

The complaint

Mr S is unhappy Fairmead Insurance Limited (Fairmead) declined a theft claim made under his home insurance policy.

What happened

Mr S has a home insurance policy underwritten by Fairmead which covers his buildings and contents. Due to the value of two watches, he has them specified on his policy.

In April 2023, whilst at home, Mr S was burgled. One of the specified watches was stolen, so Mr S made a claim to Fairmead.

Fairmead declined Mr S' claim. They said an endorsement on the policy required Mr S to keep his watch in a safe when not being worn, but because the watch was neither being worn by Mr S or in a safe when it was stolen, Fairmead said Mr S hadn't complied with the endorsement and declined the claim.

Mr S complained to Fairmead about the declinature of his claim. The claim decision was maintained by Fairmead, but they offered £350 compensation for the handling of the claim, delays and poor communication.

As Mr S was unhappy, he approached this service.

One of our investigators looked into things but she didn't uphold the complaint. She said Fairmead had fairly declined the claim as Mr S hadn't complied with the endorsement. She also said the compensation already offered by Fairmead for the handling of the claim was fair, so she didn't recommend this be increased.

Mr S didn't agree and asked for a final decision from an ombudsman.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

As I've reached a different outcome to our investigator, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Mr S has two watches specified on his insurance policy, and it's one of these watches that has been stolen. But Fairmead declined Mr S' claim on the basis that

they said he hadn't complied with a policy endorsement which required the watch to be in a safe when not being worn, and it wasn't when it was stolen.

Before I go on to consider the policy endorsements and wording specifically, I should recognise that the burglary occurred whilst Mr S was at home. He says he'd taken the watch off briefly, having showered, and went downstairs. It was whilst he was at home and downstairs that a thief then entered his property. Mr S says he and his son heard someone upstairs and when they went up, the burglar exited through the window with the watch. The burglar took the risk of committing the theft whilst Mr S' home was occupied. The only items taken were Mr S' watch, and some random cufflinks grabbed from a box on the side in Mr S' bedroom (he's not claiming for the cufflinks).

Obviously, I can never know for certain, but the fact the thief took the high risk of entering Mr S' property whilst it was occupied by him and his family and stole the high value watch (along with grabbing a random selection of cufflinks), the thief may well have been targeting the watch specifically given the risks they took. So even if Mr S was wearing the watch at the time the thief entered his occupied home, the thief may well have still taken it if they were indeed targeting it specifically, possibly through force and/or violence. But like I say, I'll never know for certain, but the fact of how the theft occurred and what was taken do make it a very real possibility the theft might still have happened, even if Mr S was wearing his watch at the time of the burglary.

However, in any event, I'm not minded to conclude Fairmead has acted fairly by declining the claim on the basis of a breach of endorsement anyway. I'll explain why.

Fairmead has relied on a breach of the following endorsement when declining Mr S' claim:

"J01 – Jewellery Clause

This insurance does not cover loss of or theft of jewellery unless at the time of loss or theft the jewellery is:-

- a. being worn by you; or*
- b. deposited in a bank or hotel/motel safe; or*
- c. in a locked safe at the home or*
- d. carried by hand by you"*

Fairmead said Mr S had breached this at the time of the theft as he wasn't wearing his watch, and it wasn't in a safe either.

There is also another similar endorsement on the policy:

“J03 – Safe Clause

This insurance does not cover theft of jewellery from the home unless the jewellery is kept in a locked safe, which is permanently attached or secured to the home, whilst not being worn and any and all keys to the safe are removed from the home while you are absent from the premises.”

Both these endorsements refer to ‘jewellery’ only, with no references to ‘watches’. By Fairmead relying on the ‘J01’ endorsement to decline the claim, Fairmead is implying they consider watches as jewellery.

The full policy terms define valuables as:

“Valuables

Items of gold, silver or other precious metals, jewellery and furs, and other collections (paintings, works of art etc.) which belong to you or are your legal responsibility.”

So, this outlines jewellery and furs are classed as valuables, but makes no mention of watches separately, or if Fairmead considers watches as jewellery.

However, by contrast, Mr S’ schedule separates out jewellery from watches as different items rather than treating them as the same. This says:

“Jewellery, watches & furs

| | |
|---------------------------|-------------------|
| <i>Rolex Silver watch</i> | <i>£8,000.00</i> |
| <i>Omega Gold Watch</i> | <i>£5,000.00”</i> |

So, reading the schedule, I interpret watches to be considered independently and separately to jewellery, like fur is. Additionally, a separate endorsement (which isn’t relevant to the decline of the claim), also notes both jewellery and watches separately and independently too (my emphasis):

“J05) Jewellery Valuation Clause

*It is your responsibility to provide us with a professional valuation or purchase receipt, not more than 5 years old, for any item, pair or set of **jewellery and watches** with a value of £5,000 or more that are specified on your schedule within 30 days of the effective date of cover for these items Failure to provide the required evidence of value within this specified time period will result in cover being restricted to £5,000 per item in the event of a claim.”*

So, this endorsement follows the same approach as the schedule and specified item listing of treating watches and jewellery as different items.

