

The complaint

Ms G complains about Fairmead Insurance Limited's handling of a claim made under her home insurance policy after a landslip damaged her property.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, concentrating on the key issues.

Ms G has been represented in making this complaint by someone who lives at the property. For ease of reference, I'll refer below to comments and information as coming from Ms G.

Ms G has a home insurance policy underwritten by Fairmead which covers her home and its contents, amongst other things.

The back of Ms G's property faces a limestone cliff. She made a claim after part of the cliff collapsed, in June 2019, and caused a landslide which impacted the rear of the property. The bone of contention in this case is the extent of the impact and the degree to which the impact caused damage to the property.

Initially, Fairmead and/or their loss adjuster said that the landslide had been caused by work Ms G was having carried out on the other side of the property. However, they then accepted that it had been caused by heavy rainfall.

Having accepted the claim, they agreed that the conservatory on the right-hand side of the property (looking from the road at the front) had in effect been destroyed and needed to be rebuilt.

But they said cracking and other damage to other parts of the property hadn't been caused by the landslide. Their loss adjuster reported that the "*slight cracking*" to plaster and render in the main house was "*indicative of normal shrinkage and temperature effects*".

Throughout the life of the claim, Fairmead have indicated their willingness to provide a cash settlement for replacement of the conservatory and associated works. But they have been unwilling to accept liability for the damage to the rest of the house.

Ms G doesn't agree with Fairmead's assessment. She says the damage to the main house (not the conservatory) only appeared after the landslide and is clearly attributable to the impact at the back of the house.

In summary, over 2022 and 2023, she commissioned four independent experts to inspect the property and report on the damage and/or the likely causes of the damage.

She's also had experts visit to assess the state of the limestone cliff and to report on whether the house walls are plumb (they aren't), but those reports are less relevant to this decision.

I'll return to those expert reports in more detail in the section below but suffice to say for now that Ms G believes that – when taken as a whole - they show that the damage to the

property was caused by the landslide. Fairmead don't agree.

Ms G made a complaint to Fairmead in 2023. She said they were wrongly denying cover for the damage to the main house, and they delayed and obstructed the claim.

Fairmead responded in November 2023, saying that they were confident their claim decisions were correct, and the cash settlement offer they'd made was fair. Ms G wasn't happy with this outcome and brought her complaint to us.

Our investigator looked into it and thought Fairmead hadn't treated Ms G fairly and reasonably. She said they should:

- follow the recommendations made by one of the experts Ms G had instructed (which were based on the premiss that the damage to the main house was caused by the impact from the landslide);
- consider the costs Ms G had incurred for works to make the property safe;
- consider payment for increased heating costs Ms G had incurred after the render had been removed from the external walls of the house;
- pay for the expert reports Ms G had commissioned; and
- pay Ms G £1,000 in compensation for her trouble and upset.

Fairmead didn't agree with our investigator's assessment and asked for a final decision from an 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.

There are two key questions for me in making this decision.

One – did the landslide impact the back of the main part of the house (rather than just the conservatory)? Fairmead appear to be suggesting – at least at times during the claim – that the main part of the house wasn't impacted by the landslide.

And two – if it did impact the back of the main house, what damage did it likely cause?

Did the landslide impact the main house?

The answer to the first question is, in my view, reasonably obvious. Fairmead and/or their agents have said there's no evidence that the landslide hit the back of the main part of the house – at least, in any meaningful way.

They've pointed to the fact that the debris was cleared before they inspected the site. And that there's no photographic evidence showing rocks / earth against the rear wall of the main house. They've also said there was no sign on the wall itself of any significant impact.

I don't think Fairmead's arguments are persuasive. I'll explain why.

It's understandable that Ms G had the debris moved from the wall as soon as practically possible and without waiting for the loss adjuster to visit the property, given the on-going

damage that may have been caused had she not done so – and the possible risk to the structural integrity and safety of the property.

Whilst Ms G has no photographs of the debris piled up against the house wall, she has provided photographs of the conservatory area immediately after the landslide. Given where the rocks and earth are lying in the conservatory (all the way up to the side of the main house, at some depth), it's inconceivable that the slippage didn't also impact the back corner of the main house.

The loss adjuster later agreed that there were some signs of the damage on the back wall of the main house – marks in the render and missing render in some places – although they said they would have expected more signs of damage if there had been a significant impact.

Most of the experts also refer to damage on the back wall, indicative of the landslide impacting that wall.

So, I'm satisfied that it's overwhelmingly likely that the landslide did hit the back of the house - and that debris consisting mainly of rock and earth came to rest against the back wall of the main part of the house, at its right-hand rear corner.

What damage was caused by the impact of the landslide?

The second question is more difficult. Primarily because the experts don't entirely agree about what damage that impact caused.

I've already described above the loss adjuster's view as to what happened and why. The loss adjuster is a qualified expert and was, of course, appointed by Fairmead.

