

The complaint

Mrs M complains about the way Fairmead Insurance Limited (“Fairmead”) has handled a subsidence claim made on her home insurance policy.

Mrs M is being represented on this complaint, so any reference to her includes the actions and comments of her representative. Any reference to Fairmead includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I’ve summarised events.

Mrs M made a claim on her home insurance policy in 2019 having noticed crack damage to her property. Fairmead carried out site investigations which initially concluded the damage had occurred as a result of clay shrinkage subsidence.

In early 2020, Fairmead confirmed roots hadn’t been found, but that there were significant drainage issues and that these had been repaired by its drain specialist under the subsidence section of her policy. It said it couldn’t repair the pipe belonging to the Local Water Authority (LWA) - which it said was fractured - because it didn’t have authority to do so. It told Mrs M to contact the LWA herself to arrange a repair – which she did.

In April 2020, the LWA responded to Mrs M saying it had looked at Fairmead’s drainage report but there was nothing to suggest the subsidence was due to a defect on its asset. It said the insurer had pointed to clay shrinkage subsidence – caused by roots extracting moisture and altering the moisture content of the clay subsoil – as the cause of damage. Because of this it didn’t deem it necessary to carry out an investigation.

The LWA did subsequently carry out a CCTV survey of its pipe but said no defects could be seen – and so, it wouldn’t take further action. But it said it had identified a defect on Mrs M’s pipe. Fairmead arranged for its drain specialist to reattend, and a subsequent repair was carried out. The specialist said the defective section of the pipe wasn’t displaced at the time of the first repair.

Around this time, Mrs M said the damage to her property had worsened and that she wanted the property’s stability monitored. But Fairmead didn’t consider monitoring to be necessary. Unhappy with how the claim had been progressed, Mrs M complained to Fairmead.

In December 2020, Fairmead sent Mrs M a final response letter. It said its loss adjuster would contact the LWA about the necessary repair to the public pipe, and it apologised this hadn’t been done sooner. To recognise this, it paid Mrs M £250 compensation. Mrs M referred the complaint to this Service. An Investigator considered it but didn’t uphold the complaint. That complaint has long since closed.

In February 2021, the LWA attended Mrs M's property and said the fractures to the pipe were minor and could not be contributing to the subsidence. It did, however, identify a dropped joint on another pipe it owns which runs across the rear of Mrs M's property - which it said it would repair.

Owing to Mrs M's ongoing concerns about the stability of her property, Fairmead agreed to carry out level monitoring. It monitored the property from March to September 2021. It said the results showed the property was stable and so, it could move to the repair stage. Whilst the property was being monitored, Mrs M raised a concern about the soil composition which had been assessed during the site investigations. She said the report indicated the soil was very soft and she had concerns about its load bearing capability.

In response, Fairmead said:

"The dampness may relate to the drainage issues which weakened the soil, but because of the sand content the excess moisture should drain away over a relatively short period of time and the soil return to its natural condition. We are monitoring to check stability and the latest reading doesn't show any significant movement at the present time. In fact, the third set of readings are very similar to the second set, taken at the beginning of April."

Mrs M said she wanted further information regarding the monitoring and cause of damage, so Fairmead arranged for another reading to be taken in December 2021. It said this again confirmed the property was stable.

In February 2022, Fairmead instructed its drain specialist to carry out a CCTV survey of the drains having been told by the LWA there was a blocked pipe within the boundary. Having done so, the drain specialist said there were no cracks or leakage on the private drain.

Following this, Fairmead told Mrs M it was in a position to settle the claim and provided a schedule of works for the repairs. Mrs M raised concerns about the schedule saying it omitted helibar fixings - which she'd previously been told were needed. She also queried why replacing woodwork and works to the hallway and landing hadn't been included. In response, Fairmead said: woodwork isn't included as it hadn't been affected by the subsidence; helibars are no longer deemed necessary as the cracks can be patched by a mason; it had referred her comments regarding the landing and hallway to its contractor for comment.

The repairs were subsequently placed on hold as Mrs M said a leak - unrelated to the claim - had occurred which needed to be resolved before internal repairs could start. In August 2022, the position remained the same. And in September 2022, Fairmead offered Mrs M a cash settlement to bring the claim to a close.

Mrs M didn't accept the cash settlement and in February 2023 appointed her own surveyor who said he'd put together a schedule of works and sought tenders from contractors for the reinstatement work.

In May 2023, Mrs M referred the matter to this Service. In July 2023, Fairmead said it wanted to arrange a visit to Mrs M's property with the contractor to review the schedule of works and finalise repairs.

An Investigator considered Mrs M's complaint but didn't uphold it. In summary, he said:

- He wasn't satisfied Fairmead carrying out a video survey to review the damage and decide the scope of works was unreasonable, or that it meant things had been

missed.

