

## The complaint

Mr W's complaint is about a claim he made on his FAIRMEAD INSURANCE LIMITED ("Fairmead") legal expenses insurance policy, which was declined.

Mr W feels Fairmead treated him unfairly.

In this decision all references to Fairmead include their claims handlers.

## What happened

I issued a provisional decision in which I said the following:

*"I've considered the relevant information about this complaint.*

*Having done so, I'll be departing from the findings of the investigator and upholding Mr W's complaint for different reasons and with different redress.*

*Before I explain why, I acknowledge the volume of submissions made by each party in this complaint. I have read everything they've said but I won't be addressing it all. That's not intended to be disrespectful. Rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of Mr W's complaint, namely whether Fairmead did something wrong here and if so, what they need to do to put things right.*

*The starting point is the policy terms. They provide property protection cover for Mr W as follows:*

- “
  - a) *To pursue a legal action following an event which causes or could cause physical damage to your home.*
  - b) *To pursue or defend a legal action following a legal nuisance or trespass.”*

*In this complaint Mr W wants to bring a third-party claim against the insurer for the developers of neighbouring land which he says caused damage to his own property.*

*Fairmead declined Mr W's claim for several reasons but have since clarified the reasons they are now relying on are as follows:*

- *An appointed a panel firm of Solicitors considered the property damage claim and determined that it did not have reasonable prospects of recovery because the developer was now insolvent.*
- *There is no indemnity available to Mr W for this claim because he has exhausted his limit with a right to light claim that arises out of the same originating cause- namely the erection of the same development.*
- *The claim Mr W wishes to pursue is against the insurer for the developer, which would include an application for disclosure of insurance. This is not an insured event under the policy.*

I've thought about the reasons why Mr W's claim was declined and what both parties say about this. The policy terms set out that:

*"The most we will pay for all claims resulting from one or more event arising at the same time or from the same originating cause is £50,000."*

*In this case I need to consider whether both claims Mr W has made arose from the same events that Fairmead are contending applies- namely the erection of the neighbouring building. I appreciate one claim is for property damage and the other was for a right to light but I'm satisfied that they do all stem from the erection of the same development, and I don't agree with the distinctions the investigator made in his view. These were that the two claims had different originating causes- one being planning permission being granted to allow the building to be constructed and the other being the damage caused to Mr W's land when the property was constructed. If I were to take planning permission being granted as the originating cause of the first claim, then this would lead me to the conclusion that Mr W's claim was in relation to this issue alone. But it is not. The physical nuisance he was complaining about originates from the erection of the building not the planning permission itself. Whether that permission permitted the development isn't in my view relevant until it was constructed and caused the physical nuisance complained of. Equally the damage Mr W is claiming for was caused as a result of the erection of the building rather than anything separate from that. So, I agree with Fairmead that these two claims do both stem from the same originating cause. Given the right to light claim has exhausted the level of indemnity afforded to both claims, there is nothing left in terms of cover for Mr W to explore a claim for property damage. As such, the remaining reasons why Fairmead declined the claim make no difference to the outcome of Mr W's claim. Because of this I don't think Fairmead need to do anything more in relation to exploring this claim further.*

*When reaching this conclusion, I've taken into account what Mr W says about the claims being separate in nature. I agree with that. They are both separate types of action but that doesn't change the originating cause, which in my judgment is the erection of the development in both cases.*

*I turn now to the question of how Mr W's claim was handled. I agree with the investigator that Fairmead, did not treat him fairly. Fairmead accepted there were several delays their handling of his claim. Fairmead offered Mr W £175 to compensate him for this. But I don't think this goes far enough to recognise the errors they caused. For example, it wasn't until the latter stages of Mr W's complaint to this Service that Fairmead accepted they'd referenced the wrong legal entity when referring to the developers in this claim in error. And they hadn't up until that point acknowledged they could consider the property damage and right to light claims as distinct and separate from one another, subject to the same indemnity limit being applicable to them both. Fairmead had also failed to address the fact that they had arranged for a panel firm to consider the property damage claim on a standalone basis in 2022. The conclusion reached by that panel firm was that the claim didn't have reasonable prospects of recovery. Although I haven't considered this further given my findings above, I think that Fairmead's approach to Mr W's claim was confused and gave him mixed messaging about what was and wasn't covered. From what he's said, I'm satisfied that this caused Mr W both considerable confusion and distress and that he found it difficult to address what Fairmead had said. As such I think Fairmead should do more than they have proposed in this matter to compensate him Mr W for this. I think the award should be increased to £350 which better recognises the failings in the way Fairmead handled this claim.*