Their initial assessment – that the landslide hadn't impacted the back of the house, and that the cracking was minor and related to thermal movement – has been shown to be mistaken.

I've said above why I think the landslide *did* impact the back of the main house. And I don't think anyone is now suggesting that the damage to the main house is "*slight*" (in the loss adjuster's own words). The loss adjuster did, of course, formulate that view *before* the render was removed from the external walls of the house to allow a fuller assessment of the damage.

There are four other experts involved - all commissioned by Ms G. I'll refer to them here as T, B, H and J.

T provided a report in March 2022, and later updated it, in October 2022. In summary, they said the damage to the property was indicative of "*shear failure*". They said the property was out of plumb. And they said the damage "*may be as a result of the rock fall collapse*".

B reported in June 2022. They said there was "*impact-type damage to the (rear) wall*". They said the wall had been subject to "*excessive shear and bending forces*". And there was "*certainly a possibility that it could be attributed to a ground collapse, if a significant amount of debris built up against the rear wall structure*".

But they also said the damage to the front of the property was unlikely to be related to the landslide and was due to de-bonding of the render.

Both T and B carried out their inspections before the render had been removed from the external walls to allow a fuller assessment of the damage.

I think it's fair to say that once the render was removed, it became apparent that the damage to the front of the property was more profound than a simple de-bonding of the render.

J's inspection was carried out in March 2023. In brief, their view was that there may be some impact damage to the rear corner of the house and that "*may have added*" to the distortion evident in the rear wall.

But the main issue was with the construction of the building and the inadequate restraints between the first floor and the rear external wall and between the roof and the external wall.

H reported in May 2023. Their view was unequivocally that the damage to the property (front and rear - and internally) was due to the "*landslide thrust*" against the rear wall of the house.

I have to ask both parties to understand that we are as reliant as they are on the views expressed by the experts.

Where the experts provide conflicting explanations, that makes things more difficult. But what I have to do, in making this decision, is to identify where the consensus appears to lie and to make a decision based on the balance of probabilities.

All of the four experts – including J – agree that the landslide is likely to have affected the property. They disagree about the extent of it – and whether some elements of the damage might be due to other causes, but they are agreed that there was some impact of the landslide on the building.

Three of the four experts (T, B and H) agree that the building was subject to a degree of force that appears to have distorted the rear wall and/or other parts of the building. T refer to that force as "*shear*". B refer to it as "*excessive shear and bending*". H directly refer to the "*thrust*" applied to the rear of the property by the landslide.

Whilst T and B are more guarded about whether the landslide caused the damage, it's difficult to see how (excessive) shear forces might have come to bear on the building other than through the weight of the landslide's impact.

The consensus then (J allow some "*added distortion*" to the rear wall from the impact of the landslide) is that the immediate cause of at least some of the damage is the landslide. And T, B and H all agree that the rear wall needs significant repair / re-building because of the damage which is likely (or certain, according to H) to have been caused by the impact of the landslide.

I've mentioned why I think B's assessment of the damage to the front of the property might be contradicted by what later became evident once the render was removed.

On balance, taking all of the expert views into account, I think it's more likely than not that the immediate cause of the damage *throughout* the property was the impact of the landslide on the rear wall. I know J disagree with this, but they appear to be in the minority.

The experts' views, taken as a whole, appear to support Ms G's assertion that there was no damage or cracking evident to the property before the landslide. I should also say that there's no reason to doubt Ms G's word on that – and she has provided photographs of the property before the landslide which appear to show the front elevation in particular in a good state of repair.

A number of the experts comment on the original construction of the property – either directly or in making recommendations about what needs to be done now to carry out effective and lasting repairs.

It is noted, for example, that the walls at the rear right-hand corner aren't tied. There's also mention of a lack of adequate restraints between various parts of the building – mainly but not only by J.

I have considered then whether there's a possibility that the landslide was the immediate cause of the damage to the property, but that the damage was more profound because of defects in the original construction of the house.

However, I note that neither Fairmead nor the loss adjuster has suggested that their reasons for declining parts of the claim were poor design or workmanship in the original build, at least not directly.

I also think if they had made that argument, it might be a difficult position to sustain given that there's been no assessment of the building against the building standards of the time.

I also note that the property is relatively recently built and would have been subject to building control and approval at the time.

Neither Fairmead nor their agent(s) have carried out any investigation about the original build of the property. But if they had, it's overwhelmingly likely they'd have found that that the build was approved and signed off as complying with the relevant building regulations.

In summary then, taking all of the evidence and information into account – including all of the experts' opinions – I'm satisfied on balance that it's more likely than not that the damage to Ms G's property is primarily the result of the landslide and its impact on the rear wall of the main house.

Putting things right

Based on the reasoning set out above, I agree with our investigator about the outcome of this complaint.

Fairmead will now need to proceed to the repair stage, accepting that the damage identified throughout the property is caused by the landslide (which they've accepted as an insured event). As H suggested, that may now require an asbestos survey, a further inspection of the roof area, and a further plumb survey.

