

The complaint

Miss W complains about the settlement that Fairmead Insurance Limited has paid her for a claim she made on her landlord's home insurance policy.

What happened

In September 2018, Miss W discovered damage had been caused to her rental property by water leaking in from a neighbour's gutter. She made a claim on her landlord's home insurance policy.

Fairmead accepted the claim and appointed a loss adjuster to handle it. Fairmead initially made an offer of settlement which was around half the amount of a quote Miss W had obtained. Miss W was unhappy with the original settlement offered by Fairmead and with its handling of the claim, so she brought a complaint to us about that issue. Our investigator recommended Fairmead should pay £300 compensation for its handling of that claim at that point, which it agreed to. That complaint was settled and closed.

Ultimately, once the neighbour's gutter had been repaired in June 2019, Fairmead offered a revised settlement of around £7900, based on quotes from Miss W's contractors and its loss adjuster's opinion. Shortly afterwards, Miss W sent in a further quote for around £16,000. This included the cost of replacing the damp proof course (DPC) at the property, which Miss W said had also been damaged by water ingress and additional property damage. Miss W said the DPC had only been installed around five years before the claim. The installer of it, which I'll call J, had put the damage down to the water ingress and J said the DPC's guarantee was now void.

Fairmead didn't agree to cover the costs of replacing the DPC or any property damage associated with rising damp. It'd appointed a surveyor to inspect Miss W's rental property, which had found the DPC injections looked old and dilapidated; were inconsistently spaced and the paint in the basement was an unsuitable tanking system. It found evidence of rising damp in the hallway and lounge floors and lounge walls. So Fairmead concluded the damage to the DPC and some of the property damage was down to rising damp, rather than the ingress of water from Miss W's neighbour's property.

Miss W disagreed and asked us to look into her complaint, although she accepted its offer of settlement for the other re-decorating costs. This amount was settled by Fairmead.

Our investigator thought Miss W's complaint should be upheld. He noted that initially, there'd been no mention of rising damp in the loss adjuster's reports. He put weight on the report from J which said the damage was partly caused by water ingress; build-up of condensation and lack of air-flow. The investigator felt the fact that water had been getting in for nine months was the most likely reason for the failure of the DPC. He recommended Fairmead should pay the full claim, together with compensation of £250.

Fairmead disagreed. It initially disputed that a DPC had been installed at Miss W's property. But the investigator sent it a copy of J's DPC guarantee which was dated October 2013. Fairmead said J's original report suggested that water had been leaking into the property

continuously, which wasn't the case. In July 2019, Miss W had provided an estimate from another contractor, P, which was a damp-proof specialist, which didn't mention the DPC. It explained that its surveyor had attributed some damage to the leaking gutter. But the remaining damage was down to rising damp following the DPC breaking down and deteriorating over time.

I issued my provisional decision on 7 September 2020. In my provisional decision, I explained the reasons why I thought the settlement Fairmead had already paid Miss W was fair and reasonable. I said:

'I'm grateful for Miss W for providing me with a copy of J's guarantee from October 2013. This clearly shows that a DPC was installed at the property at that point. It seems Fairmead now also accepts this was the case.'

Damage caused by damp; wear and tear; or gradual deterioration is specifically excluded by the terms of Miss W's policy. So what I now need to decide is whether the DPC was most likely to have failed due to the leaking gutter, causing further water damage, or whether it's deteriorated over time.'

As I'm not a damp-proof or construction expert, I've carefully considered all of the expert evidence available to me in reaching my provisional view. On the one hand, I have a report from J and on the other, I've a survey provided by Fairmead's surveyor. I've first considered J's findings set out in its report of 26 July 2019.'

J said: 'On further inspection internally on the property it was evident that there were damp/ condensation issues all caused by water ingress due to in our opinion by the poor maintenance of the property and above property water- disposal systems.' J also added that its guarantee was now void as a result.'

It seems J attributed the internal damage to the leaking gutter, although I note it didn't specifically mention the DPC or how the leaking gutter had caused it to become damaged. It's report was brief. I've also looked carefully at the guarantee. The section J referred to was a responsibility for J's client (in this case, Miss W) to fully and properly maintain the water-disposal services and all other services in the property. As J voided the guarantee, it appears it considered this responsibility may not have been met, although I accept this could've been because of the claim.'

