

The complaint

Mrs T is unhappy that a claim made under her Fairmead Insurance Limited home insurance policy was declined and her policy voided (cancelled as though it had never existed). Mrs T is also unhappy about how she was spoken to by a call handler at Fairmead when discussing the claim.

What happened

In 2015 Mrs T arranged a buildings and contents insurance policy with Fairmead. The policy provided total contents cover of £73,130, with a high-risk property limit of £14,640 within that figure. Mrs T says that this covered her contents and high-risk items at the time. The policy renewed each year thereafter.

In April 2019 Mrs T discovered a considerable amount of jewellery (49 items) had been stolen. She believed some workmen she'd had in her home in the summer of 2018 had likely stolen the items. She contacted the business the workmen had been employed by and when she didn't get anywhere with it, she reported the loss to the police. Mrs T also made a claim to Fairmead.

The recording of the claim call detailed the suspected circumstances of the loss and how it had been discovered. The discovery came about because Mrs T's niece was getting married and Mrs T's mother had left a gift (of jewellery) to be passed on to her. There was then a discussion about the value of the loss and some possibilities were given as to value. The call-handler asked if all the jewellery belonged to Mrs T. She answered yes, but then immediately clarified that some belonged to family members – items that had belonged to her mother that were to be passed to that lady's grandchildren. Mrs T was told Fairmead needed to know what the value of the stolen items was, and she needed to provide more information before the claim could be moved forward. Mrs T has told us that she understood this to mean that Fairmead wanted details and values for all the items that were stolen, including those that didn't belong to Mrs T personally.

Mrs T then approached a local jeweller to provide an estimate of the value of all the stolen items based on photographs of her jewellery and a description of the other items. She sent this to Fairmead. The total estimate for the stolen jewellery was slightly over £118,000.

Fairmead arranged for a firm of loss adjusters to assess the claim. It was determined by the loss adjuster that the total contents value was £194,857 and the high-risk sum assured should have been £118,000. Fairmead said that the maximum contents cover it provided was £100,000, so had it known the true value of Mrs T's contents, it would never have offered her a policy. In light of this, Fairmead decided to void the policy. It thought Mrs T had been reckless in the way she presented incorrect information when applying for the policy, so it said it wouldn't be refunding the premiums she had paid, and they would be used to cover its expenses.

Mrs T wasn't happy with Fairmead's decision and she complained. Fairmead responded to the complaint, but it didn't uphold it. It remained satisfied that Mrs T hadn't answered the questions correctly when she'd taken out the policy.

As Mrs T remained unhappy with the response from Fairmead, she asked this service to consider her complaint. She said the loss adjuster's assessment of the value of the contents of her home was wrong and that some of the items belonged to other people who lived in the property and were insured elsewhere. She also told us some of the jewellery didn't belong to her, but was family jewellery and had been passed to her keeping sometime earlier for a celebratory event. The event had been postponed, and she had stored the jewellery in a locked metal box, along with her own jewellery, which was then placed in a locked drawer. The last time she'd checked the items was in the spring of 2018. She said she'd told Fairmead this from the outset and that she knows the jewellery that didn't belong to her wasn't insured – she just wanted her own jewellery paid for. She also raised concerns about how she had been spoken to by Fairmead after it had made its claim decision in that the member of staff showed little empathy.

One of our investigators considered the complaint. However, she didn't recommend it be upheld as she was satisfied that if Mrs T had answered the questions about the value of her contents and valuables correctly, Fairmead wouldn't have given her a policy. In relation to Mrs T's concerns about how she was spoken to by Fairmead when her claim was declined, she thought more empathy could have been shown, but she didn't think it had done anything wrong.

Mrs T didn't accept the investigator's conclusions and asked that the complaint be referred to an ombudsman for consideration. She said she didn't think the complaint had been addressed fully and didn't think the outcome was fair. Mrs T highlighted that the valuation done by the loss adjuster was just an estimate made by an individual walking around the property '*sticking their pencil in the air valuing items*'. She believes many of the items were over valued and asked whether that was fair. It was also reiterated that many of the items stolen were not owned or insured by her, but Mrs T had been asked to provide an estimate of everything stolen, not just what she was claiming for.

Our investigator responded to Mrs T's further comments. In relation to the loss adjuster's assessment of what the sum assured should have been, the investigator pointed out that the value of the jewellery alone significantly exceeded the sum assured Mrs T had selected, so even if the estimate of the value of the rest of the contents wasn't right, the contents were still very much underinsured. She asked for clarification as to why Mrs T thought the complaint hadn't been fully addressed, but no response was provided.

