

The complaint

Mr M complains about how Fairmead Insurance Limited responded to his home insurance claim.

Fairmead are the underwriters (insurers) of this policy. Much of this complaint concerns the actions of their appointed agents. As Fairmead accept they are accountable for the actions of their agents, in my decision, any reference to Fairmead should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Mr M and Fairmead. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr M made a claim on his home insurance policy in August 2019, following a flood. Fairmead responded to the claim and ultimately offered Mr M a number of options to settle the claim. Mr M chose to accept a cash settlement of £28,000 without any requirement to show invoices. The offer was paid in January 2021. Mr M later disputed the cash settlement and said that further damage (mainly from a rat infestation and damp) was caused to his property whilst in the care of Fairmead's appointed agents.

Mr M complained to Fairmead. In their final response letter dated 14 May 2023, Fairmead said there had been some delays, due mainly to them needing to review the invoices submitted by Mr M and they were waiting for Mr M to either accept their previous offer or supply requested evidence to support that he'd suffered a further loss at the because of Fairmead's actions. Mr M referred his complaint to our Service for an independent review.

Shortly after the final response letter, on 15 May 2023, Mr M was made aware of a further full and final settlement offer of £30,000. He accepted this offer on the same day.

Our Investigator considered the evidence but didn't recommend that Fairmead needed to do anything further. The complaint was then referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've reconsidered the complaint for a final decision.

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 scope of my decision

It's very important that I remind both parties of our role (as set out in the preceding paragraph) and they understand that. A vast amount of evidence has been provided in this complaint by both parties. I find that much of it is irrelevant as it relates to events long before this complaint was raised. It's to be expected that as years pass and both parties became more entrenched in their positions, that the evidence pile of emails and reports would grow.

Our Service previously considered the earlier stages of this claim under a different complaint reference. Therefore, my decision has only considered events after our involvement in that previous complaint ended.

Given some of Mr M's dissatisfaction spans the entire time since the claim was made, on occasion I may reference events covered by the previous decision in this decision. This doesn't mean I'm making new findings, I'm simply referencing for context. For example, I'm not considering whether the initial claim settlement was fair, but I will need to reference it as one of Mr M's points is around having to provide evidence of further losses - despite not needing to provide invoices as a condition of that earlier settlement.

I also won't be considering a separate claim event from 2022 as that claim was responded to by a different insurer, but I have kept in mind that the second flood event will likely have caused damage to Mr M's property as a claim was made.

Responses to my provisional decision

I thank Mr M again for sharing detail about his family's experience over the past number of years. It's not in dispute it has been a very difficult time for him. Mr M has also let us know about his health and I'm very sorry to hear that news.

Mr M has provided an in-depth response to my decision. As set out previously, I won't be addressing each and every point – as that's not how our Service works. To do so would seriously impair the effective operation of our Service.

I mean no discourtesy at all to Mr M, but I will not be responding to the large volume of questions and statements he has sent following my provisional decision.

I can confirm to Mr M (in relation to his provisional decision response) that I have considered the relevant FCA rules, such as ICOBS, in relation to how Fairmead have dealt with this claim. But our Service is an alternative, informal dispute resolution service. Although I may not have directly addressed every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Mr M's main argument is that although he feels he accepted a further offer in 2023, this was to settle any damage caused by the *flood event only* and he did not accept anything in relation to loss or damage caused to his home by Fairmead or their contractors or the subsequent pest infestation that he says they admit liability for. As outlined previously, my interpretation of the offer made and accepted in 2023 was that it intended to draw to a close his dispute with Fairmead following his continued unhappiness since the earlier offer (cash settlement without invoices). Mr M of course is entitled to his own opinion on this.

My final decision is based on the evidence available and it shows that Mr M was in correspondence for a long period of time, across many months, with Fairmead about the damage caused by pests, damp, damp proofing and the general issues he was unhappy about. He then then received an email from his loss assessor (quoted below) with the subject '*Best & Final Settlement Offer*' (which followed the previous lower offer a few months earlier) refers to the staircase issues, damp proofing, alternative accommodation and other costs incurred.

