

The complaint

Mrs C complains that Fairmead Insurance Limited have delayed in settling her claim for loss of rent and damage to her property by previous tenants, and this has financially impacted her.

What happened

Mrs C held a buildings and contents policy with Fairmead for a property that she lets out.

In March 2021 Mrs C made a claim following the previous tenants leaving extensive damage behind. Fairmead initially declined the claim and then later agreed that this was a mistake.

Mrs C brought her complaint to this service, and in July 2022 we upheld the complaint, directing Fairmead to reconsider the claim and make separate payments for the loss of rent and damage.

In March 2023 Fairmeads contractors recommended a loss of rent payment, and settlement was made in May 2023 for this.

In December 2023 Fairmead proposed a settlement for the damage. Mrs C accepted the settlement in January 2024, and it was paid in February 2024.

Mrs C was unhappy that Fairmeads had delayed in settling the claim and raised a further complaint about these delays and the impact of the delays on the claim in general. Fairmead partially upheld the complaint and paid Mrs C £1000 compensation for the delays.

Mrs C was unhappy with this and asked us to consider the matter.

Our investigator looked into the complaint and he thought that Fairmead should:

- Calculate and make an additional payment for the increases in quotes for the work to be completed on a proportional basis.
- Raise payment for the increased costs Mrs C paid as a result of losing the council tax discount for an occupied property up to 8 February 2024, plus 8% simple interest from when each of these payments were made by Mrs C until Fairmead make payment.
- Make a payment for the loss of rent Mrs C has evidenced from the date the original LOR rent payment covered, until 8 February 2024, plus 8% simple interest from when each of these payments was due until Fairmead make payment.
- Make a payment to reimburse Mrs C for the solicitor fees she incurred when changing her mortgage, plus 8% simple interest from when this was paid until Fairmead make payment.
- Increase the compensation paid from £1,000 to £3,000.

Fairmead didn't agree with the investigator and have asked for an ombudsman's decision and so the case came to me to decide.

I issued a provisional decision on this complaint as follows:

I'm currently minded to uphold this complaint with a different proposal for resolution to the investigator, and I will explain why.

It's important to recognise that Mrs C's property has been severely damaged, and her policy doesn't provide cover for all that has happened. She has been left with a large shortfall in the cover for repairs. This shortfall isn't the fault of Mrs C or Fairmead, the policy just didn't provide cover for what happened at the property. As I don't think Fairmead are responsible for the shortfall, I can't hold them responsible for any consequences of the shortfall itself, only the consequences of Fairmeads actions where I think they made mistakes.

It's also important to explain that I am restricted to looking only at matters which didn't fall within the scope of the previous decision by this service. One of our investigators issued a recommendation on the previous complaint that the claim was reconsidered. Following that, Fairmead and Mrs C's representatives negotiated, and a loss of rent payment was agreed for £119025.75 and paid in January 2024, and a settlement amount was agreed in January 2024 for the repairs and paid in February 2024. These sums themselves were negotiated and agreed with all parties and haven't been brought to us as part of the complaint, and so I am not considering whether these amounts were in themselves fair.

What I am considering is whether any mistakes and delays in dealing with this claim had any consequential impact on Mrs C, and if it did, what Fairmead should fairly do to put her back in the position she would have been in if the mistakes and delays hadn't occurred.

I've considered each of the heads of complaint below separately for clarity.

Additional loss of rent and delays in payment of loss of rent

Fairmead didn't initially accept the loss of rent claim but after reconsidering the matter they finally settled it in May 2023 for the period up until January 2023.

Mrs C has complained that she had suffered additional loss of rent after January 2023 as Fairmead didn't agree and pay the settlement for repairs until February 2024. This meant that she was still not in a position to get the repairs completed in order to rent the property out until after February 2024. This resulted in further loss of rent.

Having thought about this, I do agree that Fairmead should pay the loss of rent beyond January 2023. I appreciate that Fairmead's contractors had to assess the costs of restoration work, but this could have been done well before January 2023 given that the claim was made in March 2021 and so I'm proposing to direct that a further loss of rent payment is made for the rest of the period from January 2023 to either the date that Mrs C switched her mortgage and moved into the property, or February 2024 when the repairs settlement was made – whichever is soonest.

