

The complaint

D complains that Fairmead Insurance Limited has unfairly declined to provide cover for a claim made on its buildings insurance policy.

What happened

In June 2023, D notified Fairmead of damage caused to its property, discovered after the tenants had left following their eviction.

Fairmead had a preliminary report on the property completed by its agent on 1 July 2023 and this highlighted different levels of damage within the property. Some of this was considered by the agent to be malicious but they also highlighted the general condition of the property and said many areas of damage could be considered due to a lack of care, dilapidation and neglect.

The report highlighted that the property was underinsured with a sum insured for the buildings of £170,000. Fairmead considered the value to be in the region of £202,784 and that the property was 83% adequately insured.

On 17 August 2023, a final report was provided. This recommended the claim be repudiated and it confirmed that D had been sent a repudiation letter.

The repudiation letter explained that the claim was declined as Fairmead and its agent didn't believe the damage was the result of malicious damage. And additional wear and tear is excluded within the policy, which it considered to be the cause of damage.

D complained to Fairmead about its decision to decline the claim and Fairmead reviewed the claim with its underwriters, but it maintained the decision to decline the claim.

A final response was issued on 13 October 2023 and Fairmead said it didn't think it had done anything wrong when it made the decision it had on the claim. D made a subject access request to it and raised further complaint points about the claim decision following this. A further response dealing with the complaint about the malicious damage claim was issued in May 2024.

D said it had not been told that it needed to report the malicious damage to the police. The initial report did conclude some damage was malicious and this was later downplayed by subsequent reports. And a gas safety inspection had been completed and this identified malicious damage to the boiler, which was missed in the reports.

Fairmead explained that it felt it had been made clear in previous communication and the policy terms that the damage needed to be reported to the police. The claim had been reviewed with subsequent reports and there was no dispute that some of the damage was likely deemed malicious. But with there being multiple claims, each would be subject to individual excesses and the damage was minor for each claim and fall below the excess level. So it didn't think there would be a claim and there wasn't evidence to show the damages were done maliciously.

Our investigator looked at this complaint and felt Fairmead hadn't acted fairly when declining to provide cover for malicious damage. They didn't think Fairmead was prejudiced when no police report had been made and it was fair that Fairmead consider a number of the damaged areas as malicious.

Fairmead did not accept that it was fair to cover the items our investigator said should be and the complaint was referred for decision.

I issued a provisional decision on this case and explained I was intending on upholding the complaint but with a difference in the recommendation on what needed to happen to put things right. I've copied below what I set out:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've decided to uphold this complaint in part. I appreciate the outcome does not cover all that D may be hoping for and Fairmead will be asked to do something it feels it doesn't need to. But I'll explain why I think it is fair and reasonable that Fairmead do something else with this claim.

The crux of this complaint is whether there has been damage caused to D's property which is malicious damage. If it has been, it would be fair to expect Fairmead to cover the damage unless it can demonstrate an exclusion applies. This is because the policy wording sets out there is cover for malicious damage with a limit of up to £5000 per each incident.

There is a separate complaint with this Service focused on an escape of water claim and issues linked with this, but this is not something considered here.

The policy doesn't define what malicious damage is, but this is broadly defined as intentional damage or destruction with common examples being vandalism, trespass, graffiti etc.

I've considered whether I think it is fair to say the damage highlighted in D's property could be considered malicious. If it is not, and this deemed to be wear and tear, Fairmead would be reasonable to decline cover as this is not something the policy provides cover for.

The preliminary report completed does set out that the damage could be considered malicious in nature. It is not disputed that the tenants left after being evicted with notice and with the damage noted, I think it is fair to say this could have been caused with malicious intent.

However, the report is clear that not all of the damage highlighted could be considered to be malicious and there is a number of areas of damage which it feels are more consistent with general wear and tear.

Our investigator set out what they considered to be malicious damage to the property. I agree with this in part, but I don't think there is enough evidence to demonstrate that damage was caused to all of the items described with intent.

Kitchen damage

The preliminary report sets out that damage has been caused to the kitchen unit doors with locks screwed into them. There is damage to the wall, as the result of the freezer door slapping into this and several holes, visible from the included photo's, which have been filled and painted. And the heating thermostat has been prised from the wall.

The report does not indicate why, locks fitted to the kitchen doors would have been done so with malicious intent. The previous tenants lived in the property since May 2020 and while the fitting of locks may have caused damage to the doors, I don't think it is fair to say this was done with malicious intent. The interim report from April 2023 on the condition of the property said three adults lived in the property and I don't think it is unreasonable to believe locks were added to kitchen cupboards for their benefit and use, over being added with intent to cause damage. So I'm not persuaded this damage could be considered malicious.