I also note that an email Mr M sent to his loss assessor on 9 May 2023 (prior to the £30,000 offer) stated "*attached is a videoclip of the infestation damage.....This should give you some idea of the extent of damage.*" The loss assessor replied with the email I've quoted below and it's my opinion, on balance, that Fairmead's increased offer was intended to draw a line

under the whole dispute. As outlined previously I haven't found sufficiently persuasive supporting evidence to fairly conclude, on balance, that Fairmead need to do anything further in relation to this complaint.

Mr M has said I have overlooked the connection between replacement damp proofing and further flooding and infestation, but I disagree. I've found insufficient evidence to conclude, on balance, that Fairmead acted unfairly on this point.

Mr M has also said that criminal damage has been caused to his property by Fairmead during the course of responding to his insurance claim. I have considered the service provided by Fairmead when responding to this his claim, but allegations of criminal damage would be best suited for a court of law to consider - outside of the scope of my final decision. He has also referred to taking legal action against Fairmead to sue them for damage caused to his property. Mr M of course retains this option and would need to seek legal advice, but I won't be asking Fairmead to revisit their full and final settlement offer, or do anything further as part of my decision.

I can't advise Mr M on what steps to take next, but my final decision marks the end of our Service's involvement in trying to informally resolve his dispute with Fairmead. He retains all other dispute resolution options.

In summary, Mr M's detailed responses to my provisional decision don't materially change the outcome I've reached. I've therefore included my key earlier findings below for reference as they form the basis of this, my final decision.

The offer to settle this claim (2023)

As explained, I'm not considering the 2020/2021 claim settlement. An email from Mr M's loss assessor to him dated 15 May 2023 is important. This is because the offer is in relation to many points that Mr M has referred to our Service. Below are key extracts. They are lengthy, but very important:

*"Further to the ongoing correspondence on this matter I have had further discussions with [Fairmead's agents] pertaining to a **possible settlement** [bold added for emphasis by Ombudsman]*

*Unfortunately, they are of the view that **insufficient information has been provided to support the claim that the staircase required full replacement. Insurers and adjusters advise the documentation provided from the council does not support this element of the claim.** [bold added for emphasis by Ombudsman] **They have reviewed the matter of the damp proof membrane further** [bold added for emphasis by Ombudsman] **and they maintain their position that this has also not been satisfactorily proved as arising as a result of the incident. Finally, they continue to maintain that you received adequate funds for alternative accommodation and the sum total of costs issued for AA cover the appropriate period.** [bold added for emphasis by Ombudsman] **Notwithstanding this they have referred to an email communication from your Solicitor in which she accepted a settlement sum in this regard which was in full and final settlement.** [bold added for emphasis by Ombudsman] *The wording of the email specifically states it was in full and final settlement which leaves you at something of a sticky wicket unfortunately....**

*[Fairmead's agents] have advised they are prepared to increase their offer to £30,000.00. We are advised **this is their best and final offer** [bold added for emphasis by Ombudsman] **and of course would be subject to final agreement by***

Insurers.

*I understand this is not what you hoped for, however we have it good authority this is the **best and final offer**. [bold added for emphasis by Ombudsman] Should you wish to accept we can proceed to finalise the settlement for you. However, should you wish to decline we would be unable to assist any further. **Should you decline and proceed with the FOS please be aware this process is likely to be lengthy. I say this not to discourage you, but rather to make you aware that the FOS will request the full file** [bold added for emphasis by Ombudsman] from both [Fairmead and their agents]. They will then ask for all your documentation and one of the things they will want is for you to quantify- ie. value your claim with detailed evidence in support of all costs sought. They are not a swift organisation and so it could take several months if not over a year.*

*However, **this is entirely your decision to make of course**. [bold added for emphasis by Ombudsman] **Please do think it over** [bold added for emphasis by Ombudsman] and let me know **if you wish to accept or decline** [bold added for emphasis by Ombudsman] the offer."*

Mr M responded to the email around 30 minutes later, at 14.15pm stating: "*I would be willing to accept the £30000.*" I find that Mr M would reasonably have been aware that his options were to either accept the offer; or reject it and show with supporting evidence why he felt it wasn't sufficient; or refer it to our service for consideration.

Of course, the earlier referenced email came from Mr M's loss assessor - and not direct from Fairmead. But I'm satisfied that it is still relevant evidence in the context of setting out the how and why the offer was being made as the loss assessor was acting on Mr M's behalf.

