

## The complaint

Mrs B complains that Fairmead Insurance Limited has turned down a loss of rent claim she made on a property owner's insurance policy.

All references to Fairmead include the actions of the agents acting on its behalf.

## What happened

Mrs B's property was tenanted. In mid-December 2022, her tenant moved out. Unfortunately, a couple of days later, a leak was detected at the property. Mrs B made a claim on the policy for the damage caused by the escape of water and for loss of rent.

Fairmead accepted Mrs B's buildings damage claim. But it didn't agree to cover a claim for loss of rent. It said that as the property wasn't tenanted at the time of the leak, there was no loss of rent claim to cover.

Mrs B was unhappy with Fairmead's decision and she asked us to look into her complaint. She said prospective tenants had been booked to view her property. But the viewings had had to be cancelled due to the water damage. She said the property would have been quickly tenanted and she'd lost six months of rent.

Our investigator didn't think Fairmead had handled Mrs B's claim fairly. He thought the claim should be covered by the policy terms and that Fairmead should pay the loss of rent claim plus interest.

I issued a provisional decision on 25 January 2024 which explained the reasons why I didn't think it had been unfair for Fairmead to turn down Mrs B's loss of rent claim. I said:

*'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of the policy and the available evidence, to decide whether I think Fairmead treated Mrs B fairly.'*

*'I've first considered the policy terms, as these form the basis of the contract between Mrs B and Fairmead. The policy does cover loss of rent and page 13 sets out the cover Fairmead provides. This says:*

*'If the Home is damaged by any cause covered under Section 1 - Buildings and, as a result, cannot be lived in,*

*We will pay for:*

- (a) **loss of rent due to You** which You are unable to recover; or*
- (b) any costs of alternative accommodation for the Resident and the Resident's pets; until the Home is ready to be lived in.'* (my emphasis added).

*In my view, I think Fairmead has made it clear that it will cover loss of rent which is due to a*

*policyholder if a property can't be lived in due to an insured event.*

*However, it's a general principle of insurance that it's a policyholder's responsibility to provide enough evidence to show they have a valid claim on their policy. That means that in order for Fairmead to pay Mrs B's loss of rent claim, it needs to be satisfied that Mrs B has suffered a loss of rent she was due, as a result of the water leak.*

*It's clear that in November 2022, Mrs B's managing agent had carried out credit checks on a prospective new tenant. They'd initially been due to move in a few days after the previous tenant left in mid-December 2022. But Mrs B told us that, in fact, the prospective tenant had pulled out before signing a tenancy contract.*

*Mrs B's managing agent provided evidence that viewings had been carried out in the days prior to the leak and that viewings had been planned for the week after the leak. Those viewings had had to necessarily be cancelled because of the water damage. However, it simply isn't clear that at the point of the escape of water, Mrs B had a new tenant in place (or contracted to move in) either at the time of the loss or at any point during the period for which she's claiming. Nor has she shown she's suffered a loss of rent she was due during that period. Instead, at the time of the leak, she wasn't due any rent because the property wasn't tenanted.*

*I'm mindful that Mrs B may have been able to secure a new tenant if the damage hadn't happened. But it isn't at all clear how long credit checks might have taken, how long it might take for the tenancy agreement to be signed nor how long it might have been until a new tenant could take possession of the property.*

*Taking these factors into account, I don't currently think Mrs B has shown that she suffered a loss of rent due to water damage. And nor do I think she's shown how much rent she would actually have lost out on, even if I accepted that the property could have been let quickly. So I don't think I could fairly or reasonably conclude that Mrs B has provided enough evidence to show she has a valid loss of rent claim on the policy.*

*So it follows that whilst I sympathise with Mrs B's position, I don't currently think it was unfair for Fairmead to turn down her loss of rent claim.'*

I asked both parties to provide me with any additional evidence or arguments they wanted me to consider.

Fairmead provided me with some more information from its claims team and loss adjuster.

Mrs B disagreed with my provisional findings and I've summarised her response:

- She didn't agree that the claim had been handled promptly or fairly. She said she'd made the claim on 19 December 2022 and that she'd been supported by her management company to begin building works;
- She said the loss adjuster had told her that there'd be no problem with the claim, but that they expected it to be paid at the rental rate Mrs B had been charging, not at a new rate;
- The building company had been ready to work on the property immediately, but Fairmead hadn't accepted liability for some months. The building company had been ready to withdraw from carrying out the repairs;
- The loss adjuster had been concerned about the length of time the claim was taking. Once it had been approved, the works were completed within two months.

