

The complaint

S, a limited company, complains that Fairmead Insurance Limited (Fairmead) has settled a claim made under their commercial property insurance policy under the malicious damage by tenant's cover, rather than the fire cover.

What happened

S owns a property which is split into several flats, let out to tenants. In March 2021 there was a fire in a communal part of the property. S made a claim to Fairmead, its commercial property insurance provider.

During the early stages of the claim, S said that one of the tenants who resided in the property was initially thought to be responsible for the fire and was arrested. But S also said they were later released without charge.

Fairmead said the fire peril under S' insurance policy doesn't cover a fire started deliberately by a tenant. But they said malicious damage by tenants was a separate peril under the policy, so they considered the claim against that.

Under the malicious damage by tenants' peril, there is a policy limit of £7,500. Fairmead offered that amount toward the fire damage, along with some additional amounts for loss of rent and alternative accommodation for the tenants.

S was unhappy with the claim being considered under malicious damage by tenants, due to the low policy limit. S thinks the claim should be considered under the fire peril, which has a higher limit. So, S brought a complaint to this service.

Our investigator looked into things, but she didn't uphold the complaint. She said that it was fair and reasonable for Fairmead to consider the claim under malicious damage by tenants, as it was likely the tenant was responsible for the fire.

S didn't agree and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my provisional findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I’ve provisionally reached a different outcome to our investigator. So, I’m issuing a provisional decision, to give both parties an opportunity to comment on my findings before I reach my final decision.

Fairmead has accepted a claim under S’ policy. But the dispute centres around whether it should be considered under the fire peril with a policy sum insured of £447,487.15, or the malicious damage by tenants cover with a limit of £7,500.

S made a claim shortly after the fire had happened (the fire was in the early hours of the morning). When speaking to Fairmead shortly after to find out an update on the next steps, S mentioned that a tenant had been arrested, but they also said they thought the tenant had been released.

Fairmead has said the fire peril under S’ policy doesn’t cover deliberate damage by people who are lawfully in the property i.e. the tenant. So instead Fairmead has considered the claim under malicious damage by tenant’s cover, which has a policy limit of £7,500. Fairmead paid this full policy limit towards the fire damage.

However, the tenant was released without charge – and S told Fairmead this. S also provided Fairmead with a statement from the Police who confirmed:

“As discussed this email is confirmation that the investigation involving (NAME), who was arrested for Criminal Damage-Arson on (DATE) at (ADDRESS) was interviewed and bailed, while the investigation was reviewed by the Crown Prosecution Service. On (DATE) we received a decision from the CPS, stating that they would not be prosecuting (NAME) due to lack of evidence linking him to the arson.”

For me to conclude Fairmead has acted reasonably by considering the claim under the malicious damage by tenants section of the policy (and the limit for that cover), I’d first need to be satisfied the evidence demonstrated the tenant was responsible for causing the fire. Allegedly (although there has been no evidence submitted) the tenant also suffered with poor mental health. So, I’d also need to consider if the tenant had acted ‘maliciously’ when starting the fire.

However, the tenant originally suspected was released without charge. They weren’t prosecuted or charged on the basis there was a lack of evidence linking him to the arson.

So, with this in mind, on balance, I’m not persuaded the evidence supports the tenant most likely started the fire. Instead, the fire could have been started by anyone, including those who weren’t lawfully in the property or a tenant. Consequently, I don’t think it is fair for Fairmead to consider the claim under malicious damage by tenants’ section of S’ policy, or to apply that policy limit when settling the claim.

Therefore, unless anything changes as a result of the responses to my provisional decision, I'm minded to conclude it would be fair and reasonable for Fairmead to reconsider the claim under the fire peril, with the associated policy limits attached to that, rather than restricting the claim to the £7,500 malicious damage by tenants cover and limit.

S has outlined a list of costs it says should be paid including repair costs, loss of rent, alternative accommodation, council tax and utility bills. However, here I'm not deciding the specific quantum of the claim. Instead, at this point, I'm minded to say that Fairmead need to reconsider the claim under the fire peril with that corresponding limit.

If my final decision remains the same as my provisional decision, and S accepts it, S will then need to liaise with Fairmead about the appropriate total settlement and provide any evidence Fairmead needs in support of that. If S remains unhappy with the settlement ultimately offered by Fairmead, it may be able to bring a new complaint to this service about the settlement amount.

S has also said that one of its directors, and their health, has been personally affected by Fairmead's decision to deal with the claim with the lower limit. However, I can't award compensation to them personally for this. This is because the complaint is being brought by S, a limited company, and a company can't be distressed or suffer poor health.

S, as a company, can be inconvenienced though. But some of the inconvenience to S here, and costs claimed for, relate to loss of rent, alternative accommodation and it needing to pay for this, and the repairs required etc. But those are separate costs that S would need to make a claim for under its insurance policy (some of these costs have already been partly covered too), when Fairmead reconsiders the claim.

However, I do recognise that having the claim declined would have been inconvenient for S as a company. S needed to move things forward after Fairmead, in my view, incorrectly restricted the claim to the £7,500 limit. This includes releasing tenants from their contracts, arranging and paying for the alternative accommodation, and arranging for quotes and repairs of the fire damage – that potentially should have been covered under the fire peril by Fairmead if they hadn't – incorrectly in my view - applied the lower limit.

So, unless anything changes as a result of the responses to my provisional decision, I'm also minded to direct Fairmead to compensate S £350 for the inconvenience caused."

Therefore, I was minded to uphold the complaint and to direct Fairmead to reconsider the claim under the fire peril, and in line with the remaining policy terms. And, to pay £350 compensation.

The responses to my provisional decision

S responded to my provisional decision. It clarified that I had said the £7,500 limit had been paid by Fairmead, whereas payment hadn't actually been made.

Fairmead responded to say that they still believe the initial claim decision was correct. However, as they do not have any other evidence to support that position, beyond what I considered when reaching my provisional decision, they agreed to accept the claim under the fire peril. They added that the claim will be reassessed to understand the claims costs and current position.

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.

And I've thought carefully about the provisional conclusions and decision I reached, and the responses to it. Having done so, and as neither party has provided anything which leads me to reach a different conclusion, my final decision remains the same, and for the same reasons.

I also recognise S has said the malicious damage limit hasn't yet been paid because S didn't agree with the claim being considered under that peril. But that doesn't change things here in any event, as Fairmead now need to reconsider the claim under the fire peril with the higher limit, and in line with the remaining terms.

Neither party has provided anything which changes my view on the appropriate amount of compensation either, so that also remains the same as my provisional decision and for the same reasons.

My final decision

It's my final decision that I uphold the complaint and direct Fairmead Insurance Limited to:

- Reconsider the claim under the fire peril, and in line with the remaining policy terms
- Pay S £350 compensation for the inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 16 November 2022.

Callum Milne
Ombudsman