

The complaint

Mr J and Ms D complain on behalf of Mrs J that Fairmead Insurance Limited declined a claim made under her home insurance policy following damage caused by a water leak.

Mr J has primarily dealt with things so, for simplicity, I'll refer to him only.

Reference to Fairmead includes its agents and representatives.

What happened

I'll summarise the main points about this dispute:

- Mr J got in touch with Fairmead in December 2022 after a leak caused water damage at Mrs J's home.
- Fairmead declined the claim. As Mrs J wasn't living at her home, the policy required the heating to remain on and maintain a temperature of at least 15 degrees. Fairmead wasn't persuaded this had been achieved based on utility bills.
- Mr J didn't think this was fair. He said the heating was on a thermostat programmed to maintain the required temperature. And he said the cause of the leak wasn't related to the temperature in the home.
- Fairmead maintained it had declined the claim fairly. However, it accepted there had been 'slight' delays and paid £50 compensation.
- Our investigator said the complaint should be upheld. He said the plumber's report showed the leak wasn't caused by the temperature. Bearing in mind ICOBS 8.1.2B requires the rejection of a claim for the breach of a condition to be connected to the circumstances of the claim, he thought Fairmead should have accepted the claim.
- Mr J agreed but Fairmead didn't. It reiterated that it didn't think the utility bills showed the temperature threshold in the policy had been met. And as the leak coincided with a period of cold weather, it thought the damage may have been connected to the temperature in the home being below the threshold.

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 policy covers damage caused by “water as a result of a burst, leaking or overflowing domestic water or heating installation, appliance or piping”. There's no dispute this is what happened, and the damage is covered in principle.
- Mrs J wasn't living at her home in late 2022. Fairmead has a policy term which says, in summary, that cover for a water leak is dependent upon maintaining the central heating to a minimum of 15 degrees over winter.
- Fairmead declined the claim because it didn't think the temperature threshold in this policy term had been met.
- But I don't think I need to decide whether the term was met in order to reach a fair and reasonable outcome to this complaint. I'll explain why.
- As our investigator pointed out, ICOBS 8.1.2B says, in summary, that it would be unfair for an insurer to reject a claim for breach of a policy condition if the circumstances of the claim aren't connected to the breach. In my view, that means it would be unfair to decline a claim where the loss would have happened regardless of whether the policy condition was complied with or not.
- The plumber's report is clear that the cause of the leak was a faulty ball cock in the water tank. They said it allowed the tank to keep filling until it overflowed. The plumber didn't indicate this problem had anything to do with the temperature.
- Whilst Fairmead has suggested the cold weather *may* have caused the leak by freezing the pipes, it hasn't offered a plumber's report or similar to support that conclusion. And it accepts the pipes hadn't ruptured, which in my view is commonly associated with damage caused by freezing. It says it's possible for freezing to cause pipes to 'pop' apart, rather than rupture, and that may be so. But this comment seems to be mere speculation about what *could* have happened rather than an evidence-based assessment of what *likely* happened in this particular case. In the circumstances, I'm more persuaded by what the plumber said.
- So *even if* the temperature had dropped below the required threshold, I'm not satisfied that was likely to have been the cause of the leak and subsequent damage. That means the damage was likely to have happened whether the policy term was complied with or not. It follows that I'm not persuaded it would be fair for Fairmead to rely on the policy term to decline the claim *even if* it had been breached.
- To put things right, Fairmead should accept the claim, subject to the remaining terms and conditions of the policy. It should get in touch with Mr J to explore the next steps for settling the claim.

My final decision

I uphold this complaint.

I require Fairmead Insurance Limited to accept the claim, subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 14 September 2023.

James Neville
Ombudsman