

The complaint

Miss B has complained that Fairmead Insurance Limited hasn't paid enough in settlement of her business interruption insurance claim.

Fairmead is the insurer of Miss B's policy. Part of this complaint concerns the actions of its agent. As Fairmead has accepted it is accountable for the actions of the agent, in my decision, any reference to Fairmead includes the actions of the agent.

What happened

Miss B has a holiday home business in Scotland for which she held holiday home insurance with Fairmead. She claimed on her policy for loss of rent for the period 11 January 2021 to 20 June 2021 after her business was closed following an escape of water which caused substantial damage.

Separate to this later claim, in 2020, Miss B received £5,000 from Fairmead after claiming for losses as a result of Covid-19.

Fairmead said that at the time the escape of water occurred there had been a level 4 lockdown in place for Miss B's holiday home, which remained in place until 17 May 2021. It said this meant that even if her holiday home hadn't been damaged Miss B wouldn't have been able to rent it out. Fairmead said it agreed to cover the claim from 17 May 2021 to 20 June 2021 and paid the claim on 14 September 2021. Fairmead acknowledged that there had been some delay and offered Ms B £50 compensation in recognition of this.

Unhappy with Fairmead's response, Miss B brought her complaint to our service. She didn't think Fairmead had considered the correct level of restrictions when assessing her claim. She said the area had been level 1/2 during the time of her claim and therefore could have remained open if not for the escape of water. Miss B said she hadn't been informed of any changes to her policy and didn't think it was fair that Fairmead was able to reduce payments as a result of Covid-19. Miss B provided a document which said that travel was allowed in any level 1 or level 2 area in Scotland and online articles showing that the area Miss B's home is in had moved to level 1. She also provided a copy of the Scottish Government's Covid-19 strategic framework.

Miss B said that the payments she received from Fairmead had been delayed and this caused her distress.

Our Investigator looked into Miss B's complaint. He thought Fairmead had fairly stated that Miss B's property was in level 4 and therefore would not have been able to open at the beginning of the claim period. However, he thought that the property would have been able to take visitors from 26 April 2021 when it moved to level 3. He initially recommended that Fairmead pay Miss B's claim on this basis but Fairmead said that no further action was due as it had already settled Miss B's claim on the basis of her taking £400 a night for the period she had claimed for, which was likely to be an overpayment. It didn't think it should pay anything further. Fairmead also said that it didn't believe that Miss B would have received many bookings while the area was in level 3.

Miss B disagreed with our Investigator's view and asked for an Ombudsman's decision. She said her policy with Fairmead was meant to cover her for 52 weeks of the year and she wasn't aware that there were times that she wasn't covered. Miss B said her claim was fairly assessed by the loss adjuster and Fairmead had agreed to cover her losses. She said she had never been told that Fairmead wanted information to substantiate her losses so it wasn't fair to say it had overpaid her.

Miss B said that 2021 was an exceptional year for the holiday home business and the information the Investigator provided to show that her home was in level 4 did not make any sense. Miss B said Fairmead had accepted that the claim was due to an escape of water and there had not been any mention of the claim being limited due to Covid-19.

Miss B was also unhappy with the delays in receiving the payment for her claim and said she'd had to use her own money to carry out repairs.

Before reaching a decision, I got in touch with Fairmead and Miss B through our Investigator. Fairmead had told us that it had paid Miss B £10,800 as that was the total of £400 per night for the period 17 May 2020 to 20 June 2020 (34 nights). However, I said that I thought that it should have paid her £13,600 as the correct calculation. I asked Fairmead to increase the amount it paid to Miss B by £2,800 and to add interest to that amount at 8% simple per year.

I also said that I intended to increase the compensation Fairmead should pay to Miss B for distress and inconvenience by £150. This is because it incorrectly calculated her claim value and didn't properly explain its decision about the basis on which it was going to settle her claim.

Fairmead agreed to pay Miss B an additional £2,800 plus interest and a further £150.

Miss B didn't accept my recommendation. She said she was pleased to be able to recoup some of the money but wanted a final decision on her complaint. She reiterated that levels of Covid-19 in the area surrounding her holiday home were low in early 2021.

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.

The claim

Miss B's policy covered her holiday home for up to 12 months loss of profit following insured damage. In this case the insured damage is the escape of water and Miss B claimed for loss of rent as a result of the escape of water. However, Fairmead said that Miss B's holiday home could not have opened anyway between the date of the escape of water and 17 May 2021. Therefore, it said it paid her claim at a rate of £400 per night for the remaining time her holiday home was closed.

It's generally accepted in insurance law that if there are two equally effective causes of a policyholder's loss and one is covered by the policy and the other is not, the policy will cover the loss unless one of the causes is expressly excluded under the policy.

That means that where there are two causes of loss – in this case the escape of water and the restrictions brought about by Covid-19, Fairmead can only reduce the amount paid if Covid-19 is specifically excluded or if there is a trends or other circumstances clause within the policy.

Miss B's policy was in place from 29 January 2020 until 28 January 2021. I believe that this is the policy that her claim would fall under as this is the policy in place at the time of the escape of water.