Equally, there is little detail provided to show how the damage to the wall has been caused. The photos show the fridge location and its door hinge position mean the door would normally open onto the kitchen wall. And while D has said previous visits didn't identify any damage to the property, the interim inspection report provided from April 2023, doesn't provide any photographs to support its condition.

With the location of the fridge and its door, I don't think it can be confirmed that the damage was caused with intent and I am not persuaded that the damage is consistent with malicious damage. The location of the door and type of damage caused means it is difficult to rule out this was not caused by a lack of care over intent to cause damage.

The holes on the kitchen wall have been repaired and painted over and is more indicative of a partial repair over damage caused with intent. And while the repair is incomplete, I am not persuaded it would be fair to say this is malicious damage. So, I don't think Fairmead has made an unfair claim decision when refusing to provide cover the damage in the kitchen, listed above.

There is some damage to the kitchen listed which I think is more likely to be malicious damage. The report explains the heating thermostat has been prised from the wall and this is something which I feel is more likely to have been done with intent. Fairmead hasn't demonstrated why this would not be malicious damage and something not covered under the policy. So I think it is fair and reasonable to expect it to reconsider the damage to this, as malicious damage with cover provided for it.

First floor bathroom

Damage has been reported to be caused to the base of the door in the bathroom, with it thought this could be the result of objects being hit into it.

In the final report completed for Fairmead by its agent on 17 August 2023, is said:

"Further information regarding the areas of damage is within our Preliminary Report, but following review of the damage, we confirmed to you that only the following could be deemed as malicious damage:

- Bathroom door*
- Handles on windows*

The other areas of damage we believed were caused from a lack of care by the previous tenants or wear and tear."

I've not seen anything to demonstrate why, when first considered as malicious damage, that the damage to the door hasn't been considered as this. And I think it is reasonable that this is considered as malicious damage and the cover provided within the policy.

Bedrooms

Linked to what I've set out above, the final report provided to Fairmead on 17 August set out that it considered the damage to the window handles to be malicious.

Handles being snapped off is something that is more indicative of malicious damage and I've not seen anything to show why this would not be covered under the policy. So I think it is fair that Fairmead considers this damage under the malicious damage of the policy.

However, the other damage noted to the bedrooms is not something that has been shown to be malicious. The report explains that other damage is likely to be caused by a lack of care and wear and tear. And dents to doors and glue around window frames is more indicative of this. So I don't think Fairmead has acted unreasonably when refusing to provide cover for this damage under the malicious damage cover.

Hall, stairs and Landing.

In the preliminary report, damage was noted to the loft ladder which had been snapped off and requires replacement. This wasn't something referenced in the interim schedule of condition produced for the property in April 2023 and is likely something not assessed at this point. So whether there was any damage to this, prior to the tenant's eviction is not clear.

I've thought about whether it would be fair to include the damage to the loft ladder as malicious damage. A loft ladder is not something used on a regular basis in normal circumstance so wear and tear would be unlikely to account for it snapping off. And while a lack of care being applied when using it could cause damage, the fact it is a metal ladder which has been snapped off, means I think a lack of care is unlikely to result in this level of damage. So I think it is reasonable to believe this could have been damaged with intent and it could be considered malicious damage.

Although the other areas of damage noted to these locations do not appear to be consistent with malicious damage. So I'm not asking Fairmead to consider more than the ladder here.

Boiler damage

D has said further damage was discovered to the boiler within the property and they believe this is malicious and should be covered under this claim. This is something raised after the complaint was dealt with and the final response on this matter issued. As a result, any decision on this being covered or not, will need to be raised as a separate issue to the ones set out above.

As I've set out above, there are several areas of damage to the property which I think it would be fair to say, have been damaged with intent and could be considered malicious. And I've not seen any exclusions which would indicate this damage would not be covered. So, I've considered whether there is any other reasons why Fairmead could avoid providing cover based on the policy terms.

Should D have reported the malicious damage to the police

Fairmead has highlighted that the policy wording sets out that when a claim is made, it places a number of duties on the policy holder. This includes the following:

"Tell the police immediately about any property which has been lost, stolen or maliciously damaged to obtain a crime reference number."

Fairmead has said it doesn't think it should cover the claim for malicious damage, not only because it felt the damage claimed was not malicious, but also because the damage was not

reported to the police.

I understand there is some dispute over whether D was made aware of this requirement but I don't think this needs to be explored further. I accept this duty was not met, but as our investigator has said, it has no bearing on the claim or prejudice the position of Fairmead. And I don't think it would be fair and reasonable to decline the claim on the basis of this not being completed alone.

