

The complaint

Mrs M complains about how Fairmead Insurance Limited (Fairmead), handled a claim under her home insurance policy for damage to a wall at her property caused by ingress of water.

Any reference to Fairmead in this decision includes their agents.

What happened

Mrs M had a three-year, fixed price home insurance policy with Fairmead. In January 2023 Mrs M noticed a damp patch on the lower part of the lounge wall at her property. She had a builder look at the damp patch and they thought it could be the proximity of a neighbour's fence, which was only a few inches from the wall, potentially allowing for moisture to form in the gap and then penetrating the wall.

Mrs M contacted Fairmead to tell them about the damp patch. LV sent an assessor (LDS) to carry out detection of the ingress. In their report following the visit, LDS concluded the cause was an outside water ingress. There was a very small void area between the external lounge wall and the neighbour's fence, potentially trapping rainwater in the soil in the area with no room for it to dissipate, so permeating the wall. LDS also found perished pointing along the external wall and insufficient damp proofing, making the area liable to rainwater ingress. There were also broken areas and cracks in the rainwater downpipe.

Subsequently a loss adjuster (GHG) was also appointed, who visited the property. In their report, GHG concluded there wasn't any evidence of an escape of water within the property and the damp patch appeared associated with the proximity of the neighbour's fence to the external lounge wall. They didn't think an insured peril was the cause of the damage, water having penetrated the wall over a period of time, bridging any damp proof protection.

GHG advised Mrs M they couldn't see the damage fell under an insured peril. If there was an issue with the neighbour (Mrs M thought the neighbour may have moved the fence onto her land so it was too close to the wall) it might be best for the claim to be handled by any legal expenses insurer.

Fairmead then declined her claim on the grounds that the damage was caused by the neighbour, a third party, which wasn't an insured peril under the policy. Fairmead said the damage hadn't occurred due to a single specific event such as escape of water from a burst pipe, overflowing drain or storm. The damage to the lounge wall was caused by an external source, not an event covered under the policy. Fairmead also noted the factors in LDS's report, and said it was likely water had been entering the wall over a period of time – damage occurring gradually was excluded from the policy.

Mrs M complained to Fairmead about the decline of her claim, but they didn't uphold the complaint. In their final response they referred to the factors likely to have caused the damage set out in LDS's report and the subsequent decline of the claim. They also responded to concerns Mrs M had raised about the attitude of GHG – Mrs M said they were rude to her and had asked her whether she had legal expenses cover in place, as she might be able to make a claim for the damage against the neighbour. Fairmead said GHG was trying to provide Mrs M with options but apologised if Mrs M felt GHG acted inappropriately.

Fairmead concluded GHG hadn't delayed assessment of the claim but did accept there had been a lack of communication and Mrs M had to call on several occasions to ask for updates on progress with her claim. In recognition of this, Fairmead offered Mrs M £50 in compensation.

Mrs M then complained to this service. She said Fairmead should have accepted her claim under her policy. She'd made many calls to Fairmead in relation to the claim, which had significantly increased her telephone bill. She wanted Fairmead to accept the claim.

Our investigator didn't uphold the complaint, concluding Fairmead acted fairly and reasonably when they concluded the cause of the damage to the wall wasn't covered under the terms of the policy. He also thought Fairmead's offer of compensation was fair. He noted LDS and GHG both concluded the damage was caused by the neighbour's fence being too close to the wall, leading to rainwater collecting in the narrow area between the fence and the wall. He also noted the findings about the pointing being perished and insufficient damp proofing. The water had been entering the wall over a period, not a one-off escape of water. And unfortunately Mrs M didn't have legal expenses cover under the policy.

Mrs M disagreed with the investigator's view and asked that an ombudsman review the complaint. She said the damage was caused by the neighbour's fence being up against her wall and this had caused the water ingress. She didn't think the need for re-pointing was related to the damp in the wall. She also thought Fairmead could have made a 'counter claim' against the neighbour, as it was the proximity of their fence that had led to the water ingress. Mrs M didn't think she needed legal cover, given the level of cover she'd taken out under the policy. She'd also had to make 50 -60 calls about her claim. Mrs M was also concerned at the speed with which our investigator provided his view after being assigned to the case.

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.

My role here is to decide whether Fairmead have acted fairly towards Mrs M. In doing so, I'd want to assure Mrs M I've considered all the evidence and information she (and Fairmead) have provided. This includes the reports from LDS and GHG as well as the representations made by Mrs M when bringing her complaint to this Service, including her detailed response to our investigator's view.

Looking at the circumstances of the case, the key issue is Fairmead declining to cover the damage to the lounge wall of Mrs M's property, because they don't consider the damage is covered by an insured peril under the policy. They believe the damage is due to issues with the neighbour's fence (being too close to the wall). Mrs M says the damage should be covered under the policy. A second issue is the time taken to assess the claim and a lack of communication from Fairmead during the claim process.

On the first issue, I've considered the evidence and information available, including the reports from LDS and GHG. Looking at LDS's report, the key conclusions are as follows:

"A visual inspection was carried out and our engineer discovered the boundary line to be tightly enclosed between the neighbouring fence creating an area of concern for rainwater ingress..."

Our engineer has carried out a leak detection survey and our equipment has detected the source of water damage to the lower lounge wall to be caused from an outside water ingress.

There is a very small void between the external wall and fence which could potentially trap rainwater into the soiled surface between the areas with no room for escape causing outside water to migrate into the unprotected extension wall. Our equipment indicated perished pointing along the external wall and insufficient damp proofing deeming the area to be liable for rainwater ingress."

