

The complaint

Mr and Mrs O have complained that FAIRMEAD INSURANCE LIMITED (“Fairmead”) unfairly declined a claim made under their property insurance policy.

What happened

In January 2024, Mr and Mrs O made a claim under their Residential Landlord Insurance Policy with Fairmead, following damage to their rental property which was caused by an escape of water.

Fairmead advised Mr and Mrs O to obtain estimates for repairs, which they did. A loss adjuster was then appointed to validate the claim and visited the property. Following this, the claim was declined in February 2024, on the basis that there had been a breach of the unoccupancy conditions in the policy, as Mr and Mrs O hadn’t stayed at the property while it was untenanted as required by the terms and conditions of their policy, and hadn’t met other conditions relating to unoccupancy.

Mr and Mrs O didn’t agree with the claim decision and complained, asking for a review of the claim. Following some back and forth between the parties, the claim was ultimately declined for the same reason as before, in November 2024.

In its response to their complaint, Fairmead said a telephone interview had been conducted and contradictory information had been provided by the policyholders. It said Mr and Mrs O had initially said that no one had stayed at the property, but had then disclosed that the property had been slept in. And despite initially confirming that no inspections of the property had taken place, they had then said that inspections had been carried out every 14 days.

Due to these contradictions, Fairmead considered its decision to decline the claim was reasonable. But Mr and Mrs O didn’t accept this, so they referred their complaint to the Financial Ombudsman Service. They said whilst they acknowledged the significance of the unoccupancy clauses, they believed the circumstances warranted a more nuanced interpretation of the facts, because the property had been constantly attended to, with regular visits from their handyman for example, who was tasked with maintaining the property.

Our Investigator considered the complaint, but didn’t think it should be upheld in full. He told the parties that whilst the claim could be declined fairly, he didn’t think it should’ve been declined due to a breach of the unoccupancy conditions – but that Fairmead could reasonably rely on the delay in Mr and Mrs O reporting the damage, to decline the claim. The Investigator recommended £100 compensation for the unfair initial reason Fairmead used for declining the claim.

Fairmead didn’t agree with our Investigator’s conclusions, and asked for the complaint to be reviewed. So the complaint has now been referred to me for an Ombudsman’s decision.

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 this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr and Mrs O and Fairmead have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm upholding this complaint in part. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

The policy term and conditions Fairmead initially relied on, in declining the claim is:

"Unoccupancy of the Home

If the Home is Unoccupied, there is no cover prior to the commencement of the first tenancy, between lets, or where You or Your managing agents are aware that the Home is not being lived in, unless the following conditions have been met.

- a) carry out internal and external inspections of the buildings at least every 14 days*
- b) maintain a log of such inspections*
- c) as soon as possible, repair or arrange to be repaired, any defects found*
- d) The Home is not going to be demolished*
- e) The cost of refurbishment or renovation does not exceed £50,000 inc VAT*
- f) Regardless of the cost of any work You must tell Us before work commences if the planned work is structural i.e. re-roofing, knocking down or through a load bearing wall or extension to the existing buildings.*
- g) remove all waste, combustible materials and gas bottles, either within or outside the buildings, from the Home*
- h) securely lock all external doors, close and secure all windows.*
- i) There is no cover for loss or damage caused by a contractor or sub-contractor."*

The term "Unoccupied" means the following according to the policy definitions: "The Home is not occupied overnight by a Resident for 60 consecutive days." Fairmead says based on its interviews with Mr and Mrs O, it wasn't persuaded that a resident (broadly meaning either Mr or Mrs O or their tenant) stayed at the property during the relevant time period.

But Mr O said he did stay overnight at the property during the relevant time. Fairmead says it's considered the evidence he's provided about this, but doesn't accept that the evidence

shows Mr O stayed at the property.