The complaint was passed to me to consider and I asked for further information from Mrs T. She explained that when her mother died her jewellery had been worth around £90,000 at the time and much of it was to be distributed among that lady's grandchildren. Mrs T was the executor of her mother's estate and until 2017 the jewellery had been kept in a safety deposit box with a high-street bank. In 2017 the bank closed down this facility and the jewellery was retrieved and left for safe keeping with Mrs T's brother along with other items of family jewellery. When Mrs T's niece (and one of the beneficiaries) was to be married in 2018, the jewellery was returned to Mrs T so that the inheritance could be passed on. Unfortunately, the wedding was postponed, so Mrs T placed the jewellery, along with her own, in a place in her home that she considered was safe.

Once the clarification about the circumstances surrounding the jewellery was obtained our investigator provided that explanation to Fairmead and provided it with the supporting documentation Mrs T had given us. Fairmead didn't change its conclusions about the claim. It effectively said that Mrs T hadn't proven all of the items stolen weren't hers. It went on to say that it was the responsibility of an executor to settle an estate in a timely manner and questioned why Mrs T hadn't done so, given it had been several years since her mother's death. It also drew our attention to Mrs T having told the loss adjuster who interviewed her at

the time of the claim, that the items had been in the house since purchase/inheritance. Fairmead subsequently provided a copy of the witness statement it referred to.

The witness statement documented *'Most of the items that are on the list are gifts to me and inheritance. I would have purchased some of them myself.'*

I issued a provisional decision on 23 August 2021, in which I set out my conclusions and reasons for reaching them. Below are extracts.

'Having done so, I think much of the problems with this case may well come down to both sides making assumptions at an early stage. Mrs T told Fairmead about the loss, and despite her telling it that some of the items weren't hers as they belonged to other family members and some were an inheritance to be handed on to younger members of the family, Fairmead assumed she was claiming for all the lost items. On the other hand, Mrs T appears to have assumed that Fairmead would register that she'd said some items weren't hers, that this meant they weren't insured and, therefore, she wasn't claiming for them.'

Fairmead has suggested that Mrs T confirmed to its loss adjuster that all the jewellery had been in her home since it was inherited. I have reviewed the statement made and I don't believe that's what it says. It says some of the jewellery was an inheritance. However, it doesn't give a timescale; whether Mrs T took immediate custody of the items or even whose inheritance they were.'

I accept Fairmead's comment that being the owner of a safety deposit box doesn't evidence what was stored in it. So it is possible that the jewellery wasn't stored in that way until 2017. However, this type of storage arrangement is usually used for valuable or significant items, be that monetary value or otherwise. Mrs T has said the jewellery was stored in her safety deposit box, and given the general purpose of such arrangements, I see no reason to doubt Mrs T's word in this respect.'

Fairmead has also suggested that Mrs T shouldn't have still been holding items that were to be inherited by younger members of the family, as it had been years since her mother's death. I would acknowledge that it is usually the role of an executor to settle an estate as quickly as possible. However, I don't think it's unusual for personal items, such as jewellery, to be handed to a beneficiary at an important point in life, be that attaining a particular age or upon a life event, such as a graduation or on marriage. The latter being quite a tradition in some cultures. As such, the fact that it had been some years since Mrs T's mother's death doesn't, I think, cast doubt on her explanation of the origin of some of the stolen items.'

Fairmead has voided Mrs T's policy because it believes she misled it when she took the policy out in 2015, as she didn't tell it about the quantity or value of the valuables she had in the house. As I have said above, I see no reason to doubt Mrs T stored the jewellery in a bank prior to 2017. As such, I am not persuaded that she did misrepresent the situation when she took the policy out.'

She has also said that the items were stored elsewhere until close to the planned date of her niece's wedding in the spring of 2018. So until that point, Mrs T couldn't have declared the items to Fairmead. The question then becomes whether Mrs T should have declared the items when she did take custody of them.'

