

The complaint

Mr A complains that Fairmead Insurance Limited trading as Legal and General unfairly declined claims he made for damage to his property and a theft of items on a home insurance policy.

Mr A's been represented in his dealings with our service by a solicitor. Where I refer to Mr A within this decision, this should be taken to include the solicitor acting on his behalf.

What happened

Mr A insures his home with Fairmead. He sought to make claims on the policy in relation to two related matters. He said a building contractor had carried out poor quality works and not returned to complete the contracted works. He also claimed that items of jewellery had been stolen from the property by the contractor.

Fairmead declined cover for both claims. It said the circumstances of the damage to the property weren't covered by the policy, and that the policy terms and conditions required that either forced entry or deception was used to gain access to the property.

Mr A complained to Fairmead, and when it rejected his complaint, he referred it to our service. Our investigator thought that Fairmead had acted fairly when it declined cover for the damage to the property. Mr A didn't agree with this. Our investigator did think that Fairmead should reconsider the theft claim. She thought the circumstances of what had happened meant that deception had been used to carry out the theft. Fairmead didn't agree with this.

As no agreement could be reached, the complaint's come to me to make a final 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.

While the root cause of the matters complained about are the same, that being the alleged conduct of the contractor, there are two claims under separate sections of the policy here, and so I'll look at them separately.

The damage to the property

Mr A's policy provides cover for "*malicious damage*," and it's this cover that Mr A contends applies to his claim. In brief, he engaged a contractor to carry out works at the property which included the removal of existing walls at the property.

Mr A says that after the works were started, the contractor recommended further works which he agreed to. Some new walls were partially constructed but not completed before the contractor failed to return to complete the agreed works.

Mr A's position that this should be considered malicious damage is based on a number of

points:

- That the contractor is now the subject of a prosecution by local trading standards.
- The contractor has a history of starting but not completing works.
- The contractor used false details in their dealings with Mr A.
- An inspection of the works completed suggests they are of a poor standard.
- The necessary permissions and regulations weren't complied with for the works completed.
- The contractor never intended to complete the works to a proper standard.

In the absence of any definition of "*malicious damage*" in the policy terms and conditions, I need to consider the ordinary and normal meaning of the words. Our investigator considered, and it hasn't been disputed by the parties, that this should mean damage caused with the intention of causing harm. I'm satisfied that this is a reasonable definition.

At this point, the contractor has been charged by trading standards but hasn't been convicted of any offence in relation to their actions at Mr A's property. Unlike the theft (which I've addressed below), Fairmead doesn't appear to accept Mr A's contention that the contractor never intended to complete the works.

My consideration here is therefore whether I think, on balance, the contractor intended to cause harm to Mr A by demolishing parts of the property and partially completing building works, to a poor standard. It isn't disputed that Mr A agreed to the works which were carried out by the contractor. So ordinarily I don't think it would be reasonable to say that works carried out by a contractor with the agreement of the property owner (and policyholder) could constitute malicious damage – "*damage*" to the property (for example demolishing existing parts of the property) has been caused intentionally, but not with the intent to cause harm.

I do agree things are slightly different here. If I'm satisfied that, on balance, the contractor had no intention of completing all the works when the parts of the property were demolished, my conclusion may be different. While I note Mr A's position regarding the conduct of the contractor previously with other clients, I'm not persuaded I can reasonably reach such a conclusion here. I'm aware that in addition to the works which had been carried out, there were additional materials which had been delivered to the property to allow further scheduled works to take place. I think this is suggestive that the contractor intended to carry out further works which had been agreed with Mr A.

I can't say why the contractor didn't attend the property to complete the works. I don't have any statement from them or evidence from any proceedings taken against them. On balance, however, I don't think I can safely reach a conclusion that they carried out demolition works at the property, and started new construction, with the intent of causing Mr A harm. I'm not persuaded that the circumstances described here mean that what's happened amounts to malicious damage.

I've also thought about whether the poor quality of works constitutes malicious damage. For this to be the case, I'd have to be satisfied that the works were carried out to a poor standard intentionally, to cause harm to Mr A. While the works may not be to the required standard, this isn't evidence that they were done poorly deliberately. I haven't seen any evidence from monitoring of the contractor's work, or observation of it, to show that the work was intentionally poor.

The theft

Mr A has said that he believes the contractor stole items of jewellery from a bedroom when

they had access to the property after asking to use the bathroom. I'm aware that the contractor hasn't (to date) been convicted of the theft, but for the purposes of my decision I will have to assume that the circumstances of the theft are accepted – as this is what Fairmead has assessed the claim on.

The terms and conditions of Mr A's policy say for *"claims caused by theft or attempted theft, no cover is provided: unless there are signs of damage caused by the thief (or thieves) to get into the home or violence or deception was used to gain entry."*

It isn't disputed that there was no forced entry to the property. The question to be considered is whether the circumstances outlined meant that deception had been used. Fairmead's view is that deception wasn't used to gain access to the property.

What obviously can't be said with certainty is whether the theft arose on an opportunistic basis, essentially by the contractor taking advantage of them having access to the property when using the bathroom, or whether it was planned, with the contractor lying that they needed to use the bathroom, to gain access to the property.

I don't think this affects my decision here. Whichever applies, I think a fair and reasonable interpretation of what's happened is that Mr A has provided access to his property for a legitimate reason – he was told the contractor needed to use the bathroom. That legitimate access has been used for an illegitimate purpose. I think a reasonable interpretation is that Mr A has been deceived as to the ultimate aim of the contractor having access to the property – whether that was the contractor's aim from the outset or this was doing opportunistically doesn't change that point for me. I think it's fair to say that deception has been used to gain access to the bedroom where the jewellery was kept. I think a fair and reasonable interpretation of the policy terms and conditions means that the exclusion shouldn't apply in these circumstances.

I'm satisfied that the Fairmead couldn't fairly rely on the exclusion to decline cover for the claim. In order to put things right, Fairmead will need to re-consider the claim in accordance with the remaining terms and conditions of the policy. My finding here doesn't place an obligation on Fairmead to settle the claim, or restrict their ability to undertake reasonable enquiries and investigations to establish whether the policy provides cover.

My final decision

It's my final decision to uphold this complaint in part. In order to put things right, Fairmead Insurance Limited trading as Legal and General must reconsider the theft claim in accordance with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 July 2022.

Ben Williams
Ombudsman