

The complaint

Mrs T complains Fairmead Insurance Limited unfairly declined a claim she made on her home insurance policy for damage to a conservatory.

When the claim was brought and the complaint initially made, there was a joint policyholder, Mr T. Sadly having issued by provisional findings I was told Mr T had passed away. To reflect that the claim, and complaint then transfers to Mrs T as joint policyholder, I've only referred to her in the "my findings" and "my final decision" section of this decision.

What happened

In July 2022, Mr and Mrs T contacted Fairmead to make a claim under their home insurance policy, they'd noticed issues with their internal plumbing. Having contacted a contractor, a broken pipe was discovered underground near a conservatory.

Fairmead carried out some investigation and repaired some drains, this was completed in November 2022. Mr and Mrs T told Fairmead they were concerned their conservatory was sinking. In January 2023, Fairmead's contractor said it thought the leaking drains had caused subsidence, but it recommended further investigation.

In May 2023, Fairmead declined the claim. It said it had found vegetation to be the cause of the subsidence. It said whilst there had been an issue with the drains, this hadn't caused any subsidence issues with the soil. Fairmead relied on a defective design exclusion to decline the claim, saying that the foundations hadn't been dug to account for the drainage pipes beneath the conservatory, or to factor in the root activity of vegetation, specifically a nearby oak tree.

Mr and Mrs T complained about Fairmead's decision to decline the claim, it didn't agree to change its position. But it did accept that the service hadn't met the standard it would expect, so it offered £300 compensation as an apology for that.

Unsatisfied with Fairmead's response, Mr and Mrs T brought their complaint to the Financial Ombudsman Service for an independent review. They said Fairmead's own expert had concluded the subsidence had been caused by the leaking pipes, and that it took Fairmead four months to carry out the borehole analysis.

Our Investigator didn't think Fairmead had acted unfairly in declining to cover the damage under the policy. She put Mr and Mrs T's comments about compensation to Fairmead, having done so it agreed to pay a further £100 compensation for the way it had handled matters, so its total offer was £400. Our Investigator thought that amount was fair for the frustration caused by Fairmead's handling of the claim. She noted Mr T's health issues and the overall stress caused by the claim, but as she was satisfied Fairmead had fairly declined it, she didn't think it needed to pay more compensation.

Mr and Mrs T didn't accept the outcome of our Investigator. They thought that, having regard to our compensation guidelines, an amount of £1,500 was more appropriate in the circumstances.

In October 2024 I issued a provisional decision on this complaint, a copy of my findings is set out below:

When an insurance claim is made it is for the insured to prove that there is an insured peril –

a problem that's covered by the policy. It is then for the insurer to either accept the claim or to prove an exclusion in the policy applies.

In this case, Fairmead has accepted that there is an insured peril – subsidence. And it said this wasn't caused by the leaking pipe but had actually been caused by vegetation. Having considered the information provided by Fairmead's experts, I'm minded to decide it was reasonable in concluding the damage was as a result of vegetation. However, Fairmead has said that the subsidence has only happened because the foundations of the extension are defective, and this is excluded under the policy. The policy says:

*“What is not insured
Loss or damage arising from defective design, defective materials or faulty workmanship.”*

This allows Fairmead to decline a subsidence claim where the damage has been caused by defective design or faulty workmanship. I need to decide if Fairmead has applied this exclusion fairly in this case.

Fairmead said it found the conservatory foundations to be 550mm. It said given the conservatory's size; it accepts it wouldn't have been subject to building regulations when it was built in 2008.

However, Fairmead has said that standards applied by a builder of new homes – I'll refer to them as 'N' - stipulate the recommended depths for foundations. In relation to Mr and Mrs T's conservatory, Fairmead said in line with N's guidelines, owing to a nearby oak tree, the foundations should have been dug to a minimum of 1,800mm, or 2,400mm, given the presence of clay soil. So it said that as the foundations don't meet N's guidance, they are faulty in their design.

I've looked at the guidelines issued by N and I don't agree these apply here. N provides guidelines for new build houses. Mr and Mrs T's claim relates to a conservatory extension to their property which wasn't a new build. So the builders of the conservatory weren't required to consider this guidance. For this reason, it wouldn't be fair to apply it here – this has been the approach of this Service for quite some time. And as Fairmead hasn't provided me with evidence of any other building standards that might apply, I'm not persuaded it has reasonably shown it can fairly rely on the exclusion to decline the claim.

Fairmead has also said that building standards weren't adhered to given the presence of drainage pipes running under the conservatory. I asked Fairmead to show me what standards they were referencing in order for me to consider this further, but it didn't provide any further information on that point. So I'm not persuaded its fairly shown there was a 'faulty design' or workmanship in relation to the pipes.

Taking everything into account, I don't think Fairmead has shown it can fairly rely on the 'faulty design' exclusion to decline the claim. It says given the foundation depths and the nearby oak tree subsidence was "inevitable". But I'm minded to decide that the conservatory had stood, without issue, for around 14 to 15 years before the claim was made. I think it's reasonable to assume that the foundations, if defective in design, would have failed before then.