This policy provides loss of profit cover as a result of a restriction or denial of access to her holiday home by the Government as a result of a contagious disease. Under 'what is not covered' it says, *"More than £5,000 in any one period of insurance"*.

As Miss B had been paid £5,000 for losses incurred from March 2020, I think this acts as an exclusion and means that Fairmead don't need to pay any further losses where Covid-19 is a concurrent cause of the loss.

If I'm wrong about the claim falling under the policy which started in January 2020 and part of the claim falls under the second policy which started in January 2021, Miss B's claim still wouldn't need to be paid for the period her holiday home was required to close due to the Scottish Government restrictions because that policy specifically excludes loss due to infectious or contagious diseases and Covid-19 is an infectious or contagious disease.

I've therefore gone on to consider whether Miss B's holiday home was required to close by the Scottish Government. Miss B said that the area in which her home is situated was level 1 throughout the period January to May 2021. She has provided online articles which she believes supports this as well as other evidence. While I've carefully considered this, the information Miss B has provided is not dated between January and March 2021 so I don't believe that this indicates that the area was in level 1 or 2 at that time.

I have looked at the announcement dated 4 January 2021 where the Scottish First Minister said:

"other decisions that I will outline will apply to those parts of Scotland currently at level 4, which of course is all of mainland Scotland".

As Miss B's holiday home is on mainland Scotland, I think Fairmead was reasonable to say that it was level 4 from January 2021.

Therefore, I believe that Miss B's premises were required to close by the Government in January 2021 and, for the period her holiday home was in level 4, Fairmead does not need to pay anything further than the amount it has now agreed to pay.

Miss B has provided information which is not dated; however, I believe that it sets out the relaxing of restrictions from 26 April 2021. I have seen the announcement from the Scottish Government which said, *"all holiday accommodation...can open"*. The Scottish Government's website¹ said that from 26 April 2021 all of Scotland would move to level 3. This indicates that Miss B's holiday home would have been under level 3 restrictions from this date which means she would have been able to reopen her business.

Fairmead did not explain this to Miss B and instead told her that she would not have been able to open until 17 May 2021, which I don't think is correct.

As set out in the background, Fairmead has now agreed to pay a further £2,800 to reflect the full claim period from 26 April 2021, plus 8% simple interest. I think this is fair and reasonable as it covers the duration Fairmead said it would pay to settle her claim and compensates Miss B for being without money she should have had.

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<https://www.webarchive.org.uk/wayback/archive/20210425095409/https://www.gov.scot/publications/coronavirus-covid-19-protection-levels/>

Miss B should have been able to claim for the period 26 April 2021 until 20 June 2021, a period of just under two months. However, Fairmead only paid her for her losses for around one month. It's impossible to know exactly what Miss B would have received in rent if her holiday home had been open so I need to decide what's fair and reasonable in all of the circumstances. Having considered everything, I don't think Fairmead need to pay Miss B anything above what it has now agreed to. I'll explain why.

Fairmead paid Miss B's claim based on her testimony that she would take £400 per night for each night, with a 5% reduction for stays over 4 nights. However, from the information Miss B has provided, she was not fully booked each night in the months after she reopened, so I think it's unlikely she would have been fully booked for the period 26 April to 20 June 2021. Moreover, of the bookings Miss B has shown us, most were for less than £400 per night. By paying Miss B's claim on the basis of her receiving £400 a night I think Fairmead has already paid Miss B a reasonable amount to reflect what she's likely to have received in rent.

Therefore, when taking everything into account, I think Fairmead has now agreed to pay Miss B a fair and reasonable amount to settle her claim.

Delays

Miss B said there were numerous delays in Fairmead dealing with her claim. With regard to the property damage claim, Fairmead said the Loss Adjuster submitted a report on 22 June 2021 following receipt of the final invoice from Miss B's contractors. It said payment was requested and due to the costs, the report was referred to Underwriters for their approval on 29 June 2021. On 14 July 2021, Underwriters requested further information and this was provided on 16 July 2021. Fairmead said payment was approved on 27 July 2021 and raised on 30 July 2021.

With regard to the claim for loss of rent, Fairmead said payment was requested on 8 September 2021 and approved and raised on 14 September. Fairmead accepted that there had been some delay in this being paid and offered Miss B £50 compensation.

I can see from Fairmead's claim notes that Miss B chased payments on a number of occasions. I believe that these delays would have been frustrating to Miss B. I also think her claim not being calculated correctly has caused her inconvenience and Fairmead not properly explaining its rationale for how it was going to pay her claim would have caused additional distress and inconvenience. Overall, I think a further £150 is a fair and reasonable amount for Fairmead to pay Miss B to compensate her for this.

Putting things right

To put things right Fairmead should pay Miss B:

- £2,800 to settle her claim.
- Interest on this amount at a rate of 8% simple from the date Fairmead paid Miss B's business interruption claim to the date it makes payment.
- A further £150 compensation for her distress and inconvenience, in addition to the £50 it has offered if that has not already been paid.

My final decision

My final decision is that I uphold this complaint and require Fairmead Insurance Limited to

do what I've set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 31 March 2023.

Sarann Taylor
Ombudsman