Fairmead have made the point that this takes them beyond the limit of their liability for loss of rent under the policy. However, I am able to make an award beyond this if I consider it fair and reasonable to do so because of the impact of the delays caused by Fairmead.

Mrs C has also complained that she should be entitled to interest on the £119025.75 loss of rent sum that has already been paid.

Fairmead have said that they aren't obliged to pay the interest, as this wasn't directed by our service in the previous complaint resolution, and our investigator agreed.

I've looked at the previous case, and I disagree. I wouldn't have expected the investigator to have made a direction about interest in that case, as he was only making a recommendation to reconsider the case – not to pay a specific sum - and on reconsideration of the claim, the claim could still have been declined for other reasons.

And so, as interest hasn't been looked at and it is now being raised following agreement on a figure for the loss of rent, I am satisfied that I can now consider if interest is appropriate.

As a service, we consider awarding interest in situations where a consumer has been deprived of means or income for a period of time. In this case, Mrs C didn't receive rent payments when they would have been due because she was unable to rent the property out, due to the claim being erroneously declined and then delayed. So, she has been deprived of income. However, I don't consider that the whole of that period was Fairmeads fault. The deprivation of income from rent was in the first instance due to the damage caused by the previous tenants. It only became the fault of Fairmead from the point at which they incorrectly declined the claim.

So, I do think it is fair for Fairmead to pay interest on the loss of rental income from the date that they declined the claim until the date of the loss of rent payment in May 2023. The interest will need to be paid at 8% and will be payable from the date that each periodic monthly rental payment would have been due, until the date of settlement.

There will also then be further interest payments due on the additional loss of rent payment I have directed above from the monthly dates they were due up until the new settlement is paid.

Repairs settlement delay

Mrs C had quotes for the damage repairs in May 2021 but settlement wasn't paid until February 2024 by which time Mrs C says the cost of repairs had significantly increased. The settlement of £83574.37 was proposed on 22 December 2023 and accepted. Funds were received on 8 February 2024.

While I appreciate that the cost of repairs may have increased during the lifetime of the complaint, I understand that Mrs C's solicitors were negotiating with Fairmead regarding the settlement, and the settlement was agreed by all parties in December 2023. As they were negotiating up until the settlement date, I would have expected Mrs C's professional representatives to have agreed the settlement with any increased costs in mind - obtaining updated quotes as necessary. I've not seen any details of the negotiations but as I understand it, all parties agreed the full and final settlement figure. Mrs C didn't bring the settlement figure to us as part of her complaint.

I'm also mindful that Fairmead aren't obliged to pay a cash settlement based on Mrs C's estimates, only on what it would have cost their contractors to complete the work, and I understand that their own loss adjusters have calculated the settlement in line with their rates as they were at the time the settlement was offered. I'm not therefore minded to make any alteration to the settlement sum, and neither do I think any interest should be added. The sum reflected the costs as at December 2023 and was agreed in January and paid in February so I wouldn't expect interest to be due.

Mrs C also says that the property has suffered additional damage due to her inability to repair it sooner. Again, I consider this should have formed part of the negotiations for settlement which were undertaken in December 2023

Council Tax and other utilities

Mrs C has paid council tax during the time that the property was unoccupied.

If Mrs C had been able to repair the property and get a tenant in, she wouldn't have been liable to pay any Council Tax at all, as the contractual responsibility lies with the tenant.

It would be normal when a property is subject to a claim and unable to be occupied, for the council tax liability to be met by the insurer. In this case, Mrs C would always have had a period of liability from then the tenant moved out until a new tenant could be found, but the delays starting with the first claim decline extended this period and I consider that the council tax liability is a consequential loss and it's fair for Fairmead to meet the cost of Council Tax that Mrs C has had to pay for the period from the date the claim until the date of the repair settlement in February 2024.

Mrs C has also had to pay other utilities during this period which she again wouldn't have been liable for if the property had been rented out. As the delay in settlement caused the inability to rent the property out, I think it's fair for Fairmead to cover the cost of utilities from the date the claim was first declined until the date of repairs settlement in February 2024. As there was no one living at the property, I would expect these charges to be fairly minimal.

