limit on a money award in relation to this escape of water claim. If, having considered this claim, the business decides that it is appropriate to settle the claim, the £415,000 limit will apply to the amount payable. But I intend to recommend that Fairmead pays above that limit if the total value of the claim exceeds it.

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.

Fairmead didn't respond to the provisional decision.

Mr B was pleased with the proposal to reinstate the policy. His only request was that I include, in this final decision, a comment on one issue. He said it's likely there's been, since the initial escape of water, some further deterioration in the condition of the property. He was unable to self-fund the full drying and mitigation works required. Mr B's position is that Fairmead, being responsible for any such additional damage by its avoidance decision, should cover it under the claim.

I'm not going to make a finding on any additional damage here. For starters I don't have the necessary evidence, nor Fairmead's response to Mr B's concerns. I will make a general comment on this Service's approach. We often take the position that where an insurer's unreasonable act or omission is responsible for additional damage, it's fair for it to take responsibility for putting it right.

I will also remind Mr B that, in my provisional decision, I said if Fairmead does settle his claim and he's unhappy with its approach - or the amount it offers he can consider referring a new complaint to the Financial Ombudsman Service.

I haven't been provided with anything to persuade me to amend the outcome I proposed in the provisional decision. My final decision is to require Fairmead to reinstate Mr B's policy, and to consider the claim in accordance with the policy terms – as set out below.

I consider this to be a direction and not a money award. However, the effect of this direction is that the reinstated policy will be subject to this Service's £415,000 limit on a money award in relation to this escape of water claim. If, having considered this claim, the business decides that it's appropriate to settle the claim, the £415,000 limit will apply to the amount payable. But I recommend Fairmead pays above that limit if the total value of the claim exceeds it.

My final decision

For the reasons given above, I require Fairmead Insurance Limited to:

- Reinstatement of the policy and removal of any internal or external record of the policy avoidance. It can charge Mr B the full year's premium if it wishes to.
- Reconsider the claim against the remaining terms of the policy. If it accepts the claim, it can settle proportionately at 90% if it chooses to.
- Pay Mr B £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 April 2025.

Daniel Martin
Ombudsman