

## **The complaint**

Mr A complains as a director of M, a company, that Fairmead Insurance Limited has rejected its residential property owners policy claim for fire damage to its unoccupied building.

## **What happened**

M exchanged contracts on the purchase of the property in February 2019, and took out the policy at the same time. Completion of the purchase took place in April 2019. In May 2019 Mr A was notified there had been a fire at the property, which had caused considerable damage. A claim was made to Fairmead who appointed loss adjusters. The property had been broken into and vandalised, a number of sinks removed from their pedestals and smashed. After inspecting the damage and obtaining full details from Mr A, the loss adjusters appointed a forensic examiner (H) to report on the likely cause of the fire.

H's report set out that the property had been broken into, and the likely cause of the fire was due to unauthorised human activity, either accidental or deliberate. He couldn't say what had started the fire and there was no evidence of an accelerant being used.

Fairmead rejected the claim. It said the damage had likely been caused by a malicious act, taking into account that the property had been broken into and vandalised. Under the terms of the policy, as the property was unoccupied, malicious acts weren't covered. It further said that an unoccupancy condition in respect of carrying out regular inspections of the property, hadn't been complied with. Further it noted that on buying the property, steel shutters had been removed and replaced by boarding although it wasn't clear whether even that was in place at the time of the fire. It had concerns about the overall security and the credibility of Mr A's mileage/inspection log, and further said that combustible materials were left on the premises, again in breach of the unoccupancy condition. It apologised for a delay in making its decision in respect of the claim, and paid compensation of £100.

On referral to this service our investigator said the complaint should be upheld.

The matter has been referred to me for further consideration.

## **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.

On the question of whether the exclusion for malicious acts was drawn adequately to Mr A's attention, I bear in mind that the policy was specifically taken out to cover an unoccupied property. In that respect there was a specific endorsement on the policy concerning, amongst other points, weekly inspections. And Mr A was aware of that. The endorsement also says that the policy itself must be referred to in respect of what is not covered in the case of unoccupancy. A number of perils aren't covered when the property is unoccupied, including malicious acts and I wouldn't have expected attention to be drawn specifically to each and every one of them. I'm satisfied that Mr A was made adequately aware of what was covered and not covered whilst the property was unoccupied.

### *malicious acts*

Fire is one of the perils covered when the property is unoccupied, and M has shown that, on the face of it, there was a fire covered by the policy. But if it can be said that the fire was started by a malicious act, then it is excluded as the property was unoccupied. Clearly there were trespassers on the premises, these were seen by witnesses and the property was broken into and other malicious acts, like smashing the sinks, took place.

However H wasn't able to say that the cause of the fire was a malicious act – bearing in mind no accelerant was found. He said it was likely to be a result of unauthorised human activity but couldn't see if it was accidental or deliberate. He said there *could* have been several seats of the fire but wasn't able to show that that was the case. I don't think it's been shown that it was more likely that a malicious act caused the fire as opposed to an accidental cause (e.g. a dropped cigarette).

### *failure to carry out inspections*

The policy does require, when the property is unoccupied, that there be internal and external inspections of the property at least every 14 days, and that a weekly log of such inspections be maintained. Mr A has produced a mileage claim log in support of this having been done.

Fairmead has said that although the log shows inspections to have taken place every 14 days, it doesn't show that the property was actually inspected internally. Also it didn't record any concerns - Fairmead thinks there would have been such concerns to report. Further it thinks the log may have been created after the event.

The policy doesn't stipulate what form the log should take, and I would've thought that had it been created after the event it wouldn't have been in the form of a mileage log. I've noted that the inspections didn't show up anything of concern, but given the short time period between completion of the purchase and the claim, it's just speculation to suggest there would have been any such incidents. I think it reasonable to accept that the required inspections were carried out within the terms of the policy endorsement.

### *combustible materials*

The endorsement requires all waste and combustible materials to be removed. There were cardboard boxes and other household goods in the attic, and a rubbish bin and toaster smashed on the lounge floor. Fairmead says these are all combustible materials.

I understand that the boxes were full of files, rather than being waste, but nevertheless were combustible and should've been removed. I understand that the bin and toaster were smashed by the trespassers, but again these don't appear to have been connected to the fire.

As I understand it the fire didn't affect the attic, so the presence of such items wasn't material to the claim. So I think that M has shown, as per s 11 of the Insurance Act 2015, that any non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. So in my view Fairmead can't rely on any alleged breach of this term.

### *boarding*

Fairmead pointed out that steel shutters were removed when M completed the purchase. When it interviewed Mr A's fellow director on site the loss adjuster was told no boarding was put up. Mr A says this was a misunderstanding, and the mileage log shows that the property

was attended for the boarding up to take place. There is an invoice for this but it doesn't show the actual date it was done.

Whilst there is some doubt as to whether the boarding was in place at the time of the fire, I think if the mileage log is accepted it would seem to confirm it was in place. The loss adjuster said the fire officers who attended could have confirmed this, but Fairmead doesn't appear to have attempted to find this out.

There was no particular requirement for the property to be boarded up, in wood or steel. I think it likely that it was in place but it's irrelevant to the cause of the fire.

*overall*

Overall I think the claim should be paid. I understand that Mr A has had the repairs carried out, so any settlement will have to be a cash settlement. I should emphasise that, although this was raised by the loss adjusters, though not pursued at the time, I haven't considered the question of underinsurance.

I'm satisfied that Fairmead paid a reasonable sum for compensation, of £100, as there was some delay in it reaching a decision. Generally such claims take some time to determine owing to the need to gather evidence and consult experts.

### **Putting things right**

The appropriate settlement is for Fairmead to settle the claim for fire damage. The property is also covered for damage caused by the emergency services in gaining access to the home and this should be paid as well. This is subject to the remaining terms and conditions of the policy.

To any cash settlement Fairmead should add simple interest\* at 8% per year from the date M paid for any repairs until the date it reimburses such payment.

### **My final decision**

I uphold the complaint and require Fairmead Insurance Limited to act in accordance with what I have said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 26 April 2021

\*Fairmead Insurance Limited is required by HM Revenue and Customs to deduct tax from any interest paid. Should M request it, Fairmead should provide it with a certificate showing how much tax has been taken off so that, if appropriate, it can reclaim it.

Ray Lawley

**Ombudsman**