I've also been provided with a copy of a signed acceptance form. The letter is addressed to Mr M and dated 16 May 2023. Mr M has signed and dated it 22 May 2023. The wording of the form states:

*"I hereby agree to accept the sum of [£30,000.00] **in full settlement and discharge of my buildings claim** [bold added for emphasis by Ombudsman] arising under policy number [redacted by Ombudsman] for loss or damage caused by [FLOOD] which occurred on...."*

Mr M has told us at various points that he accepted the offer under 'duress' and was 'pressured' into acceptance. I've seen nothing at all that allows me to fairly agree with Mr M's viewpoint here. He was advised to consider it and I've kept in mind: 1- the wording of the offer, 2- the speed of his initial response, 3- the gap of one week between him being made aware of the offer and him signing the acceptance form and 4- he'd been sent the final response letter prior to receiving the offer and he'd reasonably have been aware that he'd be able to reject the offer and refer the complaint to us for an independent review and 5- he'd already set the complaint up with our Service.

I've then considered the offer and whether it consists of a full and final settlement or not. This is important because my final decision is legally binding, should Mr M accept it. But it's not the role of our Service to interfere with or override another binding settlement offer that had been accepted and paid prior to our involvement in the dispute. The three main elements of forming a contract are offer, acceptance and consideration. I'm satisfied they've been met here.

Fairmead were offering to pay Mr M £30,000 to bring this claim to a close. Mr M was committing to a full settlement and discharge of Fairmead's responsibilities. I've also seen

evidence that the settlement was transferred to Mr M. I've noted that Mr M had previously accepted an earlier offer of £28,000 without needing to provide invoices. It may have been the case that he felt he could accept this latest offer and then challenge it again later. But I'm satisfied it was made clear to him this would be final settlement of the claim and it would bring matters to a close.

Having carefully considered all of the above, I'm of the opinion that a binding agreement was formed between Mr M and Fairmead when he accepted their offer to settle the claim in May 2023 and they paid the offer. This came after the final response letter but I'm satisfied the offer materially relates to the subject matter of this complaint we've been asked to consider.

Mr M's comments about the earlier offer being delayed being paid carry little weight as there's no evidence he attempted to return either settlement. In any case, I'm not considering the 2020/2021 offer - as it occurred prior to July 2021.

Generally, this would mean that I would consider dismissing the complaint under the relevant rules under which we operate - DISP 3.3.

<https://www.handbook.fca.org.uk/handbook/DISP/3/3.html> Referring back to the loss assessor emails (prior to Mr M's acceptance) Mr M had a number of options, but in my opinion he has effectively tried to create a further 'hybrid option' by accepting the offer and then continuing to challenge it. It could also be argued that Fairmead have enabled this behaviour indirectly - as a consequence of trying to treat him fairly and engaging with subsequent challenge to the 2021 offer that was paid.

However, as our Investigator has already issued a view on the complaint, for fairness to Mr M and given how long this complaint and claim have been going on for - I've gone on to consider the merits of this complaint.

The merits of Mr M's complaint

It's not in dispute that this claim has gone on for much longer than either party would have liked. Mr M says that it was unreasonable for Fairmead to later request invoices/proof of works carried out when he accepted their offer to cash settle on the basis of not needing to provide these. I can understand his point and although I'm not considering that earlier offer, the reason they requested the further information was because Mr M alleged that the sum provided was insufficient and further damage unrelated to the claim event had been caused by rats and general damp in the property. I don't find this unusual.

When considering my decision, Mr M needs to understand that when he accepted the cash settlement without the need to provide invoices in 2021 and later in 2023, any contractors appointed were acting on his behalf – not Fairmead. The cash settlements were to indemnify him

I agree with our Investigator that some of the repairs outlined and which formed part of the cash settlement will already have accounted for further damage caused by rats or mould. By this I don't mind that further damage was foreseeable, but simply that if a wall was being removed anyway under the June 2020 report, whether it was further damaged by mould or damp is irrelevant.

A large part of Mr M's complaint revolves around the damp proofing and tanking. He says Fairmead have caused further damage to his property by not agreeing to replace the tanking. Based on the evidence provided, I haven't seen sufficiently persuasive evidence that Fairmead removed the tanking system already in place. I'm also satisfied they made a suitable allowance for the necessary repairs, not replacement to be made to it. Mr M

provided a quote for a new system, but in my opinion it would result in betterment and that's not the purpose of this type of insurance policy.

