

## **The complaint**

Mrs P complains that Fairmead Insurance Limited declined a claim she made under her buildings insurance policy following a landslip.

## **What happened**

I'll summarise the main points about this dispute:

- Mrs P got in touch with Fairmead following a landslip. A retaining wall supports the house and the garden. A section of it near the house failed and some of the previously retained material slipped downwards onto the public footpath below. Mrs P took advice from a structural engineer and shared it with Fairmead.
- Fairmead declined the claim. It said heavy rainfall had caused the section of wall to collapse. But storm damage involving landslip wasn't covered by the policy.
- Mrs P didn't think this was fair. She questioned whether the weather conditions amounted to a 'storm'. And she noted her policy had additional landslip cover, which didn't reference storm.
- Our investigator thought Fairmead had declined the claim fairly. He pointed out that if there weren't storm conditions, a claim under the storm section of the policy couldn't succeed. And whilst there is separate cover for landslip, this would only cover the retaining wall if the foundation of the home was also damaged by the landslip. And the evidence didn't show that was the case.
- Mrs P disagreed with this outcome. She reiterated that she didn't think there were storm conditions at the relevant time. And she said she'd maintained the wall. Referring to the additional landslip cover, she said the engineer thought there likely was damage to the foundations of the home.
- Our investigator wasn't persuaded the evidence did show the foundations had been damaged, so he didn't change his mind.

## **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.

- It's agreed there was a landslip and Fairmead seems to accept that caused the damage to the retaining wall. I haven't seen any suggestion the wall was damaged by anything else. The crux of this dispute is about whether the damage to the wall is covered by the policy.
- The policy covers damage caused in a number of specific ways. There are three which are relevant here.

- Firstly, the policy covers damage to the building by storm as standard. But not when that damage is caused by landslip. The word ‘storm’ isn’t defined in the policy. But I don’t think I need to consider in detail whether there was a storm – or whether it caused the landslip. I’ll explain why.
- As the investigator has pointed out, if there *wasn’t* a storm, then there can’t be a successful claim for storm damage, regardless of the landslip exclusion. And if there *was* a storm, the landslip exclusion would apply as that’s what caused the damage. So either way a claim under the storm section of the policy can be fairly declined.
- Secondly, the policy covers ‘accidental damage to the buildings’. This section also excludes damage caused by landslip. So, similarly to the storm section, regardless of whether there was accidental damage to the buildings or not, a claim under this section of the policy can be fairly declined.
- Thirdly, the standard policy wording doesn’t cover landslip. However, the policy schedule contains an endorsement which effectively adds it to the policy. It says the policy covers damage caused by landslip. But damage to walls isn’t covered unless the foundations beneath the home are also damaged by the landslip. Storm isn’t mentioned in the endorsement, so it’s not relevant to this part of the policy.
- So the key question is whether the house foundations have been damaged by the landslip.
- The engineer has said the landslip is within 2.5m of the house and that means it’s close enough “to have a direct effect on its foundations”. Also, “it must be assumed at this stage that the slip has affected the property support”. More recently, they said they couldn’t investigate the foundation as the landslip is too close, so it would need to be made safe first.
- Taking all of this into account, it’s clear the foundations *could* have been damaged by the landslip. And if that was the case, Fairmead would need to consider the claim further. But the current evidence doesn’t persuade me the foundations have *likely* been damaged by the landslip – it’s merely a possibility or assumption. So I’m satisfied Fairmead can fairly decline the claim under the separate landslip cover, based on the evidence as it stands today.
- Mrs P is entitled to take further advice and/or proceed with work which may show whether the foundation has been damaged by the landslip. If she gathers any information that she thinks shows the claim ought to be covered, she’s entitled to share that with Fairmead. I’d expect it to consider any such information carefully and bear in mind the policy wording when doing so. If she’s not satisfied with Fairmead’s response, she may be able to refer a new complaint to this Service.

### **My final decision**

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs P to accept or reject my decision before 30 August 2023.

James Neville  
**Ombudsman**