I've considered the loss adjuster's report dated 7 August 2024, which notes that there was a concern regarding "*Change in account: Contrary to original information, suggestion that regular visits undertaken*". I've also looked at the original loss adjuster's report from February 2024 which said there was a large amount of mail behind the door, indicating no one had done weekly checks. It also says the property seemed "*Unoccupied possibly more than 45 days*" and also notes "*Property unoccupied and looks like it has been for quite some time*". It mentions the loss adjuster requesting "*confirmation from ph as to when it was last occupied*", but it doesn't provide any other details about the response given by Mr and Mrs O to being questioned about this at the time.

Aside from the build-up of post, there's no other detail provided in the report which would indicate Mr O hadn't stayed at the property in November 2023, and as the date he says he stayed overnight at the insured address is 55 days before the damage was reported, I'm not satisfied Fairmead has been able to show that the unoccupancy condition has been fairly relied on here, as it hasn't been able to demonstrate that the definition of "*Unoccupied*" has been met. A large amount of post wouldn't be inconsistent with Mr O's account of staying at the property in the last week of November 2023, as the report wasn't produced until February 2024. This would allow time for post to build up, so I don't think the presence of a large amount of post means Mr O didn't stay overnight in November 2023.

In addition, Mr O has provided evidence of his visit to the area where the insured property is. The evidence includes an excerpt from his bank statement showing the purchase of groceries in the vicinity, on 25 November 2023. He's also provided an email showing he wished to cancel his storage at a nearby self-storage facility and would remove his possessions from the storage room on 25 November 2023. There's also a bank account statement confirming a payment to the storage facility on Friday 24 November 2023.

As the insured property is a 3-4 hour drive from Mr and Mrs O's home address, I consider it plausible, based on the evidence provided, that Mr O did stay overnight at the property, as the evidence demonstrates he was in the area during that weekend and his bank statements don't show any hotel costs.

Our Investigator gave Fairmead the opportunity to consider the new evidence Mr and Mrs O had provided to this service, and it said the evidence didn't change its view. As Fairmead has had an opportunity to consider and comment on the evidence, I'm satisfied I can also consider it as part of my review of the complaint. And whilst I've taken into account why Fairmead doesn't think it changes things, I think this evidence does support Mr and Mrs O's testimony that the property was slept in and didn't meet the definition of "*Unoccupied*".

So, based on everything I've seen, I think the claim was declined unreasonably based on the alleged breach of the unoccupancy condition. I think this caused Mr and Mrs O distress and inconvenience for which they should be compensated, because they felt they had to go to additional lengths to prove their claim. I've considered the impact this would've had on them, bearing in mind the loss adjuster also mentioned in its more recent report that Fairmead should've been notified of the damage sooner than 19 January 2024. This means the claim could've been fairly declined – but based on different policy terms.

The policy says that as soon as the insured becomes aware of an incident or cause which is likely to lead to a claim under the policy, the insured must contact the claims team "*as soon as reasonably possible and provide all information and help they need.*"

Fairmead has said Mr and Mrs O didn't comply with that term because the tenant's check out report dated 2 November 2023, mentions "*brown water staining on far side of ceiling just*

before entrance into bedroom 1 and above back door, additional black stain marks also on ceiling around light fixing". I'm persuaded that this would've alerted Mr and Mrs O that there was a cause that was likely to lead to a claim, but they didn't notify their insurer until February 2024 – two months later. I think Mr and Mrs O missed a vital opportunity here to mitigate the damage and their losses. If they'd reported the water staining sooner, it's likely the issue could've been investigated and resolved before further damage was caused.

In the circumstances, therefore, I'm satisfied the claim can be fairly declined, but I think Fairmead focused on the wrong reasons for declining it, as the property wasn't Unoccupied as defined by the policy. This required Mr and Mrs O to go to considerable and unnecessary inconvenience to gather evidence, when the claim could've been fairly declined for another reason. I'm satisfied therefore that £100 compensation is reasonable in the circumstances, as the impact on Mr and Mrs O has been limited due to this being a rental property.

Putting things right

FAIRMEAD INSURANCE LIMITED should now pay Mr and Mrs O £100 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and I direct FAIRMEAD INSURANCE LIMITED to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 15 November 2025.

Ifrah Malik
Ombudsman