Mr M recently provided copies of receipts he says show his outlay wasn't sufficiently covered by Fairmead's claim settlement. I had queried what some of the receipts related to, for example a receipt dated 3 August 2021 for over £300.89 for artificial grass. Mr M recently explained that this was a cheaper work around solution.

Another point of contention has been the replacement of a staircase that Mr M says doesn't meet buildings regulations. Fairmead have said:

"No evidence has been presented to confirm the staircase required replacing or that the one in situ was no longer compliant with regs. A qualified surveyor (inspected the property in June 2022 and did not advise any work was required to the staircase."

I note in email sent on Mr M's behalf after the report, it is stated:

"6. The escape stairs/ladder from the master bedroom has been removed and no longer complies with escape (regulation 2.9).

Please see attached drawing that shows what the existing ladder should have looked like. [Mr M's name redacted] informs me that the ladder has never been there, however when the flat was originally signed off building regulations allowed a ladder. Regulations now require a staircase, the reinstatement of a ladder will ensure that a staircase will not be required."

The rest of the council report and the vast majority of issues flagged relate to fire safety, smoke detectors. I find that based on the available evidence, Fairmead haven't acted unreasonably on this point and Mr M hasn't shown that he's lost out with sufficiently persuasive evidence.

It's very unfortunate that Mr M has said the condition of his property deteriorated. He has referred to damp issues throughout, pest infestation, problems with windows, walls and the boiler. But again, on balance, I'm not persuaded that Fairmead's 2023 offer to resolve this complaint and claim was unfair or unreasonable or that they need to do anything further.

Other points raised by Mr M

Many additional points have been raised by Mr M but I'm not going to address all of them as they're not material to the complaint outcome.

I agree with Mr M that when the previous loss adjuster left Fairmead he should have been updated, out of courtesy. But I don't find that this, overall, materially affected the claim journey given how long matters have gone on for. But it also wasn't unreasonable that no contact was made given they were awaiting a response from him or his representatives. In any case, it's reasonable to expect that should issues have remained outstanding on the scale that Mr M has described, either Mr M or his representatives wouldn't have waited more than six months to follow up. There were also long periods of time where Fairmead were waiting on responses from Mr M.

Mr M has raised various other points about his outlay, including council tax, fines and legal expenses. I'm satisfied that Fairmead responded fairly to his alternative accommodation claim and note that Fairmead have said that Mr M was paid around £31,000 for alternative accommodation but only provided evidence of a £17,000 spend.

Mr M has referred to the contents settlement and said he needed to use part of it to pay for building works and other contents became damaged in the period where Fairmead were dealing with the claim. As referenced earlier, Mr M accepted a full and final settlement and if he chose to not replace some of his contents and instead put that towards building costs - that was his own decision to make.

Mr M has outlined that he wants a large settlement figure to resolve his claim and complaint. Although he's provided copious amounts of evidence, on the balance of all the evidence provided from both parties, I'm not persuaded that Fairmead need to increase their settlement offer and I don't seek to interfere with it.

Recently, Mr M has said: *"A final payment is no longer final after my insurers take responsibility for the further infestation damage that was previously overlooked."* I find that the offer to consider evidence of invoices/costs related to the infestation were in the interests of being fair to the customer - rather than an expectation that further payments would be made. Acting in the interests of treating Mr M fairly doesn't mean that Fairmead conceded liability on any subsequent damage Mr M is now claiming for.

Even if I identified a persuasive, evidence backed reason for the 2023 claim settlement to be increased, I'm satisfied that a full and final settlement has already been paid and it's not the role of our Service to facilitate a never ending claim. To do so would completely undermine the purpose and legitimacy of any full and final settlement. This could also cause potential legal issues.

My decision will of course disappoint Mr M, but it brings to an end our Service's involvement in trying to informally resolve his dispute with Fairmead. I note that Mr M has referenced taking legal action against Fairmead. Our Service is an informal alternative dispute resolution service. Mr M retains all other dispute resolution options.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 April 2024.

Daniel O'Shea
Ombudsman