

## **The complaint**

Mr and Mrs H have complained that Fairmead Insurance Limited ('Fairmead') reneged on its agreement to settle their claim under their home insurance policy due to damage to their garden wall following a storm. For the avoidance of doubt, the term 'Fairmead' includes Fairmead's agents and representatives for the purposes of this decision letter.

## **What happened**

In February 2022 a tree fell from their garden fell onto Mr and Mrs H's boundary wall following a storm. They made a claim to Fairmead for the damaged wall, being their home insurers at the relevant time. Initially, Fairmead offered a cash settlement of around £19,000 which Mr and Mrs H declined. Fairmead subsequently withdrew its offer in January 2024.

Mr and Mrs H had made three previous complaints about the service they'd received from Fairmead over a two-year period, including communication failures and delays. Fairmead had offered compensation with regards to the three complaints about its service. These hadn't been accepted by Mr and Mrs H as they simply wanted the necessary work to be carried out. The current decision deals with the fourth complaint which is about the substantive issue and Fairmead's ultimate decision to decline Mr and Mrs H's claim.

Following this complaint, Fairmead maintained its decision to decline Mr and Mrs H's claim and Mr and Mrs H then referred their complaint to this service. The relevant investigator didn't uphold Mr and Mrs H's complaint. He considered that as the surveyor recorded that the storm conditions and fallen tree weren't the main cause of the damage to the wall, cover didn't apply.

Mr and Mrs H remained unhappy with the outcome of their complaint. In the circumstances, the matter was referred to me to make a final decision in my role as Ombudsman.

## **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 key issue for me to determine in this case is whether Fairmead ultimately acted in a fair and reasonable manner in declining Mr and Mrs H's claim. Unfortunately for Mr and Mrs H, I can't say that Fairmead's ultimate decision to decline the claim was unfair or unreasonable. I also consider that it responded fairly in relation to the amount of compensation it offered for its acknowledged service failures. In determining this issue I've considered the submissions of the parties as summarised below.

I turn firstly to Mr and Mrs H's submissions in support of their complaint. They said that throughout the whole process, there had never been a question as to the validity of the claim. The cash settlement had been offered by Fairmead's representative in May 2023. They said, *'We have had a think about it and would like to proceed with the insurers contractor please and not take the cash settlement.'* The representative then replied that that he would instruct the contractors appointed by the insurers to carry out the work. They'd then

had numerous site visits from surveyors, structural engineer, and loss adjusters, as well as several visits from contractors that were due to complete the works.

Mr and Mrs H referred to the fact that Fairmead instructed surveyors in May 2022 and assumed that the report from that time showed that the damage was insured. If not, then this would have been highlighted at the time. They couldn't understand why Fairmead could say that this professional opinion was no longer valid. As to the surveyor's report conducted just prior to the work start-date in March 2024, Mr and Mrs H pointed out that the results of this survey would undoubtedly be different by that stage, as the wall had been exposed to the elements for over two years, and the vegetation would have grown even more.

As to the impact upon Mr and Mrs H, they said that this had been huge. They had to be present for countless appointments. They also said that the cost of labour and materials will have significantly increased during the lengthy period of delay. Their garden and that of their neighbour had been affected and the matter had '*caused no end of stress and time trying to get responses.*' In addition, Fairmead's handling of the matter had led to significant increase in premiums on policy renewal.

I now turn to Fairmead's submissions in response to Mr and Mrs H's complaint. It acknowledged that there had been significant and unreasonable delays and indeed '*a catalogue of errors*' in relation to aspects of the claim, as well as communication failures. Over the course of two years, it offered £600, an additional £350, and then £400 in compensation to Mr and Mrs H for the way in which it had handled the claim.

As to the substantive issue, it apologised to Mr and Mrs H for any inconvenience or distress caused by the way in which it declined their claim. It noted that it had paid some costs in relation to the removal of the tree from Mr and Mrs H's garden. As to reconstruction of the wall, Fairmead stated that there was a dispute as to the best reconstruction method, and structural engineers were appointed, and '*a second opinion was sought regarding cause and condition of wall, as well as confirming the best course of action moving forward...*' The relevant report was produced in early 2024, and due to its findings, the claim was declined.

