

## **The complaint**

Mr N complains that Fairmead Insurance Limited (Fairmead) declined a claim made under his landlord's property insurance policy.

Where I've referred to Fairmead, this also includes any actions or communication by agents acting on their behalf.

## **What happened**

Mr N owns a flat which is let out to tenants, and he insures the flat under a landlord's property insurance policy underwritten by Fairmead.

In May 2023 Mr N made a claim to Fairmead for damage to the shower in the flat. Initially this was declined by Fairmead on the basis of a faulty workmanship exclusion.

Mr N provided further evidence to Fairmead which he said supported his position that an insured event had occurred. However, Fairmead's claim decision overall remained the same. But Fairmead recognised there were communications issues during the claim and offered Mr N £100 compensation.

As Mr N remained unhappy with the claim decision, he approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. She said Fairmead's initial declination of the claim wasn't unreasonable based on the information presented. But she said Fairmead had also incorrectly said the policy didn't cover *any* accidental damage. As it did actually provide accidental damage to sanitary ware, she said Fairmead should reassess the claim against that part of the policy, and the remaining terms.

Whilst the investigator said Fairmead should reassess the claim against the relevant accidental damage cover, she thought the compensation already offered was reasonable, so she didn't recommend this be increased.

Mr N agreed with the investigator's assessment and recommendations. Fairmead didn't agree and asked for a final decision from an ombudsman.

## 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.

Having done so, I've reached the same outcome as our investigator.

### The claim

Mr N initially reported a claim for his shower to Fairmead in May 2023. When reporting the claim, he said:

*"Shower drain upon further investigation by my plumber was noted to be built by previous owner on concrete blocks (photos attached) and pipe work was all done incorrectly. It requires ripping out and being done correctly as it causes flooding due to how it was fitted, the back boarding also requires another layer as it is not thick enough and current enclosure can not be used with the new shower tray."*

Fairmead subsequently declined the claim based on the following exclusion in the policy:

*"13. Defective Design or Construction Exclusion  
We will not pay for any loss, damage, liability, cost or expense of any kind caused by or resulting from poor or faulty design, workmanship or use of faulty materials."*

I don't think Fairmead acted unfairly by declining the claim at that point, based on how it was reported by Mr N, as this indicated a workmanship issue.

However, following the claim declination, Mr N provided additional information and clarification. He said:

*"The damages are therefore tenant related and due to their wear and tear over the past 2 years. The plumber was just giving me some feedback as to his reasoning for the cost of full refitting, stating that due to the nature of the build, it would require fully replacing and re-piping underneath. He is doing this mostly just as part of the job whilst there, the enclosure and shower tray is most of the cost of the claim and then his labour is replacing these parts. Removing the concrete blocks underneath he has advised will only take 5 minutes."*

So, Mr N was explaining what he meant when first making the claim, and that this was feedback on the construction which needed remedying when replacing the shower unit, rather than this being the cause of the damage itself.

Mr N then clarified that, in his view, the actual damage was caused maliciously, which is covered under his policy. But his plumber also said:

*"To clarify this issue, I have been at this property several times previously and enclosure was always working fine, There has been no leakage in the past year. The tenants have appeared to damage the enclosure which is attached to the shower tray, so to replace this the tray and enclosure both need replacing. Further damage to the tray has widened the gap which is now creating the escape of water but initial cause is definitely from the tenant standard damage. I believe this to be genuine not malice. I removed the tray when there to ensure the job at hand on the day so there were no surprises. This led to me seeing the blocks underneath which I will simply remove and re run the pipes. This will not take me long, approx. 5 minutes – it is more for advisory purposes of what I am doing and not included in the cost below."*

So, this seems to say whilst the tenant caused damage, it wasn't done with malice in their opinion. But they also have explained why the damage wasn't as a result of poor workmanship itself either.

Ultimately Fairmead's claim decision remained the same, and they referred to the faulty workmanship exclusion in their claim decline letter. But based on the above, I don't think this applies as nothing has been provided which shows the cause of the damage was the faulty workmanship itself.

I can see that Mr N has changed his view on the cause of damage several times. However, given the damage was caused by his tenant and discovered later, it's unsurprising that Mr N is unaware of exactly how it was caused. Therefore, he can only give his opinion of potential causes. So, I don't think it's unreasonable or unusual that this has changed several times. And Mr N has sought to clarify things when requested, including providing comments from his plumber who both inspected the damage and carried out the repair - who also didn't conclude it was damage caused by poor workmanship.