- He hadn't been provided with information to persuade him the property could only be returned to its pre-loss condition if helibars were used. So, he didn't consider it necessary for Fairmead to include these in its scope of works.
- Fairmead can't force the LWA to repair the pipe. He'd seen evidence that Fairmead had written to the LWA and put them on notice that it would be responsible for any further damage or claim as a result of it not completing a repair to its pipe – as advised to do so by Fairmead. And he was satisfied this was a reasonable course of action.
- The need for the pipe to be repaired to avoid “washing away of the fines” was in relation to the LWA pipe, not Fairmead's. So, he couldn't reasonably ask the insurer to take responsibility for work which lays with the LWA.
- Fairmead had provided a reasonable explanation as to why it was satisfied the soil type would return to normal. Without something happening as a result of the water leaking from the drains, he couldn't ask the insurer to investigate matters further.
- He'd reviewed the contact notes for the claim and was satisfied Fairmead had acted reasonably in how it communicated with Mrs M.
- Whilst he acknowledged the claim had been stressful, he didn't consider it necessary for Fairmead to do anything else.

Mrs M disagreed. In response she provided findings from a structural and civil engineer she'd instructed to review the evidence. In summary, the engineer said the subsidence was due to the subterranean pipework and that this had been caused because of the washing out of fine sands and silt from fractured pipework creating voids beneath adjacent foundations.

In concluding, the engineer said:

“It is our opinion that the repairs to the pipework should be implemented as a matter of urgency to stabilise the surrounding ground and foundations. [...]”

She also provided comments from an Environmental Consultant dated June 2020, who said:

“Even if the drains have been sorted now the problems that the broken drains have caused are still causing issues, or at least that is how I see it from the information so far. A structural engineer will be best placed to tell you about underpinning...”

Mrs M also provided an email from the LWA who had said it would expect Fairmead to contact it directly if it considers a defect on their pipe to be causing subsidence.

The Investigator considered the information, but it didn't change his mind. Because Mrs M disagreed, the complaint has been passed to me for an Ombudsman's 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.

I've also kept in mind Fairmead's responsibilities as an insurer – as set out in the Insurance Conduct of Business Sourcebook (ICOBS) to handle claims fairly, promptly and to not

unreasonably decline a claim. Having done so, I'm not upholding this complaint and I'll explain why.

But, before I do, I want to make it clear that whilst I have reviewed the wealth of information provided by the parties, as this Service was set up to provide quick and informal outcomes to complaints, I haven't commented on everything in my decision. Instead, I have addressed the issues and evidence I consider pertinent to deciding the complaint.

I'm also not addressing concerns or the period of the claim which pre-dates Fairmead's final response letter in December 2020. An Investigator has given their opinion on that complaint - which Mrs M accepted - and that complaint has long since closed. So, my decision considers events and new concerns which post-date this final response letter up until the point Mrs M referred the matter to this Service in May 2023.

Before I address Mrs M's concerns, it's worth setting out that it's not in dispute the damage is covered by the policy under the subsidence section. Whilst it was initially thought to have been the result of clay shrinkage, the insurer has subsequently shown it was due to leaking drains – and that's not in question. Mrs M's drains have been repaired, so that part of the claim has been resolved. The key question is whether the LWA's drain is contributing to a subsidence problem – and therefore, whether further action needs to be taken by Fairmead.

The Local Water Authority's pipe

At the heart of Mrs M's complaint is her concern about the LWA's pipe and Fairmead having not repaired it. She considers the pipe to pose a significant risk to the future stability of her property, saying if it's not repaired it will likely lead to another episode of subsidence and damage to her property. So, she doesn't want to proceed with internal repairs until the LWA pipe has been repaired.

In short, Fairmead has said it's not responsible for repairing the pipe as it's for the LWA to do this. It said it has made the LWA aware that if it doesn't repair the pipe, it will be liable for any future damage or claim which is attributable to its decision to *not* repair the pipe. The LWA has consistently said its pipe isn't defective and so, no remedial action is needed.

On the face of it, Fairmead's position isn't unreasonable – it doesn't have a right to carry out repairs to the LWA's pipe. And so, regardless of how insistent Mrs M is that Fairmead *should* repair it, simply put, it can't. Nor can it force the LWA to do so.

If, however, the LWA pipe was shown to be causing instability to Mrs M's property, or if Fairmead hadn't engaged with the LWA (and the pipe was the main cause of the subsidence) I might be inclined to say Fairmead should take further steps to stabilise the building in order to provide an effective and lasting repair. But I'm not persuaded that's necessary based on the evidence I have, and I'll explain why.

Here, the LWA has - following Mrs M and Fairmead sharing reports with it - carried out its own CCTV surveys, together with a repair to another of its pipes. With regards to the LWA pipe Mrs M says *still* requires fixing, the LWA has said the CCTV survey didn't reveal any defects which required remedial action.

In addition, the level monitoring readings I've seen don't support further stabilisation works being necessary. I note the monitoring was carried out for a period of nine months in total. Monthly readings were taken each month for a period of six months, and this was followed by another ad-hoc reading three months later. Fairmead has said the results show Mrs M's property was stable and from what I've seen I'm persuaded this is a fair interpretation of the results as there's very little difference between the readings. I also have to keep in mind that

this monitoring happened *after* Fairmead had carried out repairs to the drains its responsible for. This suggests to me that despite a repair to the LWA pipe having *not* been carried out, the property has stabilised. I also haven't seen any professional opinion to challenge what Fairmead has said about the monitoring.

