

The complaint

Mr S is unhappy with Fairmead Insurance Limited's (Fairmead) decision to decline part of a claim made under his landlord insurance policy.

Any references to Fairmead include their agents.

What happened

Mr S owns a property which he rented out. The property suffered further damage as a result of an escape of water in early 2022 and other damage which Mr S considered was caused maliciously. Mr S contacted Fairmead to tell them about the damage. They considered what had happened but declined the claim for the escape of water, saying it had occurred gradually. For the damage considered to have been caused maliciously, Fairmead said they would pay Mr S £5,000, which was the maximum amount offered under the policy.

Mr S was unhappy with this and made a complaint. He said the total cost of the repairs exceeded £70,000 and he's been unable to make a claim for loss of rental income because the damages claimed for had been declined.

Fairmead responded to Mr S' complaint in October 2023. They said they hadn't been provided with any evidence to show the conclusion reached by the loss adjuster about the cause of the escape of water was incorrect. But they said the service provided had fallen below the level expected and offered Mr £100 compensation in respect of this.

Unhappy with Fairmead's response, Mr S referred his complaint to the Financial Ombudsman Service. His concerns were considered by one of our investigators who said she considered Fairmead had acted fairly.

Mr S didn't agree with the investigators' conclusions. He said he'd never been aware the policy would exclude claims where damage had occurred gradually. And he referred to a separate court case which had awarded him possession of the property, during which the judge said the escape of water was catastrophic. These further comments didn't cause our investigator to reach a different conclusion, so this case has been passed to me to decide.

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.

I appreciate Mr S feels strongly about the damage caused to his property. He's explained the time and care he put into renovating it before renting it out and I'm sure it must be very difficult to see how damaged it was. And I think it's helpful to set out here that I'm not disputing the property has been subject to a lot of damage. But I can only require Fairmead to cover any of the damage shown to be because of an insured event as defined by the policy.

Malicious damage

I've started by considering the malicious damage aspect of this claim. The policy wording set out on page 25 of the terms and conditions says:

*"This **policy** will cover malicious damage and theft, by the tenant(s) named on the tenancy agreement, up to a maximum of 5,000 under section 1 building and section 2 contents."*

In July 2023, there was an email exchange where the loss adjuster confirmed they would pay Mr S the maximum amount of £5,000 under the policy. Given Fairmead has agreed to pay maximum Mr S is entitled to under the policy, there isn't anything more I can require them to pay in relation to the damage Mr S says was caused maliciously.

Mr S says he hasn't received the payment of £5,000. But I can see from the file that some payments were made to Mr S for certain items, like some of the waste collection.

Fairmead should provide Mr S with a breakdown of any payments already made under the malicious damage element of his claim so Mr S can understand how much he's received so far. Fairmead should pay the remaining amount of the £5,000, less any amount already paid.

In addition to this, Fairmead should pay interest at simple interest at 8% per annum from one month after Mr S regained possession of the property. Normally, we'd require an insurer to pay simple interest from one month after a claim was made. In this case the claim was first registered in July 2022, however Mr S didn't have possession of the property and therefore couldn't show that he had a claim covered by the policy. So, in this instance, I'm requiring Fairmead to pay interest from one month after Mr S gained possession of the property, as both sides had an opportunity to consider the damage.

Escape of water claim

I'll turn now to the escape of water claim. It's accepted a leak from the first-floor bathroom occurred with very significant consequences, causing damage to the living room underneath.

I've started by considering the policy terms, which on page sic of the terms and conditions say cover will be provided for:

*"Escape of water from domestic fixed water systems, pipe or appliance and **damage** to such by freezing"*

So, or me to say the escape of water was covered, it needs to be shown the water escaped from a fixed water system, pipe, or appliance.

The only evidence I have which sets out how the damage occurred is from the loss adjuster which is contained in a report from June 2023. The loss adjuster said:

"The escape of water has originated from the first floor en-suite shower where a large amount of cracked and damaged tiles have allowed water to penetrate and floor large sections of the round floor over a significant period of time."

Mr S disputes this. He said there are photographs from an inspection undertaken in January 2022 which showed both the bathroom and living room ceiling in "pristine" condition. He said it was clear the leak was a catastrophic event, as Mr S describes it. He's also said a judge who awarded him lost rental income from his tenants described the leak along the same lines. It's important to note here there's no suggestion the judge made any kind of finding about how the leak was caused.

I appreciate how Mr S has reached the conclusion he has, and it's not in doubt the damage caused by the escape of water is considerable. Whilst the photographs Mr S provided do show the bathroom appeared in a reasonable condition as of January 2022, this doesn't mean the loss adjuster's conclusion about how the water leak occurred isn't correct. And I'm not persuaded the photographs provided or Mr S' belief the bathroom was in such good condition are so persuasive that means I'd consider them more persuasive than the cause of damage set out in the loss adjusters report.

I also note the policy excludes damage which occurs as a result of "*wear, tear or deterioration*" and *the expert evidence seems to support the*. With this in mind and the findings of the loss adjuster, I'm not persuaded that Fairmead unfairly declined Mr S's claim for the escape of water, and I'm not going to require them to take any further action.

Fairmead's handling of the claim

It's clear this has been a very difficult time for Mr S. I'm sure that having to go to court to gain possession of his property and the rental income was due to him. Coupled with his explanation of the time and effort previously spent renovating the property, it must have been very difficult to see it in the condition it was left in.

I can't hold Fairmead responsible for this. But I can see there were occasions where Mr S didn't receive responses in a timely way, especially when he said he disagreed with the decision to decline the claim. Fairmead have offered £100 in respect of the upset and frustration caused and I'm satisfied this was appropriate in the circumstances.

Putting things right

- Pay Mr S a total of £5,000 (less any payments already made) for the malicious damage claim.
- Pay 8% simple interest per annum from one month after Mr S regained possession of the property until the date of settlement *.
- Pay the previously offered £100 to recognise the distress and inconvenience experienced by Fairmead's handling of the claim, if not already paid.

If not already paid, Fairmead Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the payment at 8% a year simple.

* If Fairmead Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr S how much it's taken off. If requested, Fairmead Insurance Limited should also provide Mr S with a certificate showing the amount deducted, so she can reclaim it from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr S's complaint and require Fairmead Insurance Limited to do what I've set out above in the "Putting things right" section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 March 2025.

Emma Hawkins

Ombudsman