Insurance policies will have a condition normally referred to as a change in risk clause, it means that if something material changes in relation to the property being insured, the policyholder should inform the insurance company. However, where consumer policies are involved, we would usually only expect a policyholder to do this when prompted in some way, such as at renewal, or if the change was very significant, such as an extension being

built. I am not persuaded the change was such that, if the items had been Mrs T's and she expected them to be covered by the insurance policy, she would have known to declare the items to Fairmead when she took custody of them. Indeed, that would only have happened after the loss likely happened in the October of 2018 when the policy next renewed. I also note that Mrs T didn't consider the items being brought into the property, as they didn't belong to her, were covered by the policy at all. In those circumstances I don't think it unreasonable that she wouldn't have thought to tell Fairmead about them. So I don't think there was any misrepresentation in 2018 either.

I can understand Fairmead had concerns about this claim, given it hadn't picked up on the fact Mrs T didn't own many of the items lost and wasn't attempting to claim for them. However, I think the conclusion it reached was wrong and it shouldn't have voided the insurance policy.'

'When awarding redress we aim to place a consumer in as close to the position they would have been in, but for the error on the part of the financial business. In this case, the error was voiding Mrs T's policy and, thereby, not considering her claim. As such, the appropriate redress in this case would be for Fairmead to reinstate Mrs T's insurance policy and consider her claim. Our investigator will forward the loss list, with the items Mrs T identified as hers highlighted, and the accompanying photographic evidence. Alongside those actions, Fairmead should remove all record of the voidance from its internal databases and any external ones it reported it to.

It is clear that this matter has caused Mrs T quite a lot of upset. Given that could have been avoided had Fairmead listened to Mrs T initially and asked some quite simple questions early on in the claim, I consider it should pay Mrs T £500 to compensate her in this regard.'

Mrs T accepted my conclusions in principle, but she didn't think that Fairmead should be given the opportunity to consider the claim further. Given the time that had elapsed since the claim had been made and the clear evidence of the loss she'd provided, she thought I should simply tell Fairmead to pay the claim. In addition, she asked that I reconsider the compensation payment and make an aware to reflect the amount of upset Fairmead had caused her.

Fairmead didn't accept my provisional decision. It said that a trained fraud investigator interviewed Mrs T and she had stated that she'd come into possession of the jewellery in 2010. There was no mention of it being stored elsewhere. She was told during that conversation that having a large quantity of jewellery in her home would imperil her claim and policy – she was invited to comment but didn't mention that the jewellery had only been in her home for a short period. It issued its decision and again Mrs T didn't mention that the jewellery had only been in her home for a short period and, as far as Fairmead could tell, it wasn't mentioned to this service when the complaint was made either. Fairmead argued Mrs T saying that the items came into her possession in 2010 undermines the idea that the items were stored anywhere other than the insured address at any time. It suggested that if it were the case that the items had been stored elsewhere, Mrs T had withheld facts from it.

In addition, Fairmead introduced the concept behind a police caution and the principle that not to mentioning facts later relied upon can harm a defence. It said that an explanation had been provided at the last possible juncture, which contradicted previous testimony, and as such should not be taken at face value. It asked that if this point was to be upheld, it was allowed to investigate the circumstances of the ownership and location of the jewellery as part of the claim consideration.

Fairmead then went on to say that even if it was accepted that the jewellery had first been stored in Mrs T's home in 2017, she had been required to tell it about that change; both at

the time and at the policy renewal in 2018. Mrs T didn't do as she should have. It was also of the opinion, in response to my comments about mid-term change in risk notifications, that the addition of £90,000 of jewellery would be as significant as a property owner building an extension, so she should have known to tell it mid-term. It felt that Mrs T's decision to place the items in safe places (both in the form of a safety deposit box and that in her home) showed a recognition of the need to protect the items. As such, it questioned that she wouldn't have felt the need to inform her insurer of the change in risk. It reiterated that had it known about the value of the jewellery, it wouldn't have renewed the policy, and Mrs T would have gone elsewhere and wouldn't have suffered a non-insured loss.

In addition, Fairmead said that it was aware that Mrs T might not be able to claim for some of the items, but it had a duty to investigate the value of the contents of the home, not just the contents she called her own. The objective of its investigation was partially to understand the physical risk at the address and establish if that risk exceeded the realms of its accepted business. It said that it was sure that I would appreciate that even if potentially partly uninsured, the presence of certain items in the home can fundamentally change the risk a policy presents. It confirmed that the presence of high concentrations of gold bear an increased risk of burglary, which was demonstrated by the loss suffered at Mrs T's home.

In relation to the ownership of the items from the estate, it said that Mrs T had a responsibility for those items until the will was executed in full. It suggested that Mrs T might have had a responsibility to insurer the items, especially as she was holding them for such a long period. Fairmead highlighted that its policy defined contents as 'Household goods, personal belongings owned by you or for which you are legally responsible'.