I've then considered Fairmead's surveyor's report. This acknowledged that there had been DPC injections. But it said these looked to be 'old and dilapidated.' It said the DP injections to the left elevation were 'inconsistently spaced'. The report stated: 'the tanking paint to the basement seems too thin to be a suitable tanking system; it resembles slurry-based cement paint' and it noted the paint on the basement walls had 'deteriorated over time and broken down.'

The report also said:

'The current damp proofing to the property looks old and dilapidated with some maintenance needed to the paintwork in the basement and damp-proof injections. The damp is encroaching on the property from every possible direction. The basement has a thin coat of paint applied to the walls, which is not considered to be a comprehensive damp proof membrane. The paint...over time will deteriorate and crack.'

Fairmead's surveyor concluded: 'The remaining issues with damp present to the walls throughout the property are considered to be attributable to rising damp, due to the damp proof protection breaking down and deteriorating over time. Therefore, the damage to the

basement, the wall dividing the lounge, utility, stairwell and also the floor in the lounge and hallway are considered to be attributable to the issues associated with the rising damp.'

The report was very detailed and broke-down room by room what damage was likely attributed to each cause. It seems the surveyor undertook a full inspection, undertook testing and provided several photos to support the findings.

Based on what I've seen so far, I'm currently more persuaded by the findings of Fairmead's surveyor. That's because the report was considerably more detailed than J's and explained how it felt the damage in each area had happened. It also seems persuasive, given that the gutter wasn't continuously leaking and that the damage it caused was more likely to affect the ceilings and walls than the flooring. So I've placed significant weight on the report. It isn't clear from J's report how a leaking gutter above Miss W's property, which leaked during heavy rains, but not continuously, would've been able to penetrate the basement and damage the DPC.

I've also borne in mind that when carrying out its own estimate a few weeks beforehand on Miss W's behalf, P didn't mention any issues with the basement or with the DPC. I'd have reasonably expected a damp-proof expert to notice and include the costs of replacing a damaged DPC in its quote if it'd felt the water leak had caused this damage. I appreciate the loss adjuster didn't notice this damage during their visit. But I'm satisfied that by appointing the surveyor to look into what was causing the damp once it became aware of the additional possible damage, Fairmead took reasonable steps to check whether it was covered.

Overall, based on all I've seen, I currently think it's more likely than not that the damage to the basement and other associated areas was caused by the DPC breaking down and deteriorating. While I appreciate it wasn't particularly old, it appears the surveyor considered the paint may've been too thin and the DPC injections were inconsistently spaced, which may've contributed to it breaking down. So it seems that this damage wasn't down to the leaking gutter and is specifically excluded by the damp and gradual deterioration clauses of the policy.

This means I currently think it was fair for Fairmead not to pay for any costs related to the breakdown of the rising damp or basement damage. It's open to Miss W to provide me with any further expert evidence in support of her claim in response to my provisional decision should she wish to do so.'

I asked both parties to provide me with anything further evidence they wanted me to consider.

Fairmead didn't respond by the deadline I gave.

Miss W didn't accept my provisional decision. She sent in a detailed response and I've summarised her main points below:

- She felt that if the gutter hadn't leaked and caused damage to the DPC, the guarantee wouldn't have been voided;
- She queried whether I'd intended to say that she was responsible for maintaining her neighbour's gutter – J had clearly put the damage down to the gutter, not her failure to maintain her property;
- The DPC had been properly installed by an expert and its lifespan was for around the 30 years it'd been guaranteed for and the policy exclusion I'd referred to didn't include water ingress due to faulty or improperly installed damp mitigation;

- On balance, given that damp issues didn't arise until after the issues with the leaking gutter, it's highly likely the two are linked. There may also have been some delay in the damp appearing, which was why both Fairmead's first assessors and P had missed it. It's unlikely that damp caused by gradual deterioration could've appeared in such a short time period and been missed by multiple parties;
- The surveyor's report referred to the DPC looking old and dilapidated, but this is at odds with its age. The basement paint wasn't being used for damp purposes, it was there for aesthetic reasons;
- Rising damp takes years to manifest – so it seems that the DPC would've failed within a quarter of its expected lifespan and that the tenants hadn't noticed it. This isn't plausible;
- J's report wasn't a report, it was a voidance of the guarantee – J wasn't being paid to conduct a full survey;
- The surveyor was appointed and paid for by Fairmead, so it had a financial incentive to reject the claim;
- The damp was not rising damp, but was penetrative damp, which had caused damage.
- Fairmead should also pay compensation for the distress and inconvenience it has caused her by its handling of 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, I still think Fairmead's offer of settlement was fair. I'll explain why.