Determining exactly what happened to the shower unit with certainty isn't possible. Fairmead suggested carrying out a visit, but by this point, Mr N had already arranged repairs. I don't think Mr N acted unreasonably by carrying out repairs, as he needed to have a working shower for the tenant. But I do recognise this then makes it difficult for Fairmead to validate the claim.

However, Mr N has provided videos of the shower damage, along with reports from the plumber who inspected and replaced the shower unit. In this, they reported:

*"Following from doing work in the property at (address) approx a year ago, the shower and enclosure at that time was fine with no damage ect. (sic)  
I have since been there and in my opinion the following damage appears to have been caused by the tenant.*

- 1. Broken shower door runners (snapped off)*
- 2. Damage to wall boarding (pulled off wall, and looks like punctured)*
- 3. Shower tray damaged (chips in it)*
- 4. Waste trap has been broken (appears to have been prised up and snapped inner section out)*
- 5. Shower plinth broken (seems to have been kicked)*

*Though looking at this, I would say it's through mistreatment by the tenant who has shown poor respect for the fittings."*

So, it does seem that some of the damage *could* have been caused maliciously as thought by Mr N. But malicious damage needs to have been caused with intent to cause harm, and that's not been shown with certainty. However, the damage could also have been caused accidentally by the tenant too. In Fairmead's claim decline letter, they said:

*"Additionally, the only peril under which any of the circumstances provided by yourself could have be (sic) considered is accidental damage. Accidental damage extension was not taken out on your policy."*

I don't think this is entirely correct. I agree that Mr N didn't choose the *extended* accidental damage cover under his policy. However, under the standard buildings cover he has, this includes:

*"What is covered*

*a. The cost of accidental damage to:*

- "Sanitary ware"*

And sanitary ware is defined as:

*"Washbasins, sinks, bidets, lavatory pans and cisterns, shower trays, shower screens, baths and bath panels."*

So, it does seem that this *might* provide cover for *some* of the damage reported. But Fairmead didn't consider the claim against this part of the policy as it incorrectly said Mr N didn't have *any* accidental damage cover.

Our investigator therefore recommended Fairmead reassess the claim in line with this additional cover and remaining terms and conditions. But Fairmead responded to say they didn't agree, and the faulty workmanship exclusion applied.

I don't agree with Fairmead that the claim shouldn't be reassessed by them against the included accidental damage cover on the basis of the faulty workmanship exclusion. I've explained above that whilst the claim was initially reported and indicated as that, that was based on what Mr N knew at the time. And things have moved on since then, and additional information has been provided that doesn't conclude that. And as explained, I don't think the plumber's report on the damage that has been caused indicates it's a workmanship issue either.

Therefore, I agree with our investigator that Fairmead needs to reassess the claim against the standard and included accidental damage policy cover and remaining terms and conditions. As Fairmead hasn't done this yet, that's what I'll be directing them to do.

Fairmead has also said that any claim needs to be made within 30 days as per the policy requirements, and Mr N was aware of an issue in January 2023 but failed to make a claim until May 2023. So, they say Mr N breached this policy requirement.

However, Mr N has explained this was initially reported to him as a blocked toilet (which was replaced by Mr N) and shower. He had issues gaining access, and he also needed to consider whether to make a claim for the shower, or whether to arrange works himself if the cost was going to be minimal and not worth claiming for.

When Mr N became aware that the cost was going to be beyond a minimal amount as damage had been caused to the shower unit, he then made the claim to Fairmead. So, I don't think it's unreasonable that the claim wasn't made within 30 days and consequently it's not fair or reasonable for Fairmead to decline the claim solely on this basis.

With the above in mind, I'm directing Fairmead to reassess Mr N's claim against the standard accidental damage cover under his policy, and the remaining policy terms.

### The service received

Mr N says he has been caused inconvenience by continually needing to communicate with Fairmead about his claim, the claim decline decisions and by needing to provide additional information when requested by them. But any claim will cause inconvenience just by virtue of needing to make a claim in the first place.

And whilst the claim was initially declined by Fairmead, following this, the cause of damage has been changed several times by Mr N (not unreasonably as explained above), which has then meant he has needed to provide additional information. So, I don't think I can hold Fairmead responsible for needing additional information from Mr N to support his position, or the additional inconvenience that caused.

However, Fairmead already recognises in some areas their claim handling fell short, including communication issues and a call back wasn't made. They offered £100 compensation for this. Having considered everything overall, I think this amount of compensation is fair and reasonable in the circumstances, so I won't be directing Fairmead to increase this.

### **My final decision**

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

- Reassess the claim against the standard accidental damage cover under Mr N's policy, and the remaining terms
- Pay Mr N the £100 compensation already offered, if it hasn't already been paid

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 15 March 2024.

Callum Milne  
**Ombudsman**