Fairmead acknowledged that there had been a '*loss of expectation*' as Mr and Mrs H had been led to believe there was cover in place for this incident, '*when in fact the damage to the wall is not as a result of storm, in the professional opinion of the...surveyor.*' It also accepted that its loss adjusters had previously given Mr and Mrs H incorrect information as to the cause. It said that it was happy to review any evidence from Mr and Mrs H's own professionals that damage related to an insured peril. In conclusion however, it offered a further sum of £500 in compensation to recognise the further service failings.

As to the available professional survey reports, the first report is dated April 2023. This noted that following the incident, Mr and Mrs H had to get a tree surgeon out to remove it at a cost of around £1,600 as it was leaning into their neighbour's garden. It further noted that '*the tree has damaged the boundary wall and has been removed by the policyholder's own contractor. The wall is required to be removed and replaced.*' In its summary of findings, it also however raised the point that the wall had been damaged '*by the roots of the adjacent trees and will eventually collapse*'.

The second report is dated January 2024. This is more detailed and includes photographs of the wall. This states that the '*... boundary retaining wall has been damage[d] due to 2... trees growing in very close proximity abutting the wall. The wall is cracked in several places .... [and] appears to be suffering [from] bulging due the close proximity of the neighbour's tree with its tree trunk and root ball exerting pressure on the wall. In addition, the... removed tree was allowed to grow into the wall and it would appear that the root ball has uplifted a section of the wall. When that tree swayed in winds it will have also acted as a cantilever on*

*the wall.*’ The report concluded that *‘the reported failure of the retaining wall appears to have occurred due to the growth of the trees and eventual failure of the wall was inevitable.’*

Finally, Fairmead also referred to the structural report it had obtained in early 2023, and this referred to the loss of structural integrity of the wall at the location of the two large trees either side of the wall. This stated that *‘the main damage was directed by the large tree on [Mr and Mrs H’s] side collapsing during a storm event, which resulted in the tree pushing the wall over towards [the neighbour’s property]’*. It also referred however to the neighbour’s tree being significant, and it had been reported that during windy conditions, this tree *‘also pushes the wall over towards [Mr and Mrs H’s property]’*. It was also noted to be causing longstanding structural problems as it grew, and there was a suggestion that *‘the global capacity of the wall has been compromised’*.

I now turn to the reasons as to why I’ve unfortunately been unable to uphold Mr and Mrs H’s complaint. Having considered the chronology of events, I fully agree with Fairmead’s assessment that it’s been responsible for a catalogue of errors in dealing with Mr and Mrs H’s claim. I therefore have a great deal of sympathy with situation in which Mr and Mrs H have found themselves due to Fairmead’s poor handling of the claim.

Mr and Mrs H have faced frustration and uncertainty for a period of nearly three years. If the claim had been robustly investigated and promptly declined at the outset, they could have engaged a local contractor to carry out the work and it’s likely that the work will have been completed a long time ago, and at lower cost. In addition, Mr and Mrs H have undoubtedly experienced distress and huge disappointment in having been led to believe for over two years that Fairmead would be meeting their claim. For over a year, they’d been led to believe that Fairmead would in fact arrange for the necessary work to be carried out on their behalf. These factors amount to a very significant loss of expectation.