*Mr W wants to be compensated for various other things including the cost of the reports he obtained as well as legal consultations and administrative costs for document retrieval. I haven't seen anything to suggest that Fairmead requested he incur these expenses nor that*

*they agreed to pay for them in line with their policy terms. If those costs were incurred by Mr W to help substantiate he had a claim capable of cover, then that's not something I think Fairmead are responsible for. That's because it's incumbent on a policyholder to establish they have a valid claim before an insurer can consider whether to cover it. We wouldn't expect an insurer to be responsible for any costs a policyholder incurs to achieve this and generally I wouldn't anticipate there to be much, if any costs attributable to that kind of administrative work. In this case it's not clear what Mr W is claiming for and why. Without any further details or evidence that Fairmead asked him to obtain evidence that was beyond the ordinary, I can't say that Fairmead need to do anything further.*

*Mr W also says Fairmead's actions prolonged the damage to his property, potentially increasing his repair costs and reducing the value of his home. Whilst Mr W has not provided any evidence to support this claim, I don't think it is one that Fairmead are responsible for even if he were able to. It is up to Mr W to mitigate any losses he has and for the reasons I have set out above I don't think this was a claim that was capable of cover in any event. That means it would never have been covered once indemnity on the right to light claim was exhausted. So, it was a matter for Mr W to either repair the damage to his property himself or pursue it with the third party's insurers directly, without the benefit of Fairmead funding this.*

### **Putting things right**

*Fairmead should pay Mr W £350 in compensation for the distress and inconvenience caused to him by the way in which they handled his claim."*

I asked both parties to provide me with any comments or evidence for me to consider in response to my provisional findings. Fairmead accepted my provisional decision, but Mr W has not. In summary he says he agrees with my finding that the way Fairmead handled his claim was unfair and caused distress but not what I've said about one indemnity limit applying to both of his claims and that insolvency defeats prospects.

### **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, I remain of the view that Mr W's complaint should be upheld in the same way and for the same reasons set out within my provisional decision.

Mr W maintains that his claims arise from separate originating causes. He says that the right to light claim requires proof that the building's design and position interferes with an easement and the property damage claim requires proof of breach of duty in construction and methodology. But these aren't originating causes as Mr W suggests, rather they're what is required to prove a claim. The originating cause in my view in both cases is the erection of the development. That is the common cause. Without it Mr W would have no claim at all. So, I don't agree that his submissions change my view of things.

Mr W has also referred to previous decisions made by this Service which he says supports that the causes of both of his claims are separate. I have considered what he says but those circumstances don't apply here and in any event, we determine each complaint on its own merits. In this case, it's clear to me that the originating cause of the two claims cannot be separated and as such there isn't a separate indemnity limit open to Mr W to utilise. For that reason, his arguments about prospects of recovery and the merits of his claim more generally fall away because they make no difference to the position he finds himself in - namely with an indemnity limit that has been exhausted. Therefore, nothing further is available to him in terms of funding. For that reason Fairmead were not wrong to decline his

claim.

Mr W has asked me to increase the compensation payable to him for the poor handling of it to £750. I've considered what he's said but what he's referenced is a sliding scale. In this case I'm satisfied that the award I've made here is commensurate with awards we'd make in similar circumstances to his own, taking into account the impact this conduct had on him. As such I won't be awarding anything further.

### **Putting things right**

Fairmead should pay Mr W £350 in compensation for the distress and inconvenience caused to him by the way in which they handled his claim.

### **My final decision**

I uphold Mr W's complaint against FAIRMEAD INSURANCE LIMITED and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 December 2025.

Lale Hussein-Venn  
**Ombudsman**