So at the moment, as I'm not satisfied Fairmead can fairly rely on the exclusion to decline the claim, I intend to require it to accept their claim and settle it in line with the other policy terms and conditions.

Fairmead accepts it didn't provide Mr and Mrs T with the service they ought to have expected, it has agreed to pay a total of £400 compensation for that. Having considered matters, I'm minded to decide this should be increased to £600 compensation. This is to account for the poor handling from Fairmead, which caused delays in the assessment of the claim. And to recognise the inconvenience Mr and Mrs T have faced, up to this point, by having their claim unfairly declined, and so living with the insured damage for longer than they should have had to.

Responses to my provisional decision

Mrs T accepted the findings of my provisional decision.

Fairmead didn't agree to my provisional findings. It provided further information for me to consider. It said the conservatory hadn't been built according to a document it referred to as "*British Standard 1986*" (which I'll refer to as 'the document'). It said this did apply to conservatories and showed that the foundations were inadequate for the site conditions due to the influence of nearby vegetation. It also said N's guidelines shouldn't be discounted when considering this claim.

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'm very sorry to hear of the death of Mr T, and I wish to send my sincere condolences to Mrs T and the family at what I know has been a very difficult time.

It is disappointing that Fairmead has only provided further evidence following my provisional findings, particularly when I gave it an opportunity to provide more evidence before issuing those findings. It also seems to me that Fairmead is now changing some of its reasoning for declining the claim, since its decline letter initially also relied on the conservatory being built over a drainage system, contrary to buildings regulations (which it has never provided any evidence of).

Nevertheless, I have considered the document provided by it. Fairmead's position seems to be that these standards applied to "*the normal range of buildings*", so even conservatories that were exempt from building regulations. Having considered Fairmead's points, I still don't think it has shown it can reasonably rely on the 'defective design' exclusion to decline the claim. I've set out my reasons below.

The document sets out that it "*gives recommendations for the design and construction of foundations*". Fairmead says the document makes clear that the foundation depths at the property should be considered as shallow, due to the following statement:

"Shallow foundations are taken to be those where the depth below finished ground level is less than 3 m and include strip, pad, and raft foundations."

However, I'm not persuaded this means Fairmead has shown it can fairly rely on the exclusion to decline the claim. The document doesn't say that any "*shallow*" foundation is therefore a defective one, for example. Nor does it say that foundations should always be dug deeper than 3m.

Fairmead has also relied on another section of the document in support of its reliance on the exclusion. That part refers to the shrinkage of clay possibly being increased by the drying effect produced by root systems. Of note to me is the following section:

“Care should be exercised to ensure that there is adequate space between new buildings and existing trees or the sites of trees that have been removed. Alternatively, special foundations founded at depths greater than 900 mm should be provided special foundations founded at depths greater than 900 mm should be provided”.

However, the conservatory wasn't a 'new building', it was a structure added to an existing building, and was one that was exempt from building regulations. So I'm not satisfied these standards do apply to Mrs T's conservatory, which was a small addition to an existing structure. And in any event, this refers to depths greater than 900mm as being the standard, not 3m as Fairmead has set out in support of its claim that the foundations of the conservatory would be classed as too "shallow".

I accept that, even though the conservatory didn't have to comply with building regulations, that doesn't mean the builder shouldn't have taken account of best practice and guidance at the relevant time. But even if I accept that these standards in the document provided by Fairmead should have been followed, I still don't think it has fairly shown it can rely on the exclusion to decline the claim.

Our approach is that Fairmead not only has to show the conservatory wasn't built to the relevant standards, but that the failure to meet those standards is the reason for the damage. And having considered matters, I'm not satisfied Fairmead has shown that deeper foundations would have prevented the subsidence damage claimed for.

I've reviewed the report carried out in April 2023 in relation to the tree roots. It says the roots were *“noted beneath the foundations of the property”*. However, it doesn't state at what depths the roots stopped. So it hasn't shown that digging a foundation deeper than 550mm would have prevented the subsidence event from occurring. Therefore, it hasn't shown a failure to meet those standards it's referred to above is the reason for the damage.

Fairmead said in response to my provisional decision that it doesn't think I should discount N's guidelines about the depths the foundations should have been dug to, given the presence of trees. But I'm satisfied – for the reasons given in my PD – that N's standards do not apply to Mrs T's conservatory. So it follows that I'm not satisfied Fairmead has shown there has been a failure to build to relevant standards, and that failure is the cause of the damage. As such, I'm satisfied it can't fairly rely on the 'defective design' exclusion to decline the claim. Which means it will need to accept the claim for damage caused by subsidence and settle it in line with the remaining terms of the policy.

I also still find that Fairmead has caused Mrs T an unnecessary amount of distress and inconvenience in declining this claim. And so it will need to pay £600 compensation, less any amount already paid.

My final decision

My final decision is that I direct Fairmead Insurance Limited to accept Mrs T's claim for subsidence damage and settle it in line with the terms and conditions of the policy.

It will also need to pay Mrs T £600 compensation, less any amount already paid. Fairmead Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs T accepts 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 date of payment at 8% a year simple.

If Fairmead Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs T how much it's taken off. It should

also give Mrs T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 17 December 2024.

Michelle Henderson
Ombudsman