The rainwater downpipe also requires repair as broken areas and cracks were identified."

Turning the GHG's report, the key extracts are:

"The operative peril under which this claim is being set up is Escape of Water.

On this occasion we can confirm that there does not appear to be any evidence of Escape of Water within the property.

The issues appear associated with the neighbouring proximity of fencing to the external brickwork."

Fairmead declined the claim on the grounds an insured peril wasn't the cause of the damage. They considered the damage under the Escape of Water peril, which the policy defines as:

"Loss or damage by water as a result of a burst frozen, leaking or overflowing fixed domestic drain, water or heating installation, kitchen appliance or fixed domestic water piping/pipes."

The definition wouldn't include water ingress from an external source, as is the case of the damage to Mrs M's wall. So, I've concluded the damage wouldn't fall under the escape of water section of the policy.

Mrs M's policy includes accidental damage cover. The policy defines accidental damage as:

"Unexpected and unintended damage caused by sudden means."

Looking at the definition alongside the description of the damage included in the extracts from LDS and GHG's reports, I can't see that the damage can be considered accidental. The circumstances indicate moisture has entered the wall over a period of time and caused the damp patch – it wasn't through 'sudden means'.

Taking all these points together, I've concluded the damage to Mrs M's wall isn't something that would fall under an insured peril. When making a claim, the onus in the first instance is on the policyholder to show the loss or damage being claimed for falls within an insured peril under the policy. As I've concluded the damage isn't something that falls under an insured peril then I've concluded Fairmead acted fairly and reasonably in declining the claim.

While I've reached this conclusion, I've also considered the point made by Mrs M that she didn't think the need for re-pointing was related to the damp in the wall. Looking at LDS's report, this factor is only one which they believe contributed to the water ingress and consequent damp. And the photographs in LDS's report show there were areas of the wall

where the pointing had perished. And this point doesn't change my conclusion that the damage wasn't caused by something that would fall under an insured peril.

I've also considered the point about the option of using legal expenses cover. Regarding the point about GHG discussing the option of using legal expenses cover to pursue a claim against the neighbour, the report states:

"During the visit, our loss adjuster again was able to discuss the circumstances in more detail with the Insured and undertake an assessment of the damage occasioned to the property.

We discussed general claims procedures and advised that we could not see at this stage whether an Insured Peril had been engaged.

If the Insured's version of events is correct in that there is an issue with their neighbour, then it may be best for this claim to be handled by any Legal Expenses insurer.

We advised the Insured that we would review and refer to insurers."

GHG advised Mrs M to consider approaching any legal expenses insurer. Looking at the policy, the legal expenses cover section includes cover for 'Protection of property', including legal costs for pursuing a legal claim and/or arrangement of mediation for a dispute relating to the policyholder's property, including an event which causes or could cause physical damage to the policyholder's property. This would appear relevant to Mrs M's position regarding the neighbour's fence and what she considers their encroachment on her land.

However, looking at the Policy Schedule, legal expenses cover is optional, and Mrs M didn't include the cover under her policy. So, she wouldn't be able to consider bringing a claim under the legal expenses section. Mrs M says she didn't think she needed legal cover, given the level of cover she'd taken out under the policy. However, it's for Mrs M to decide what level of cover to take out, including whether to take out any of the optional covers (including legal expenses cover). From what Mrs M has said, it appears she considered whether to take out the cover but decided not to. I've not seen anything to suggest she didn't make an informed decision not to take out the cover, so I can't reasonably conclude Fairmead have acted unfairly or unreasonably.

Mrs M also thinks Fairmead could have made a 'counter claim' against the neighbour, as it was the proximity of their fence that had led to the water ingress. However, this doesn't change my conclusion that the damage wasn't covered under an insured peril, so Fairmead acted reasonably in declining the claim. I wouldn't expect them to accept a claim they thought wasn't covered under the policy and then seek to claim the costs of settling the claim from the neighbour or (more likely) their insurer.

The second issue of the complaint is the time taken to assess the claim and the lack of communication from Fairmead. Fairmead say GHG hadn't delayed assessment of the claim but did accept there had been a lack of communication and Mrs M had to call on several occasions to ask for updates on progress with her claim. In recognition of this, Fairmead have offered Mrs M £50 in compensation.

Looking at the sequence of events, I don't think Fairmead took an unreasonable time to assess the claim and decline it. And while the involvement of both LDS and GHG would necessarily have added some time to the assessment process, I don't think it unreasonable for Fairmead to have appointed a leak detection firm in the first instance, to inspect the property and determine the cause of the leak (the damp). And their report is (as Mrs M

acknowledges) comprehensive and thorough. Nor was it unreasonable for Fairmead to appoint a loss adjuster to consider LDS's report alongside the question of whether there was an insured peril.

On the communication issue, Fairmead have acknowledged there was a lack of communication and Mrs M had to call on several occasions (Mrs M says she called between 50 and 60 times). I agree this would have been distressing and inconvenient to Mrs M and Fairmead could have been more proactive in their communication. Considering the circumstances of the case, I think their offer of £50 compensation is fair. My understanding is they haven't paid the compensation to Mrs M, so they should pay her the £50 compensation.

Mrs M also raises a concern at the speed with which our investigator issued their view after being assigned to the case. However, my role here is to consider the case afresh and come to an independent view of the complaint. It isn't to review the approach and way our investigator reached their view.

My final decision

For the reasons set out above, my final decision is that I uphold Mrs M's complaint in part.

Fairmead Insurance Limited have already made an offer to pay £50 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Fairmead Insurance Limited should pay Mrs M £50 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 November 2023.

Paul King
Ombudsman