Whilst Fairmead may have intended watches to fall under the J01 endorsement it’s relying on too, that’s not how it is worded, and it is made further unclear by the presence of both the schedule and endorsement J05 separating the two. And I don’t think it’s reasonable that in some places Fairmead goes to the extent of noting watches separately to jewellery, but in other places, they then consider jewellery and watches as one, especially considering the significance of the endorsements in restricting cover. And the policy terms don’t clarify watches are considered as jewellery either, so this is unclear.

With this in mind, I don't think it would be fair or reasonable to interpret jewellery to include watches in relation to endorsement J01 which Fairmead seeks to rely on to decline the claim. Consequently, I'm not minded to agree with Fairmead that Mr S has breached endorsement J01. Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing Fairmead to reconsider Mr S' stolen watch claim in line with the remaining policy terms.

Fairmead has already recognised the service they provided in relation to the handling of Mr S' claim both before and after it was declined, and the communication with him, wasn't in line with his reasonable expectations, and they offered £350 for this. I don't think that's an unreasonable amount for those shortfalls in particular.

However, for the reasons outlined above, I don't think the overall claim decision was fair in the first place. Therefore, unless anything changes as a result of the responses to my provisional decision, I also intend on directing Fairmead to pay a further £150 compensation for the additional distress and inconvenience caused to Mr S by unfairly declining the claim."

So, I was minded to uphold the complaint and to direct Fairmead to reconsider Mr S' theft claim in line with the remaining policy terms, and increase compensation from £350 to £500.

The responses to my provisional decision

Fairmead responded to the provisional decision, but they didn't agree. They said when using a general web search, the search results show watches can be considered as jewellery. They also said the dictionary definition of jewellery includes precious metals, and Fairmead considers the watch is made from precious metals, so would therefore be jewellery in line with the dictionary.

Fairmead also said the policy endorsement is clear. They also said they couldn't take any hypothetical situations into account such as what would have happened if Mr S was wearing his watch at the time.

Mr S responded and said he'd need an extension in order to provide the information that had been requested. However, our investigator explained that information wasn't being requested from Mr S in response to the provisional decision, beyond confirming if he agreed or had any further comments to make.

But in any event, an extension was provided for the period requested. Despite this, Mr S didn't provide a further response. As the extended deadline has now expired, I'll now move forward with my final 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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision.

Firstly, Fairmead says that it can't take hypothetical situations into account. To clarify, this isn't why I'm upholding the complaint, and instead it was to highlight the significant risks the thieves took, which *may* have resulted in the watch being stolen in any event, even if Mr S was wearing it at the time.

But regardless, I don't think Fairmead has fairly declined the claim based on a breach of an endorsement (J01 - outlined in full above). And nothing Fairmead has provided in response to my provisional decision has persuaded me otherwise.

Fairmead responded to the provisional decision and said the endorsement in the schedule is "*absolutely clear*". However, I explained in my provisional decision why I didn't share that view. I also went into detail why I reached the provisional outcome I did, but Fairmead hasn't provided anything which changes my thoughts on that.

To summarise, the policy schedule makes reference to jewellery, watches and fur separately. And it makes reference to jewellery and watches being separate items in the J05 endorsement too. But in contrast, the endorsement which Fairmead seeks to rely on (J01), only refers to jewellery and is silent on watches. This is at odds with, and conflicts with, other areas of the same document. And the full policy terms also don't outline watches in the definition of jewellery either. So, in my view, as outlined in my provisional decision, this is unclear.

In response to my provisional decision, Fairmead has referenced online web searches where some results have said watches can be considered jewellery. However, online searches also say they are not one and the same. So, I don't think this is a persuasive argument presented by Fairmead.

In addition, Fairmead has also referenced the dictionary definition of jewellery as:

"Personal ornaments, such as necklaces, rings, or bracelets, that are typically made from or contain jewels and precious metal."

And Fairmead says that as the watch is made from precious metal, then it would be considered jewellery in line with the dictionary definition. However, again, I don't think this is a persuasive argument.

The dictionary definition Fairmead refers to here is silent on watches, but Fairmead says by the fact it mentions precious metals then this should be interpreted to include watches. However, many expensive watches are made from other materials, for example, stainless steel, carbon fibre and plastic, these wouldn't be made of a precious metal, but would still be a watch. So, by Fairmead's rationale, only *some* watches would be jewellery if you were to follow this approach, and it would be for the policyholder to interpret whether Fairmead considered their watch as jewellery or not. And I don't think that is clear.

Ultimately it is Fairmead's insurance contract and policy documents, and it is their responsibility to provide clear and unambiguous policy wording. I don't think it's fair to expect Mr S to interpret that Fairmead considers watches as jewellery based on web searches, or via a dictionary definition which also is ambiguous, in order to decipher unclear and contradictory documents which separates watches out in some places but not others. Ultimately if Fairmead wanted watches to be included in the J01 endorsement, then in my view it should also have outlined this separately, which it did in the schedule and the J05 endorsement.

With the above and my provisional decision in mind, I don't think Fairmead has acted fairly by declining Mr S claim based on a breach of the endorsement it has relied on. Therefore, I'm directing Fairmead to reconsider Mr S' stolen watch claim in line with the remaining policy terms

My view also remains that Fairmead need to increase the total compensation from £350 to £500.

My final decision

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

- Reconsider Mr S' stolen watch claim in line with the remaining policy terms
- Pay Mr S a total of £500 compensation (including the £350 already offered)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 February 2024.

Callum Milne
Ombudsman