Policy excess and multiple claims

Fairmead has questioned whether each area of damage is separate based on the location within the property where it has occurred and should be treated as an individual claim. I appreciate these are in separate areas, but I don't think it would be fair and reasonable that all should be treated as individual claim events.

The property was inspected in April 2023 and this described the general condition of the property, including reference specifically to the windows, doors and decorative order. The tenants were evicted not long after this and with the damage I've set out that is malicious in its nature, I don't think it's unreasonable to say this all happened after the notice of eviction and should be treated as one event.

D is a limited company, and while there has been delays with this claim being settled and time spent by it working with Fairmead to settle this claim, it cannot be distressed by any delay. The inconvenience added has been dealt with by its agents in their role as supporting the company meet its objectives. However, I think this has gone beyond what would be reasonable to expect and the inconvenience is something that should be recognised.

D has highlighted that it doesn't think its experience is unique and while I appreciate it has provided information to support this, the focus of my decision is the impact on it and whether Fairmead has caused avoidable inconvenience with the handling of this claim. I think it has and to recognise this, I am planning on asking Fairmead to pay £250 for the added inconvenience, taking time away from D's agents on its normal activities and tasks.

Fairmead has set out that it thinks the property is underinsured and it might be it decides to apply this when settling the claim. But no complaint has been raised on this point and if D is unhappy with the position taken on this, it will need to be raised as a new complaint.

Putting things right

For the reasons I've set out above, I think it is fair and reasonable that FAIRMEAD INSURANCE LIMITED do the following to put things right.

Settle the claim for malicious damage to the following areas in D's property as I think it has failed to demonstrate it reached a fair claim decision when saying the damage was not malicious:

- Damage to the heating thermostat within the kitchen which was prised from the wall.*
- Damage to the bathroom door resulting from impact damage.*
- Damage to window handles removed when snapped off.*
- Damage to the loft ladder, which has been snapped off.*

Pay D £250 for the additional inconvenience caused with the handling of this claim and delays added.

Fairmead did not provide a response to the provisional decision.

D provided a response which set out acceptance of what had been recommended. But it asked that the decision go further.

It included detail about the damage which it believed was caused as the result of malicious activity. Listing 10 areas (1.1-1.10) which it felt should be included as malicious – although 1.9 of its submission was further commentary on the ladder I had previously said should be covered. It provided the inventory check-in and checkout reports from the property to support this.

It said the damage to the boiler is part of the same overall complaint and had been raised with Fairmead previously and it was not fair to not include this. And damage to the white goods was highlighted as context to the other damage likely caused by the tenants.

Finally, it also said it felt it was factually incorrect to say that Fairmead might apply an underinsurance average as this point was resolved with it in 2023 and it has internal emails to support this, obtained from a subject access request.

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 considered the points made by D, I see no reason to depart from my original outcome, although I'll clarify the points that have been made.

D has provided a list of items/areas of damage which is says, with the support of the inventory check out, are shown to have been damaged by malicious actions.

The inventory checkout report was completed on 11 June 2023 and sets the condition of the property out. It shows this to be considerably different from the condition described in the interim schedule of condition and cleanliness, completed only 2 months earlier on 14 April 2023.

I stated before that the interim report did not provide any photos to support the opinion provided. And the extent of wear and tear and damage detailed and evidenced through the checkout report, means I am less persuaded that the interim report provided an accurate indication of the properties condition.

Points, 1.2, 1.3 and 1.9 raised by D related to the damage to the kitchen unit doors, the kitchen wall damage and the broken loft ladder. The other points made relate to items I'd previously said I wasn't going to address in turn as I didn't think it had been demonstrated the damage here was malicious, or it wasn't clear these areas were in dispute when considering what had been considered by Fairmead within the final response issued on its claim decision here.

1.2 – the kitchen door handles

The comments made by D and information provided does not change my earlier position on this. While damage may have been inflicted on the kitchen unit doors, the malicious damage cover is only relevant, if it can be demonstrated this was caused with malicious intent.

I am not persuaded the locks were fitted with the intention of causing damage, but instead, I think it more likely they were fitted with the intention of providing a benefit to the tenants and their use of the property.

1.3 the kitchen wall damage

The photos provided within the checkout report show the damage to the kitchen wall more clearly. This shows on the corner of the wall, the plaster has come away exposing the metal render bead.

When thinking about the general condition of the house and the level of wear and tear present from the checkout report, it is clear there was a lack of care applied. The damage noted is consistent with a lack of care with the door hitting the corner of the wall resulting in the impact damage with the plaster being removed. But I don't think it is fair to say this can be said to have been done maliciously over being through a lack of care. So, I am not persuaded this should be included.

1.9 the loft ladder

The level of damage was accepted here as being out of sync with what could be considered wear and tear and more likely malicious in its nature. This supports my finding here and I see no reason to change my view of the ladder.

