

The complaint

Mr W complains about the way Fairmead Insurance Limited trading as Legal and General ["Fairmead"] has handled a claim on his buildings insurance policy following subsidence at his property.

What happened

I issued a provisional decision on this matter on 26 May 2023, an extract of which is detailed below:

"The background to this complaint is well known to the parties so I've provided a summary here:

- An extension at Mr W's property experienced subsidence in 2018. He made a claim on his buildings insurance policy and Fairmead initially declined it under an exclusion for defective design. Unhappy with this, Mr W raised a complaint with this Service in 2019 and it was upheld by an Ombudsman who said Fairmead should reassess the claim without applying that exclusion. Fairmead accepted the claim in 2020 and further investigations and visits were undertaken.*
- These investigations identified the foundations would need piling or the extension might need to be demolished and rebuilt. The work would be in close proximity to drains owned by the local water company and would require Mr W to enter into a "build over" agreement. By signing this, Mr S would accept liability for future problems with the water company drains if they were damaged by the remedial work.*
- Mr W didn't think this was fair and the potential liability for future damage shouldn't sit with him as the remedial work would have been designed and undertaken by Fairmead. So, he declined to sign the agreement.*
- Since then, Mr W says little progress has been made on the building project, which in his view should have only taken six months. He says he's not been provided with a start date and Fairmead has failed to monitor or progress the work. But Fairmead said the claim had stalled due to Mr W's refusal to sign the build over agreement as it couldn't progress matters without this. Mr W raised a further complaint with this Service.*
- Our Investigator explained she could consider events between 22 April 2020 and 31 December 2022. She said it was unfair of Fairmead to expect Mr W to enter into the water company's build over agreement given the obligations it places on Mr W. She said Fairmead should find an alternative way to proceed that avoided this requirement. She also awarded £2,500 compensation for the impact of the delays caused by Fairmead.*
- Mr W accepted the findings but said he was still concerned Fairmead wouldn't provide insurance cover for any damage to the drains after completion of the remedial work.*

- *Fairmead didn't accept the findings. It explained it could arrange a contractor to take responsibility for the drains during the work and to check them after the work was completed. It said the works would have a 10-year guarantee that would cover any subsequent damage, removing liability from the consumer for that time. It proposed a further site visit to explain things to Mr W directly and reassess the proposals and to assess possible current damage to the public drains identified by a CCTV drain survey.*
- *Our Investigator thought the guarantee should be in place indefinitely but Fairmead disagreed and so the complaint has come to me for an Ombudsman's decision.*

What I've provisionally 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 claim is ongoing with a number of issues still being discussed regarding alternative solutions which would avoid piling and about the terms of the policy and the future cover available under it. These issues fall outside the scope of this complaint but Mr W is of course entitled to bring a further complaint once these discussions are concluded if he remains unhappy with Fairmead's answer and renewed proposals.

My decision focuses on the period from April 2020 and December 2022.

The remedial works

- *Fairmead has proposed remedial works to address the cause of the damage and Mr W has concerns about these. He is keen for this Service to influence the engineering approach and the timescales the work is undertaken in.*
- *Our Investigator has already explained that we wouldn't tell a subsidence expert what engineered solution it should employ and we wouldn't impose time deadlines on a business for undertaking the work.*
- *Our role is to consider complaints about things that have already happened rather than what might happen in the future.*
- *But insurers are under an obligation to deal with claims promptly and fairly and I'd expect Fairmead to keep this in mind while handling the remainder of this claim.*
- *The key issue at the heart of this complaint is Mr W's concerns about the potential future liability Fairmead's work will impose on him. He's confirmed he's happy to enter into the build over agreement required by the LWA now he knows Fairmead's contractors will offer a 10-year guarantee.*
- *Our Investigator thought this wasn't long enough and Fairmead should ensure the contractor's guarantee is indefinite. But I don't agree as this Service has no power to tell a contractor the length of the guarantee it should provide, that's a matter for the contractor itself. This Service's power only extends to directions to regulated businesses, in this case that's Fairmead.*
- *Fairmead has offered the reassurance that it is very unlikely the works would fail after the 10 year guarantee has expired and says any problems are much more likely to occur much sooner than that, within the lifetime of the guarantee and this seems reasonable to me.*

- *The contractor will be working as Fairmead's agent and Fairmead is under an obligation to ensure any work undertaken on its behalf under an insurance claim is effective and lasting. So, if there were to be problems in the future and for any reason the contractor's guarantee didn't provide the expected cover for these, I would expect Fairmead to keep in mind this obligation and consider any claim or complaint made by Mr W in relation to the quality of works undertaken on its behalf.*