In relation to the substantive issue however, whilst Mr and Mrs H were, in principle, insured for storm damage to their property, it must be established whether storm or a separate cause was the main or predominant reason for damage. It’s also usual for home insurance policies to include standard conditions and exclusions regarding wear and tear, or gradual deterioration over a period of time. The relevant clause in this case states as follows; *‘We will not pay for any loss, damage, liability, cost or expense of any kind directly or indirectly caused by or resulting from wear and tear.... or anything that happens gradually.... or anything reaching the end of its serviceable life.’*

This service has a three-stage approach in deciding whether a storm is the main cause of damage. We firstly look at whether storm conditions occurred on or around the date the damage occurred. The parties agreed that this was the case in this instance and indeed Fairmead acknowledged that there were very significant winds recorded in the area at the relevant time of 71mph. Secondly, we ask whether the damage being claimed for was typical of storm damage. I’m satisfied that the collapse of a wall under the weight of a fallen tree could typically be caused due to a storm.

The third question asked by this service is, however, the critical question in this instance, this being *‘is the storm the main cause of the damage?’* The service would normally find a detailed and professional report on the cause to be persuasive in default of a more persuasive alternative view. In this case, Mr and Mrs H haven’t yet produced any expert reports. Fairmead have produced two surveyor reports and a structural report. The report of January 2024 makes it clear that the wall was likely to have been in a compromised state prior to the storm which occurred in February 2022. The photographic evidence shows that two trees had been allowed to grow on either side of the wall, in close proximity to it. This supports the surveyor view that the tree on Mr and Mrs H was blown onto a wall which was already suffering wear and tear and was reaching the end of its serviceable life in any event.

I agree with Mr and Mrs H that the original professional report which was compiled on behalf of Fairmead relatively soon after the incident should have been the starting point. Unfortunately, however Fairmead have confirmed that no report was initially submitted directly following the surveyor's visit in 2022 and the surveyor merely advised that the services of a structural engineer would be required to enable it to provide an accurate scope of works.

I consider that the surveyor's and structural reports of 2023 were cursory and equivocal, whilst the January 2024 report was extremely detailed. As such, the later report is far more persuasive. Whilst I appreciate that a considerable amount of time has passed and that vegetation will have grown and the wall has been open to the elements, the assessment of the cause of the underlying cracking is nevertheless persuasive. The insurer is entitled to change their assessment in the light of professional technical advice, however it's most unfortunate that it's taken so long for this level of advice to have been provided.

In conclusion, whilst the tree falling onto the wall will no doubt have highlighted and exacerbated the underlying damage and weakness in the wall, I'm satisfied, on the basis of the technical evidence, that the underlying issue was the main problem. I consider that the wall's integrity had already been compromised and as such I can't say that the predominant cause of the damage was an insured peril. Even if the predominant cause had been the storm conditions, I'm satisfied that the relevant exclusion clause would have applied. That is, due to the growth and action of the large trees upon the wall over a considerable period of time, the wall was reaching the end of its serviceable life in any event.

As to the significant service failure in this case, I'm satisfied that £500 further compensation is an appropriate amount to reflect the further delays and loss of expectation suffered in this case. This is at the upper range of compensation which the service would expect to be paid under its guidelines for this type of service failure. Whilst Fairmead should have reached its ultimate decision to decline many months earlier, it appears that this case was more complex and required more technical intervention than had been appreciated at the outset.

Finally, I consider that it was fair and reasonable that Fairmead's offered to review any further evidence from Mr and Mrs H's own professionals that damage related to an insured peril. Mr and Mrs H may wish to consider taking up this option, bearing in mind the involved nature of the work required to reinstate this boundary wall. They may also wish to investigate a joint solution with their neighbours bearing in mind that the professional evidence points to the wall being compromised due to tree growth on both sides of the boundary wall.

I appreciate that this decision will come as a great disappointment to Mr and Mrs H, however after carefully considering all of the available evidence in this matter, I can't say that Fairmead ultimately reached an unfair or unreasonable conclusion in declining to cover the claim for damage to their boundary wall. As long as it pays all of the compensation sums previously offered to Mr and Mrs H, I don't require Fairmead to do anything else in relation to this complaint.

### **My final decision**

For the reasons given above, I don't uphold Mr and Mrs H's complaint and I don't require Fairmead Insurance Limited to do any more in response to their complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 9 February 2025.

Claire Jones  
**Ombudsman**