Other items listed by D

D has said the damage to internal doors as well as the main entrance and back door is malicious. I'd considered these areas before and whether Fairmead had acted reasonably when not providing cover. The checkout report does not persuade me this decision is wrong, or that it needs to change. The report highlights the tenants caused a significant amount of damage to the property either maliciously or negligently. But it is also clear from the report that the tenants failed to maintain the property as would be expected.

The damage described to the doors is more consistent with a poor standard of living and negligence and not something I think can be said to be malicious. So while I acknowledge the property has been left in a state of disrepair, I don't think it was done so, for the most part, with malicious intent. And the fact the property was left with the backdoors left unlocked does not demonstrate damage, nor can it be said this was not careless.

The damage noted to the kitchen worktops is described in the checkout report as "*Scratches and scuffs, white marks, Tarnished condition Above normal wear and tear, new worktop required.*" And while there is broader reference to damage in the property being caused by carelessness or malicious intent, I don't think it is fair to say this can be proven to the worktop.

Equally, I am not persuaded that malicious damage was caused to the bathrooms. The examples highlighted of chrome fixtures being replaced with plastic indicates a repair and not damage. While this is not like for like, I don't think a repair would be made if there is malicious intent and the chrome fixtures would have been removed and not replaced if this was the case.

Rust and damage associated with this is not something that could be considered to be malicious. So, while the heating system may have issues across the property with rust and high levels of wear and tear, it would not be reasonable to say this was malicious.

Overall, I've not seen anything to show me that it would be right to depart from my initial recommendations on the damage I feel should be considered malicious and covered under this claim by Fairmead. And the detail about the white goods and damage here does not change my position on this. It simply supports my decision, that some areas of the property have been damaged by what I consider to be malicious damage but other areas of damage

cannot fairly be classed as this.

Underinsurance

I had referenced the underinsurance as something noted as a concern by the loss adjuster when the damage was assessed. Although this is something later emails, obtained through the subject access request, have referenced and state, can be ignored due to the level of underinsurance being within tolerance, it is important to highlight this.

The claim for malicious damage has not been settled yet and while previous emails support the underinsurance won't be applied, I wanted to be clear a concern was raised. And if settled on this basis, this would be a new issue.

But for clarity, I agree previous internal emails have confirmed this could be disregarded. If there is a change on this position when the claim is settled, this will need to be raised as a new complaint at the time.

Boiler damage

I said the boiler damage was not noted in the initial claim, nor was it dealt with in the response to how this claim had been dealt with. This is correct with the initial final response, which dealt with the overall complaint about the claim. It was later, in follow up responses where D raised questions about the damage to the boiler and whether this would be included.

The previous information, including the checkout report completed after the tenants vacated the property made no reference to damage to the boiler. Nor does the loss adjuster assessment of the property highlight anything here

In the final response issued in May 2024, Fairmead said the following in response to the ongoing information being asked of it.

"Whilst I accept there have been further email correspondence between yourself and the loss adjuster, I cannot see there has been any meaningful response which would enable the loss adjuster to reconsider the initial decision made and unfortunately until this is provided then we will be unable to consider our position further."

Fairmead asked questions about the boiler in an email response in April 2024. It said it hadn't been informed of the damage previously and wanted confirmation on how the engineer knew the damage to the boiler occurred previously. I cannot see a response to its questions was provided.

So while D may feel the damage is all part of the event complained about and overall claim decision, I cannot say a specific answer was provided and with this not being provided, a claim decision hasn't been made on this point – beyond the overall claim decision. With this not being detailed in the loss adjuster assessment of the property, nor noted in the checkout report, I don't think Fairmead acted unreasonably in asking questions in response to the later information and when this wasn't answered, it was unable to consider this differently to the overall claim. If D has more information to provide in response to this, it needs to provide this to Fairmead as asked.

Overall, my recommendation on what needs to happen on this complaint to put things right has not changed. And I uphold D's complaint in part and direct Fairmead to do the following,

to put things right.

Putting things right

For the reasons set out above, FAIRMEAD INSURANCE LIMITED need to the following to put things right.

Settle the claim for malicious damage to the following areas in D's property as I think it has failed to demonstrate it reached a fair claim decision when saying the damage was not malicious:

- Damage to the heating thermostat within the kitchen which was prised from the wall.
- Damage to the bathroom door resulting from impact damage.
- Damage to window handles removed when snapped off.
- Damage to the loft ladder, which has been snapped off.

Pay D £250 for the additional inconvenience caused with the handling of this claim and delays added.

My final decision

For the reasons I've set out above, I uphold D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 28 August 2025.

Thomas Brissenden
Ombudsman