Mortgage payments and solicitors fees.

During the period of delay, Mrs C's financial position was such that she decided to move into the damaged rental property and rent out her own home to generate income.

She has claimed that this has led to her incurring several consequential costs – additional mortgage costs as the mortgage she took out was a higher rate, legal costs, and repairs to the other property to bring it up to standard for renting out.

I've thought carefully about this because we can reasonably award costs are directly attributable to the delays caused by Fairmead.

I think it is perfectly understandable that given the delays, Mrs C chose to switch properties to try and mitigate her losses. However, this doesn't mean that all associated costs are directly attributable to the actions of Fairmead.

For example, I won't be making an award of the additional mortgage costs, because I don't consider that the increase in costs is solely down to the actions of Fairmead. Interest rates have risen sharply in recent years and if Mrs C hadn't remortgaged when she did, it is likely that when she came to remortgage the damaged property she would have faced a higher interest rate in any event. As the investigator has said, it is too remote and speculative to consider what additional costs here are directly attributable to Fairmead's errors and delays.

In addition, as the damage to the property wasn't all covered by the policy in any event, Mrs C may well have had to remortgage in any event to meet these losses.

Mrs C's representatives have argued that Mrs C had a variable rate on her rental mortgage, which was rising, and her ability to secure a lower rate was impacted by her not having the

rental income, which was because of the delay. I do understand the point made here. However, ultimately, Fairmead aren't responsible for the fact that Mrs C was on a variable rate. It's always a risk with this sort of mortgage, and while I appreciate that she was unable to find a preferential rate due to the loss of rental income, she wouldn't have been in that position if she hadn't opted for a variable rate to take advantage of low interest rates.

The solicitors' fees for switching the mortgage however, are a fixed sum and were incurred as a result of Mrs C trying to mitigate her losses as a result of the delays caused by Fairmead, and so I consider that these fees have a more direct link to Fairmead's actions, and so I propose to direct that Fairmead meet these costs.

Work on the other property

Mrs C has told us that because of the delays in making payments for repairs, and the way in which this impacted her financially through loss of rent, the only way she could continue to keep both properties was to move into the insured address and remortgage her property as a buy to let and rent it out. She has provided us with evidence of her doing so, and of the costs she incurred to bring the property up to standard ready for rental.

While I can see why she feels that Fairmead bear the responsibility for her having to take this action, I won't be asking them to reimburse the costs of any of the works required on Mrs C's home property. This is because, even though Mrs C may not have taken these actions without the failures of Fairmead, she ultimately benefits from the improvements made and will retain this benefit beyond the claim.

It's also work undertaken at an address that isn't covered by this policy, and Fairmead aren't responsible for the condition of that property prior to it being rented out, and so I don't consider it fair to ask Fairmead to cover those expenses.

Mrs C also wanted Fairmead to reimburse her for the emergency repairs that took place at the damaged property. However, the damage at this property has all been considered as at December 2023 under the claim and the settlement which was paid.

Distress and inconvenience

Fairmead offered £1,000 for the distress and inconvenience that Mrs C has been caused. I don't agree this takes into consideration the full impact of the mistakes of Fairmead have had on Mrs C. Our service would agree £1,000 were reasonable where the mistakes of the business have resulted in substantial distress, upset and worry which will last somewhere in the regions of a few months to just over a year.

This claim extended way beyond that, with the claim initially being declined, and the taking two years to get the loss of rent payment, and a further year for the repairs settlement. Mrs C has had to borrow from her son and alter her whole living arrangements to mitigate her losses, and to retain the ownership of the houses. So, I think this amounts to significant disruption to her life, and will have brought with it a level of stress. And so I agree with the investigator that an increased award is appropriate.

Taking into account the drastic changes to her life Mrs C has had to take as a result of Fairmead's incorrect claim decision, followed by considerable avoidable delays, and the distress that will have been experienced living in a property awaiting extensive repairs which took far longer to be settled than it should've. I am asking that Fairmead pay an additional £2,000 for a total of £3,000.

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.