- Mrs B said that her home would have taken only days to rent out, with no more than a week's vacancy in the nine years previously;
- She hadn't been able to start looking for a tenant until six months after the water leak. This was a substantial loss of rent and she felt Fairmead's delays were responsible for some months of this time. She said loss of rent cover was one of the main reasons she'd taken out a buy to let policy;
- She felt Fairmead had wrongly relied on an exclusion for unoccupied properties to turn down the claim.

### **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, whilst I'm very sorry to disappoint Mrs B, I still don't think it was unfair for Fairmead to turn down her loss of rent claim and I'll explain why.

First, I'd like to reassure Mrs B that while I've summarised her submissions to us, I've carefully considered all she's said and sent. In this final decision though, I've focused on what I think are the key issues.

There's no dispute that Mrs B first made a claim for water damage on 19 December 2022. Fairmead appointed a loss adjuster promptly, who first visited Mrs B's property on 5 January 2023. Given the festive holidays, I don't think this was unreasonable. The loss adjuster noted substantial and extensive damage to the property, including collapsed ceilings and stud walls; damage to the flooring and noted that there would need to be significant redecoration. They recommended that Fairmead should accept liability under the policy.

In the meantime, I can see that on 19 December 2022, dehumidifiers and dryers had been delivered to Mrs B's property, which were due to be hired until 3 February 2023. The loss adjuster says that Mrs B had also arranged for a contractor to start stripping out works to speed up the process.

The loss adjuster's report was sent to Fairmead on 3 February 2023 and I can see from Fairmead's notes that it didn't accept liability for the claim until 3 March 2023 – a month later. And on 8 March 2023, Mrs B's contractor carried out a damp survey to check whether works could safely begin.

I can understand that Mrs B was unhappy with the delay in Fairmead confirming liability for her escape of water claim. But it isn't clear to me that the progress of the claim was materially delayed as a result of any delays in Fairmead accepting it. That's because given the extent and nature of the damage and the type of claim, the property would always have needed to be fully dried before works could begin. This is always likely to have taken several weeks if not a few months. Indeed, the loss adjuster's preliminary report, which was sent to Fairmead on 3 February 2023, indicates that the total claim reserve cost would depend on the success or otherwise of the drying works. So it doesn't appear the loss adjuster felt it was most likely that the property had already been dry at the point they recommended that Fairmead should accept liability.

It's clear Mrs B and the loss adjuster chased up Fairmead between 3 February and 3 March 2023. But I'm not persuaded there's enough evidence to show the property was or would have been deemed dry during that period. So I'm not persuaded there's sufficient evidence to show that reinstatement works could have begun and therefore have been completed earlier. If Mrs B is able to obtain evidence showing that the property was fully dry significantly earlier than 8 March 2023, she should send this to Fairmead for its review. But

based on the evidence before me and which was available to Fairmead when it assessed this claim, I'm still not persuaded there were unreasonable delays which materially affected the progress of it. As such, I don't think I could reasonably direct Fairmead to pay a loss of rent claim on this basis.

Fairmead went on to turn down Mrs B's loss of rent claim a couple of weeks later. I appreciate the loss adjuster may not have foreseen issues with this part of the claim, which may have led to Mrs B's expectations being unnecessarily raised in this regard. But I don't find that Fairmead's decision on this point affected the progression of the claim for the reinstatement works.

And, as I've explained, while I accept Mrs B may have been able to quickly find a new tenant and that her property has previously been continuously occupied, it's simply the case that at the time of the loss, the property wasn't tenanted and no new tenancy agreement was in place. Therefore, irrespective of the purpose of the policy, there simply wasn't any rent due to her which was lost as a result of the escape of water. The loss of rent flowed from the previous tenant moving out and no new tenancy agreement having been in place at the material time. So ultimately, I still don't think it was unreasonable for Fairmead to rely on the relevant terms and conditions to conclude that this part of the claim wasn't covered.

I'd add too that I make no finding that Mrs B's property was unoccupied in line with the policy definition. Nor have I found that Fairmead can rely on a term excluding loss of rent claims where a property is unoccupied in line with the policy definition. Instead, I simply don't think that Mrs B has provided enough evidence to show she has a valid loss of rent claim on the policy.

Overall, despite my natural sympathy with Mrs B's position, I don't think Fairmead unfairly or unreasonably declined her loss of rent claim.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 10 April 2024.

Lisa Barham  
**Ombudsman**