Mrs M hasn't provided any additional information to show the property has destabilised more recently, and so, based on what I have I'm more persuaded it has stabilised and that Fairmead's decision to move to the repair stage was reasonable. I note the comments of Mrs M's environmental consultant who had said that despite the repairs, underpinning should be considered. But I note these comments were made *before* the monitoring had been carried out which showed the property was stable, and so, I don't consider this to be persuasive evidence that Fairmead needs to consider other stabilisation methods at this time.

I've also considered the findings of Mrs M's civil and structural engineer – who concluded underpinning was necessary, but this hasn't made me change my mind. Whilst the engineer says the fractured LWA pipe has caused the washing out of fine sands and silt – and has in turn created voids beneath the adjacent foundations – I've not been provided with any evidence to support this. I also note the engineer's findings are based on a review of the existing reports and is not based on a recent, physical inspection and investigation of the site. And as the evidence I do have shows the property is stable, I'm not persuaded sufficient weight can be placed on the engineer's findings.

If in the future, it comes to light Fairmead hasn't provided a lasting and effective repair then Mrs M can make a complaint to Fairmead about that. I know this won't appease her as she wants to avoid future damage – and I understand that - but as the evidence shows the property is stable, I don't consider it proportionate to direct Fairmead to take further action in anticipation of something which hasn't been shown to be more probable than not. As I'm more persuaded the property is stable and Fairmead can provide a lasting and effective repair, I consider it reasonable for it to have said the claim can move to the repair stage without the LWA having carried out a repair to the public pipe.

For completeness, I know Mrs M has raised concerns about Fairmead not contacting the LWA directly in the first instance and explaining that it needs to carry out a repair, but as this was addressed in the first complaint, I'm not going to comment on this.

Further soil investigations

Mrs M has said further investigations should be carried out in respect of the composition of the soil saying she has specific concerns about its load bearing capacity. Fairmead provided a response to her concern which I included in the background of this decision. In short, it said it was confident – owing to the sand content – that the excess moisture would drain away, and the soil would return to its natural condition.

I note Fairmead referred to the monitoring readings to support its position – at which point there had only been two – but which notably showed the property was stable. Following this, the monitoring readings continued to show the property as being stable seven months later. So, it seems the later monitoring readings corroborate Fairmead's position. And so, without persuasive evidence to the contrary, I don't consider it necessary to direct Fairmead to undertake further investigations into the soil composition.

Schedule of works

Mrs M has raised concerns about the schedule of works and so, she wants her surveyor to put together a schedule instead which can then be used to obtain quotes from contractors.

It's not entirely clear where things have got to with the schedule of works but from what I can see, following Mrs M wanting to appoint a surveyor to manage the claim, Fairmead said it wanted to revisit her property to review the scope of works.

Given Mrs M's unhappiness with the schedule of works, this seems a reasonable course of action in the circumstances. In doing so, Fairmead will need to review all Mrs M's concerns about the scope of work.

Fairmead paying for Mrs M's surveyor to manage the claim

Mrs M has said she wants Fairmead to liaise with her surveyor about the claim – which I can see Fairmead was doing. The surveyor has in turn asked Fairmead to cover their costs in respect of managing the claim. Our Investigator didn't say Fairmead *should* cover these fees rather than Fairmead had agreed to liaise with Mrs M's surveyor about the claim – which are two separate things. A dispute about Fairmead paying the surveyor's fees for managing the claim isn't within the scope of this complaint and so, I won't be commenting on this further.

Summary

I appreciate this claim has gone on for a number of years and understandably Mrs M and her representative are keen to move on from it, but the issue with the LWA pipe is making that difficult for them. I'm aware Mrs M has contacted her local MP to pursue the LWA carrying out a repair to its drain.

Subsidence claims are unfortunately, by their very nature often complex and drawn out, and whilst I sympathise with Mrs M's situation, I haven't seen enough evidence to persuade me Fairmead needs to take further stabilisation action at this time. And so, I consider its decision to say the claim can move to the repair stage to be reasonable.

I have taken on board what Mrs M's representative has said about the upsetting personal experiences she and her family have endured whilst the claim has been going on. My intention isn't to minimise these or be discourteous but what I have to keep in mind is whether Fairmead has caused avoidable issues which exacerbated what was already a difficult time for Mrs M. From what I've seen I'm not persuaded it has and so, I won't be awarding compensation.

I should also add that Mrs M is represented in bringing this complaint and her representative has also been managing the claim on her behalf with Fairmead. Even if I were persuaded compensation was warranted, I wouldn't be able to direct Fairmead to pay compensation to Mrs M's representative as they aren't an eligible complainant.

For all the reasons set out above, I'm not upholding this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 July 2024.

Nicola Beakhust
Ombudsman