I have received some additional comments from Mrs C in relation to the mortgage which she has asked to be considered. I have thought about these, but I haven't changed my view. I consider the outcome I have proposed to be fair and reasonable in the circumstances.

Fairmead have responded rejecting my proposed outcome. Again, I have considered their points, but they haven't changed my view.

Fairmead have argued that they shouldn't have to pay the additional loss of rent payment nor any interest on the existing or proposed loss of rent payments because the delay in reaching a settlement wasn't solely down to them. They said that if Mrs C had produced a more realistic claim at the outset and evidenced it, there wouldn't have been such a delay, and that the negotiations were drawn out as a result.

I've thought about this, but I don't agree for the following reasons.

In respect of the interest on the loss of rent payment made in May 2023, I have awarded this because the delay until this point was due to Fairmead declining the claim. It wasn't until this service recommended that Mrs C's claim should be allowed to proceed that the payment was considered, and so I don't think it's fair to say that Mrs C contributed to the initial delay, and this interest is therefore due.

In respect of the further loss of rent and interest I have recommended from January 2023, again I'm satisfied that the main responsibility for the delays in settling the claim lies with Fairmead, and so this is awarded under my fair and reasonable remit rather than under the policy terms. While I accept Fairmead's point that Mrs C's initial claim was for substantially more than the final settlement agreed, according to their own interim reports, Fairmead were still not offering anything for the water damage as late as July 2023, sticking to an offer of only £21,573.97 for incidents of malicious damage. There was clearly water damage to be considered which had been evident to them from the outset of the claim, and which ultimately formed the largest part of the settlement.

The evidence in my file suggests that Mrs C had switched her mortgage and moved into the risk address from 18 March 2023 so the loss of rent payment will be for a relatively short period in any event.

In respect of the council tax and utility bills, Fairmead say that these are already covered under the loss of rent aspect of the policy and that they have never been presented with these as part of the claim. I don't agree that they are covered by loss of rent – as they are an expense that would have been payable by the tenant if the property had been let, and in any event. I am awarding this payment under my fair and reasonable remit, because the loss was caused by the delay in being able to repair and relet the property as a result of the claim decline and the protracted negotiations. It will, however, be for Mrs C to provide evidence of payment of these costs to Fairmead from the date the claim was declined until the date the repairs settlement was made. My understanding from the information I have seen that the appropriate discounts were applied for and granted.

In respect of the solicitors' fees and the remaining compensation, Fairmead have said that they had not been made aware of any hardship that Mrs C was experiencing. Mrs C has, however, explained to us the impact of the original decision to decline her claim, and the protracted dispute that followed. It resulted in her having the inconvenience of having to

move to the risk address, and borrow money in order to not lose the properties. I consider that the solicitors fees are a consequential loss arising from having to switch her mortgage, and the additional compensation is appropriate to reflect the distress and inconvenience caused throughout this protracted claim.

And so, although I have taken into account Fairmead's comments, I will be making my final decision in line with my provisional findings.

Putting things right

To put things right I think Fairmead should:

- Pay 8% simple interest on the loss of rental income payment already made from the date that they declined the claim until the date that it was settled in May 2023. The interest will be payable from the date that each periodic monthly rental payment would have been due, until the date of settlement.
- Pay a further loss of rent payment January 2023 to either the date that Mrs C switched her mortgage and moved into the property, or February 2024 when the repairs settlement was made – whichever is soonest.
- Pay 8% interest on this additional loss of rental income payment from the date it commences in February 2023 until the date the repairs settlement was made in February 2024. The interest will be payable from the date that each periodic monthly rental payment would have been due, until the date Fairmead make payment.
- Pay any council tax liability and utility bills for the period from the date the claim was declined until the date that the repairs settlement was paid, plus 8% interest on these sums from the dates they were paid Fairmead make payment.
- Make a payment to reimburse Mrs C for the solicitor fees she incurred when changing her mortgage, plus 8% simple interest from when this was paid until Fairmead make payment.
- Increase the compensation payment from £1,000 to £3,000 and pay any difference due.

My final decision

My decision is that I'm upholding Mrs C's complaint and directing Fairmead Insurance Limited to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 17 June 2025.

Joanne Ward
Ombudsman