

The complaint

Mr G and Mrs G have complained about Fairmead Insurance Limited's (Fairmead) decision to decline a claim made under their buildings insurance policy.

Any references to Fairmead include their agents.

What happened

In September 2021, Mr G and Mrs G were having some underfloor insulation fitted. Their contractor noticed the shower waste pipe had disconnected and wasn't draining properly. Mr G and Mrs G arranged for the necessary repairs to be carried out without logging an insurance claim.

In July 2023, Mr G and Mrs G say they noticed brown dust in several rooms of their home. They contacted Fairmead who eventually concluded the brown dust was caused by dry rot, which had developed gradually following the leak under the shower. Fairmead declined the claim, replying on the general exclusion for rot in the policy terms. Mr G and Mrs G complained to Fairmead but they didn't change their claims decision.

Unhappy with Fairmead's response, Mr G and Mrs G referred their concerns to the Financial Ombudsman Service. Their concerns were considered by one of our investigators who initially said Fairmead had applied the exclusions fairly.

Mr G and Mrs G provided some additional information and the investigator agreed to reconsider their concerns. She then issued some revised findings, saying the rot had occurred following an insured event (the escape of water from beneath the shower) and Mr G and Mrs G had taken steps to notify Fairmead as soon as they became aware there might have been an issue with their home. Our investigator said Fairmead hadn't shown they'd been prejudiced as a result of any potential late notification and should deal with Mr G and Mrs G's claim subject to the remaining policy terms and pay £300 compensation.

Fairmead didn't agree with this conclusion, so this case has been passed to me to decide.

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 considered the content of the final response letter sent by Fairmead. This said they relied on the general exclusion for rot to decline this claim and also concluded there wasn't an insured event to be considered under the policy. And in response to the investigators most recent conclusions, Fairmead said they considered this case hinged on two points. These were whether Mr G and Mrs G would or should have been aware of the damage in question before it was reported, and if the damage was reported to Fairmead in good time.

I've started by considering if Mr G and Mrs G would or should have been aware of the damage before it was reported. They say they the presence of the brown dust alerted them to there potentially being a problem in their home, and they first saw this in July 2023.

Fairmead said Mr G and Mrs G would or should have been aware of the dust much earlier, given it wasn't just constrained to one part of their home. But I agree with the conclusions set out by our investigator, in that much of the rot damage and dust was covered by the floorboards. The dust was a similar colour to the floorboards so not easily identifiable or, as Mr G and Mrs G said, was in a cupboard not often used. I haven't been provided with any evidence to show how Mr G and Mrs G could reasonably have known there was a problem with rot in their property before the dust started to appear.

I'll turn now to whether the damage was reported in good time. This comment here seems to focus on Fairmead's belief that Mr G and Mrs G were aware of the presence of dust as far back as February 2023. This is based on comments from the loss adjuster in their preliminary report.

I can't be sure why the loss adjuster referenced February 2023 in their report. But in their dealings with us and with Fairmead, Mr G and Mrs G have consistently said they discovered the dust in July 2023. In accepting this, I'm mindful of what they've told us about Mrs G's career in the health profession and a family member's health conditions. Given the condition of their home has been in, and in particular the health condition of their family member, I don't consider it likely they would have delayed reporting the dust because any incident like that could detrimentally impact their family members' health.

I don't agree with Fairmead's comments that Mr G and Mrs G would or should have been aware of the damage in question before it was reported. And I'm persuaded Mr G and Mrs G reported the dust in good time, and as soon as they became aware of it.

Although I've concluded there isn't evidence to suggest Mr G and Mrs G should have notified Fairmead sooner, I've also considered whether, even if I accepted the claim had been notified late (which I don't) what the impact of this would be. Fairmead hasn't provided any evidence to show its been prejudiced by a late notification, so I can't conclude they've been detrimentally impacted by any potential late notification. Though as I've said, I don't agree with Fairmead's view on this.

I'll turn now to whether it's fair for Fairmead to rely on the rot exclusion to decline the claim. Fairmead said in the final response letter there wasn't an insured event. Mr G and Mrs G say they recall a leak from the pipes under their shower which was repaired in September 2021, when they were already having some works carried out in their home. Mr G and Mrs G have produced a report which said the source of the rot "*appears to have come from a leaking shower waste*". I think it more likely than not an escape of water occurred under the shower and escape of water was one of the insured events that was covered by the policy in place in September 2021.

I'll turn now to the exclusion Fairmead is seeking to rely on, which I've included below.

*"The policy does not cover:
(h) Gradual deterioration / maintenance
Any loss or damage caused by wear and tear, depreciation, the effects of light or the atmosphere, mould, dry or wet rot..."*

As our investigator noted by its very nature, rot is something that happens gradually. And as Fairmead ought to be aware, our published approach to damage that occurs gradually sets

out that we need firstly to consider whether a consumer could reasonably have been aware of the damage claimed for that was occurring gradually.

I've concluded Mr G and Mrs G couldn't reasonably have known about the dry rot until they first became aware of the dust in July 2023. It follows they couldn't reasonably have cause to think there was a problem with dry rot before this point or have taken action to repair it. Therefore, I don't consider it is fair for Fairmead to rely on the gradual damage exclusion to decline their claim.

To put things right, Fairmead should deal with Mr G and Mrs G's claim, subject to the remaining policy terms. If Mr G and Mrs G have had some of the repairs carried out that should have been covered by the claim, Fairmead should cover these and pay Mr G and Mrs G simple interest at 8% per annum from the date of the invoice until the date of settlement.

In addition to this, it's clear Fairmead's decision not to accept their claim has been very concerning for Mr G and Mrs G. It's caused them stress and worry as they say they've been unable to safely use their home as one of their family members has needed to stay out of the rooms impacted by the rot, as their previously mentioned health conditions have been impacted. Fairmead should pay £300 compensation for the distress and inconvenience experienced.

My final decision

My final decision is that I uphold Mr G and Mrs G's complaint against Fairmead Insurance Limited. I direct Fairmead Insurance Limited to:

- Deal with Mr G and Mrs G's claim, subject to the remaining policy terms.
- Where Mr G and Mrs G have made payments for any repairs or replaced any contents that should be covered under the claim, simple interest at 8% per annum should be paid from the date of each invoice until the date of settlement. This is in line with our usual approach. *
- Pay Mr G and Mrs G £300 compensation for the distress and inconvenience experienced.

Fairmead Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr G and Mrs G accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the payment at 8% a year simple.

* If Fairmead Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr G and Mrs G how much it's taken off. If requested, Fairmead Insurance Limited should also provide Mr G and Mrs G with a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 21 November 2024.

Emma Hawkins

Ombudsman