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.

Fairmead has asked that it be able to investigate the whereabouts of the jewellery in the period before the claim, before it considers the claim. After I received the case, I asked for some clarification on exact details of how the jewellery had come to be in Mrs T's home and more detail about the circumstances emerged. I don't think this information only became available at that time because Mrs T was hiding things or that her story changed, but rather it was because the appropriate questions hadn't been asked before. The statement from the interview with Mrs T shows clearly that the interviewer believed all the items belonged to Mrs T, or at the very least she was claiming for them all.

However, the call recording from the time the claim was reported made it clear that only some of the items belonged to her. Fairmead simply chose not to explore this subject with Mrs T. Had it done so, I am satisfied Mrs T would most likely have provided the clarification she did when this service asked pertinent questions. I would also highlight that an insurer is still required to ask the questions it wants answers to at claim stage, just as it is at application stage. It is not reasonable for it to assume a consumer understands what information is relevant and for them to be expected to volunteer that information. As such, given Fairmead had ample opportunity to explore these issues during its investigation, I don't consider it would be appropriate for the claim to be delayed further.

That said, I also don't consider it would be reasonable for me to simply order Fairmead to settle the claim for the items Mrs T is claiming for. The reason being that this is the first time it has been given details of the items being claimed for and the photographic evidence to support their ownership. It has a right to consider this evidence to determine if it supports ownership of the items.

Fairmead has commented on the matter of whether Mrs T should have declared the items when they entered her property in 2018 and later at the 2018 renewal. Given the items were stolen before the 2018 renewal, and so the claim was made on the 2017 policy, whether the items should or shouldn't have been declared at the renewal isn't really relevant. That said, the statement of fact provided at that time said that the *'the full cost of replacing the contents of the property insured ... does not exceed'* the sum assured. This is reliant on the consumer considering the items as contents of the property. I note Fairmead has referred back to the policy definition of contents, but that's not something most consumers would think of checking at renewal. So at renewal the answer to the question would have been subjective and Mrs T has maintained throughout that the items were in her home as a temporary measure and she didn't believe they were covered by the policy, i.e. not considered as part of her contents.

Fairmead has suggested that Mrs T should have viewed the entry into her home of the jewellery, due to its value, in the same way as she would have a significant alteration to the structure of the property. As such she should have known to contact Fairmead in the middle of the policy year. It has also pointed out that the storage of the jewellery at the property materially changed the risk the property represented. I can agree on the last point, but that doesn't alter the point that we would only usually expect a consumer to make a mid-term declaration if the change would have been significant enough to warrant it. Fairmead considers that taking £90,000 of jewellery into the home would have been that significant. I have, however, referred back to the initial claim call, in which it's clear that Mrs T didn't know how much the items were worth. In addition, at that time, she didn't think the jewellery would be remaining in the property for any length of time.

As Fairmead has commented about Mrs T's obligations as executor, I would comment at this point that whilst the items belonging to the estate would have needed to have a price associated with them when the value of the estate was declared for tax purposes, that doesn't mean the items were actually valued and Mrs T knew their value. As for Fairmead's comments about the possible obligations placed on Mrs T to insure the items, it would appear that if there was such an obligation placed on her in the will, Mrs T didn't consider her home insurance policy provided for that obligation.

I don't disagree with Fairmead that it had a duty to investigate the circumstances of the claim. However, its duty involved it listening to its customer and investigating all the circumstances of the claim. I would refer it to my earlier comments in this regard.

Before issuing my provisional decision I carefully considered the upset Fairmead's handling of the claim had caused Mrs T. While I have considered her further comments, I remain satisfied that £500 is the appropriate amount to award in the circumstances.

Putting things right

Fairmead should reinstate Mrs T's insurance policy and consider her claim. Our investigator will forward the loss list detailing the items Mrs T identified as hers highlighted, and the accompanying photographic evidence. Alongside those actions Fairmead should remove all record of the avoidance from its internal database and any external ones it reported it to.

Fairmead should also pay Mrs T £500 compensation for the upset she was caused by its handling of the claim.

My final decision

My decision is that I uphold this complaint. I require Fairmead Insurance Limited to undertake the actions detailed above in 'putting things right'. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T to accept or reject my decision before 21 October 2021.

Derry Baxter
Ombudsman