Miss W has responded to my provisional findings in some detail. While I've only summarised her points, I'd like to reassure her that I've carefully considered all she's said and provided. In explaining my decision though, I've focused on the issues and evidence I think are key rather than addressing each of Miss W's points in turn. I would say at the outset that my decision wasn't intended to suggest that Miss W was responsible for the maintenance of her neighbour's property.

I appreciate how strongly Miss W feels that the damp issues are down to penetrative damp, not rising damp. As I'm not a damp-proof specialist, I must accordingly place significant weight on the expert evidence that's provided to me as part of a complaint. While Miss W has provided detailed reasons why she considers my provisional decision was wrong, she hasn't provided me with any additional expert evidence in support of her claim - whether from J or another party - which counters Fairmead's surveyor's findings.

It's for a policyholder to show they have a valid claim on their policy. Because Miss W feels all of the identified damp issues are down to her neighbour's gutter, it's for her to demonstrate, on balance, that penetrative damp was the most likely cause of all the damage. In this case, P, a damp specialist, didn't mention the DPC and didn't include it within its repair quote. It isn't clear whether this is because the damp damage wasn't present or if it simply didn't think it formed part of the penetrative damp claim.

So Miss W has relied on the voidance of her guarantee by J as evidence that the damage was down to penetrative damp caused by her neighbour's gutter. As I explained, I appreciate that the DPC was only installed a few years before the claim. And there's no dispute that J voided the guarantee. I appreciate that the letter J provided voiding the guarantee didn't constitute a full report. But this is the only expert evidence I have which attributes the voidance to the leaking gutter in some way. So I've reconsidered what J said.

As I've explained, this letter doesn't explain how the leaking gutters caused all of the damp issues. And indeed it also doesn't solely put the internal damage down to the gutters. It says:

*'On further inspection internally on the property it was evident that there were damp/condensation issues all caused by water ingress due to in our opinion by the poor maintenance of the property **and** (my emphasis) above property water- disposal systems.'*

So this letter would suggest that the internal damage was due to poor maintenance of the property itself, as well as the failed guttering. In my view, this simply isn't strong enough expert evidence for me to fairly conclude that all of the damp damage was down to penetrative damp caused by the leaking gutters.

I've reconsidered Fairmead's surveyor's findings too. When Miss W first let it know about further damage, I think it was reasonable for it to appoint surveyors to investigate whether the damage was down to something covered by the policy. In this case, whether all of the damp was down to penetrative damp caused by the leaking guttering. I've seen nothing to suggest that the surveyors didn't carry out an independent inspection and if its findings had supported Miss W's position, that the claim wouldn't have been accepted.

The surveyor seems to have done a thorough visual inspection of the property. The report indicates that damp readings were taken, although I appreciate Miss W doesn't think they were. As I've explained, the report mentions that:

'The current damp proofing to the property appears old and dilapidated, with some maintenance needed to the paintwork in the basement and damp proof injections. The damp is encroaching on the property from every possible direction.'

And it refers to mould spores and damp building up on floorboards, which was most likely due to the lack of air flow and rising damp. The report clearly separates areas of damage into damage which was down to the penetrative damp which was linked to the leaking gutters and damage which was because of rising damp. So I think it seems it undertook a fair assessment of the damage and how it'd happened. It seems most likely to me, based on the expert evidence, that the new damp damage Miss W claimed for simply wasn't caused by penetrative damp and so simply wasn't covered by the policy.

Overall, based on the available expert evidence, the damage Miss W has now claimed for seems to be caused by rising damp and the breakdown of the DPC. The surveyor's report points to a DPC which is inconsistently spaced and looks old and dilapidated. The policy clearly excludes claims caused by damp, by wear and tear and gradual deterioration. So I'm still persuaded Fairmead's settlement was fair and reasonable and I'm not telling it to pay anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 November 2020.

Lisa Barham
Ombudsman