H also suggested some repairs that would definitely need to be carried out – and I'd expect those repairs to be included in a full scope of works which now needs to be completed – and agreed with Ms G.

I'm aware that Fairmead have suggested cash settlement of the claim. I don't want anything I say in this decision to stand in the way of a cash settlement if that can now be agreed with Ms G. That settlement would, of course, have to be based on the premiss that all of the required repair works are covered under the policy.

I agree with our investigator that Fairmead should now consider the costs Ms G incurred to make the property safe. Those should be covered as part of the accepted claim. And subject to provisions of appropriate receipts / invoices, Fairmead should reimburse Ms G for those costs.

I agree that Fairmead should also cover the costs Ms G incurred to commission the expert reports. They have said they didn't have the opportunity to commission their own expert report, which may have obviated the need for the reports obtained by Ms G.

I don't agree with that. Fairmead were entitled to assess the claim from the outset. They chose not to commission further reports or investigation initially because they agreed with the loss adjuster that the main house hadn't been impacted by the landslide.

And later, they clearly weren't inclined to shift their position as regards the causes of the damage to the main house, which left Ms G with no choice but to commission the experts herself. Those expert reports have been key to determining what should happen with the claim, justifying Ms G's decision to commission them and to set out their scope as she did.

Similarly, the removal of the render to the home – agreed by the parties – was key to understanding of the damage to the property, at both front and rear. Ms G didn't commission that work without Fairmead's agreement - and it facilitated a closer inspection of the damage. In any case, it would be necessary to affect the repairs now required.

So, Fairmead should consider any evidence Ms G can provide to suggest her heating bills increased in the relevant period. And if that evidence is persuasive, they should pay the difference between Ms G's bills before and after the render was removed.

In relation to the costs of the works to make the property safe, the costs of the expert reports, and the additional heating costs, I'm going to require Fairmead to add interest at 8% simple per annum to any payments they make to Ms G. This is because Ms G has been deprived of that money for the relevant period(s).

I've considered very carefully the amount of compensation Ms G should be awarded in response to this complaint. The claim has been on-going now for more than five years. And, fundamentally, I believe that's because of Fairmead's errors.

Essentially, they didn't at first accept that the landslide had impacted the back of the main house. They also didn't accept at first the cause of the landslide, suggesting it may have been caused by works Ms G was having carried out at the other side of the property.

Later, they've maintained their line that the damage to the main house isn't covered and wasn't due to the landslide. Although this was a complex and unusual case, and the expert views differed, I think on balance that Fairmead clung to that line for too long – particularly after the expert reports in 2022 and 2023.

I think it should have been apparent to Fairmead at that point that they would have to agree that at least some of the damage for which they didn't initially accept liability was in fact covered.

All of that said, I don't think Fairmead alone are entirely responsible for all of the delays between 2019 and now. This was a very unusual claim. It was complex. And the experts all differed to some extent in what they thought the causes of the damage were and how much of it was caused by the landslide (or the landslide alone).

Some of the delays were avoidable, in other words, and some were not. And I can only award compensation for the additional, unnecessary delays caused solely by Fairmead's errors.

I bear that in mind when I agree with our investigator that £1,000 is appropriate compensation in this case. I also bear in mind, of course, that this whole series of events

must have been quite traumatic for Ms G.

She has had the stress and worry about the safety of the property. And she's been understandably very concerned about how the claim might (or might not) be settled in the end – and whether her home would in fact be repaired.

That degree of stress and anxiety would likely have been evident however Fairmead dealt with the claim. However, any unnecessary prolongation of that period of stress – caused by Fairmead's errors – will have had a considerable impact on Ms G.

I also take into account the fact that Ms G has experienced considerable inconvenience in having to pursue her claim at this length, against Fairmead's resistance, and by means such as the commissioning of expert reports.

My final decision

For the reasons set out above, I uphold Ms G's complaint.

Fairmead Insurance Limited must:

- accept that the damage to the property was the result of the landslip (the insured event) and move to the repair stage (as set out above);
- on receipt of acceptable invoices or receipts from Ms G, reimburse her for the costs of making the property safe (adding interest at 8% simple per annum, calculated from the date Ms G paid out to the date she's reimbursed);
- on receipt of invoices or receipts, reimburse Ms G for the cost of obtaining the expert reports in this case (adding interest at 8% simple per annum, calculated from the date Ms G paid out to the date she's reimbursed);
- on receipt of acceptable evidence of increased heating bills after the render was removed, reimburse Ms G for those additional costs (adding interest at 8% simple per annum, calculated from the date Ms G paid out to the date she's reimbursed);
- pay Ms G £1,000 in compensation for her trouble and upset.

If, in relation to the second, third and fourth bullet points above, Fairmead Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms G how much it's taken off. It should also give Ms G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 4 April 2025.

Neil Marshall
Ombudsman