The delays and their impact

- *Incidences of subsidence by their nature are often stressful for policyholders to deal with and I can't hold insurers responsible for this. But Fairmead is under an obligation to handle claims relating to them promptly and fairly and where it hasn't and has caused avoidable or unnecessary delay, I can consider the impact of the delays on the policyholder.*
- *Our Investigator explained we can't consider the full life of the claim under this complaint as some of this has already been the subject of a previous complaint. But I can consider the handling and any delays from April 2020 when Fairmead issued its previous final response.*
- *Here, I do have to keep in mind Mr W's personal circumstances. He's explained his wife experiences certain medical conditions that mean the ongoing claim and uncertainty will have been particularly challenging. While she's not a named policy holder, I understand why the impact of the delays on his wife would have been distressing for Mr W.*
- *Mr W has explained he has a life expectancy of just three years. He has highlighted the impact of dealing with an extended claim and the uncertainty of when the repairs will start - let alone finish – at his time of life and under these personal circumstances has had an impact significantly more severe than if he were younger. And from considering all the evidence, I can understand why this would be the case.*
- *It's clear to me throughout Mr W has lost faith in Fairmead and its agents and given the circumstances of the claim and how long it's been going on I do understand why. The claim has been declined on previous occasions and I understand why these further problems would have a more significant impact on Mr W.*
- *Mr W now accepts he needs to enter into the build over agreement as he knows Fairmead's contractors will put a guarantee in place. But I understand why he would have been reluctant to do this until he was satisfied he wouldn't be personally liable for future problems with the work.*
- *Recently, Fairmead has said it will revisit Mr W's property to see if there are alternative solutions it could employ instead of the piling option it has been keen to pursue for some years. This seems like a sensible way forward to me but I do think Fairmead could have considered this much sooner than it has. The fact it has only just done so, means it has caused Mr W unnecessary distress and inconvenience over an extended period of time.*
- *Having thought about this very carefully, I think Fairmead should pay Mr W £2,500 in compensation to reflect the significant impact of the delays it's caused in handling this claim."*

The parties responded to my provisional decision. Fairmead said:

- While it wasn't fully in agreement, it accepted my proposed compensatory award of £2,500.
- It confirmed it was investigating alternative reinstatement proposals which would avoid the need for the build over agreement. But it said if these aren't viable, it might need to return to the original proposal which would require Mr W to sign the agreement.
- It also thought Mr W's concerns about signing the agreement went beyond the risk of faulty work or damage caused by the contractors and the 10 year guarantee didn't sufficiently allay his concerns over entering into the agreement.

Mr W accepted the findings in principle but wanted to make a number of clarifying comments.

- The piling solution required the extension to be demolished and rebuilt and the proximity of the piles to the street drainage was the reason behind the requirement for him to enter into the build over agreement.
- He was in fact unwilling to sign the build over agreement until the outstanding issue of Fairmead agreeing to provide ongoing cover for potential future damage to the drains caused by the extension and foundations, was resolved.
- He hadn't ever refused to sign the agreement but had specified a number of conditions before he would. And it was Fairmead's refusal to provide ongoing cover for the drains that halted proceedings
- If the piling solution was pursued, it would have implications for his and his wife's living arrangements. He believed Fairmead was trying to avoid undertaking the remedial work as he said the cost of the rebuilding of the extension and any alternative accommodation required would be far more expensive than any compensation awarded under any complaint he might have to make.

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.

- From the start, I will reiterate my role is to consider complaints arising from acts or omissions by businesses that have already happened and I won't make findings on things that may or may not happen in the future. A number of the points made by the parties relate to ongoing issues that are not yet resolved and I won't be making findings on these for this reason.

Fairmead's comments

- The conversations around alternative proposals which would avoid the requirement for a build over agreement are ongoing. Fairmead points out that if these prove to be unviable, it may need to revert to the original scheme and that would require Mr W to enter into the build over agreement.
- This is obviously something that may or may not happen in the future. Mr W has clarified, contrary to my previous understanding, that he does have other concerns which require resolution before he'll be happy entering into the build over agreement.

And so this is something that will need to be addressed if the alternative proposals prove unviable. I don't have the power to tell Mr W what he has to do in these circumstances.

- Further to my provisional decision, while Fairmead did not handle the claim or communications around the subject well, I am satisfied its request for Mr W to sign the build over agreement was reasonable and, seemingly, only the homeowner can enter the agreement. In connection with this, Fairmead remains potentially liable for any issues that may occur in line with its obligations to ensure any repair is lasting and effective.

Mr W's comments

- I acknowledge Mr W's clarification and comments about potentially having to make further complaints in the future and recognise the inconvenience and frustration this may bring. And while I empathise with the personal circumstances he describes, this Service can't become involved in the ongoing management of a claim as this isn't within our remit.
- Mr W has now clarified he hasn't actually yet agreed to enter into the build over agreement as the issue of ongoing insurance cover from Fairmead under his policy is yet to be resolved. I explained in my provisional decision, this disagreement sits outside this decision and so I won't be making a finding on this. But it seems it's an issue that will need to be addressed if the circumstances arise.
- Mr W has commented on the possible requirement for alternative accommodation and the costs Fairmead will incur if the original proposals are pursued, in relation to its approach to his claim. I understand Mr W's frustration about potentially having to make a further complaint and acknowledge his belief this is a cost-saving tactic Fairmead's employed. I won't comment on this beyond saying Fairmead is required to offer referral rights to this Service when it handles a complaint from a consumer. And any requirement for alternative accommodation is uncertain at this stage, so I won't be making a finding on this.
- I have also previously explained I can't place a time deadline on Fairmead regarding the remedial work once the proposals are agreed. But I will again remind Fairmead of its obligation to handle claims promptly and fairly.

Putting things right

- Having thought about everything very carefully again, including the parties' responses to my provisional decision, I have reached the same conclusion. And that is that Fairmead could have handled the claim much better than it has and its failings caused Mr W significant distress and inconvenience. I will be directing it to pay Mr W £2,500 in recognition of this.

My final decision

My final decision is that I uphold this complaint and direct Fairmead Insurance Limited trading as Legal and General to pay Mr W £2,500 for the distress and inconvenience it caused him through its poor handling of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 August 2023.

Paul Phillips
Ombudsman