

The complaint

Mr W is unhappy that Fairmead Insurance Limited declined his claim for damage caused by an escape of water.

What happened

In summary, Mr W had holiday home buildings and contents insurance underwritten by Fairmead. In December, a pipe burst and caused significant damage to the house. Mr W claimed under the policy and Fairmead instructed a loss adjuster.

Fairmead declined the claim relying on the policy unoccupancy condition which required the home to be centrally heated continuously if unoccupied for more than 72 hours, or drain the water. Fairmead said Mr W hadn't met the condition for heating his home because he had storage heaters, so he should've drained the water.

Mr W complained to Fairmead. He said the heating was always on in line with the policy, so he thought it should accept his claim. Fairmead issued its final response to Mr W, maintaining its decision.

I issued a provisional decision in September 2023 explaining that I was intending to uphold Mr W's complaint. Here's what I said:

provisional findings

The main issue of complaint lies with the policy unoccupancy condition, which states:

It is a condition during the period 1st November to 31st March (inclusive) that whenever the Home is Unoccupied for more than 72 consecutive hours You must ensure that:

1) the water supply is turned off at the mains and the water system drained

OR

2) there is a fully working central heating system which is set to operate continuously for 24 hours each day at a temperature of not less than 10 degrees Celsius/50 degrees Fahrenheit.

If this condition is not met any claims relating to the following Causes or Extra benefits will be void and not paid:

- *Escape of water or oil from any fixed water or heating installation or domestic appliance*
- *Water and heating installations*
- *Tracing and accessing leaks*

We reserve the right to request sight of utility bills for verification

The condition was prominently displayed at the beginning of the policy booklet, and Mr W was aware of it. The dispute lies with the definition of a “fully working central heating system”.

Central heating

Fairmead said Mr W didn't have central heating, so he should've turned off the water supply and drained the water system.

Mr W said he had storage heaters, operated from a central energy supply, which he believes is central heating.

I've thought carefully about this issue and, overall, I'm minded to agree with Mr W.

Storage heaters are supplied by a single energy source, usually on a time-of-use electricity tariff, with the capability of being set to maintain at least a minimum room temperature. I accept Fairmead's point that the heaters can be operated individually, but Mr W fairly points out that the same is true of radiators attached to a gas central heating system.

I've looked at reputable online sources of information about central heating systems: some include storage heaters within the definition of central heating, others don't.

But the key point of reference for me to consider is the policy. Crucially, the policy doesn't define what is meant by a “fully working central heating system”.

Given the obvious importance of this condition, and the advancements in whole-home heating systems, I think it's reasonable to say Fairmead should've included a definition. In the absence of a definition, I think it's reasonable that Mr W classed his storage heaters as central heating.

Temperature

The next part of the condition is that Mr W needed to have his heating “set to operate continuously for 24 hours each day at a temperature of not less than 10 degrees Celsius/50 degrees Fahrenheit”.

Mr W said he did this and, at Fairmead's request in line with the policy condition, he supplied evidence of his smart meter readings and electricity charges. Fairmead's final response letter doesn't comment on the conclusions it reached having seen the evidence.

I asked Fairmead to explain how Mr W could show he had the heating set to 10 degrees Celsius all day every day of the defined period. In response, Fairmead said the energy usage and charges would provide confirmation. And in Mr W's case, Fairmead said on the balance of probability he would've paid more than he did to heat his home than his smart meter readings and bills suggest.

While I understand why Fairmead expects to rely on that evidence, I can't agree that it's a fair determination of how Mr W heated his home. That's because there are too many variables which could affect the electricity usage and charges, such as the wattage of each heater, its efficiency, how well the home was insulated, whether the heating was boosted, type of energy tariff, and so on. However, what the electricity readings do show is that there were peaks and troughs in electricity usage during the night and day respectively. That supports Mr W's claim that he had his heating set according to the time-of-use tariff which, in turn, supports his claim that he had his heating on continuously in line with the policy.

In summary, I find Mr W's evidence more persuasive, so I'm minded to conclude that Fairmead unfairly declined his claim by relying on the unoccupancy condition.

Putting things right

Fairmead declined Mr W's claim on the basis that he didn't meet the unoccupancy condition. This suggests to me that Fairmead didn't consider the claim further once it believed there was no cover.

So, to put matters right, I'm minded to require Fairmead to reconsider Mr W's claim in line with the remaining terms and conditions of the policy, without relying on the unoccupancy condition.

In addition to this, I think it's reasonable to ask Fairmead to pay Mr W £350 compensation. The compensation is in recognition of the distress and inconvenience Mr W experienced, over and above that which could reasonably be expected with a claim of this nature, because of Fairmead's reliance on a policy condition which it hadn't defined or reasonably demonstrated applied in the circumstances.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Fairmead didn't provide any further comment.

Mr W accepted my provisional decision but wanted to clarify some points. I'll address those points below.

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.

As Mr W accepted my provisional decision, and Fairmead didn't make any further submissions or provide further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

I'll now comment on the points Mr W raised in his response.

Mr W explained he employed builders to repair his property and he summarised the work done. Mr W also offered to send detailed costings and invoices. Following advice from his broker, Mr W asked that Fairmead should not be able to decide which builders to use and that it should, instead, pay the costs of the builders he has already used.

My decision is that Fairmead should reconsider the claim because I didn't agree that it had fairly declined it under the unoccupancy condition. As I said in my provisional findings, it's possible Fairmead didn't look at the rest of the policy, so it would've been unfair for me to simply ask it to pay the claim. When Fairmead reconsiders the claim, its decision whether to accept or decline should be in line with the remaining policy terms and conditions.

Understandably, Mr W had the repairs done so, if it accepts the claim, Fairmead wouldn't be in a position to choose a builder. Instead, it would *likely* cash settle the claim for any reasonable repair costs. Mr W already confirmed he has detailed costings and invoices, which he'd need to provide directly to Fairmead should it request them. However, I can't

assume what Fairmead's decision will be so it would be inappropriate for me to make requirements of it in respect of how it may settle the claim. Mr W may wish to review his policy terms and conditions for further guidance.

That said, if Mr W is unhappy with any of Fairmead's further decisions about his claim, he will be entitled to follow the complaints process again to seek a resolution.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr W's complaint. Fairmead Insurance Limited must:

- reconsider Mr W's claim without relying on the unoccupancy condition, and
- pay £350 compensation for the avoidable distress and inconvenience Mr W experienced because of its unfair reliance on an undefined policy condition.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 November 2023.

Debra Vaughan
Ombudsman