

## **The complaint**

Mr F has complained about the way Fairmead Insurance Limited handled a claim he made under his buildings insurance policy.

Reference to Fairmead and Mr F includes their respective agents and representatives.

## **What happened**

The circumstances aren't in dispute, so I'll summarise the main points:

- Mr F got in touch with Fairmead about damage to his building and it accepted a claim for subsidence.
- Fairmead went on to carry out ground improvement work, which blocked a drain and flooded some of the building. The ground improvement work was redone and Fairmead said that had stabilised the building movement. It set out a schedule of work to repair the building, including damp proofing due to the flood.
- A previous complaint considered a number of points – but not the extent of damp proofing. It was settled in October 2023, when both parties agreed to our investigator's findings. The next steps for the claim were for Fairmead to arrange the repairs. At that time, Fairmead had agreed to follow the recommendations of M, an engineer appointed by Mr F, which said external Type A and internal Type C damp proofing should be carried out.
- Fairmead then said it would only carry out internal Type A damp proofing, which meant a significant change from what it had agreed previously. It took advice from A, a damp proofing specialist, and said this supported its change of position. Fairmead said external damp proofing wasn't right for the building and Type A was much less disruptive, and cheaper, than Type C. It also said Type C would represent significant betterment, as there wasn't any water proofing to the building previously.
- Mr F complained. He said it was unfair for Fairmead to change its position after it had agreed to follow M's recommendations. He also noted the building hadn't been damp until the problem with the ground improvement work during the claim, so he didn't consider it betterment to return the building to one which was damp free. He suggested a compromise between the recommendations of M and A to settle the dispute – which was for Fairmead to carry out internal Type C only.
- Fairmead didn't respond to the complaint, so Mr F referred it to this Service. Our investigator thought the complaint should be partially upheld. She was satisfied Fairmead had shown Type A would likely remedy the damp problem. However, she thought Fairmead's change of position had caused delays and a loss of expectation for Mr F. To put that right, she said Fairmead should pay £300 compensation.

- Fairmead agreed to this. Mr F didn't. He said he'd already offered to compromise on the work recommended by M, so he didn't think he should have to compromise further. He questioned what had caused Fairmead to change its position.
- Our investigator wasn't persuaded to change her mind, so the complaint has been passed to me.

### **My provisional decision**

I recently issued a provisional decision in which I said:

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

- The scope of this complaint is limited to events since the previous complaint was resolved in October 2023, and up to the time when the current complaint was made in early 2024. As a result, I won't consider anything outside of this scope.
- The crux of the complaint is the extent of damp proofing work Fairmead should pay for. So that's what I'll focus on.
- It's not in dispute that Fairmead has changed its position on this – and that its change amounts to a reduction in the extent of damp proofing it will pay for. In 2023, it agreed to follow M's recommendations and pay for external Type A and internal Type C damp proofing. But, by 2024, it changed that to internal Type A only. Fairmead hasn't disputed that Type C is a 'better' method of damp proofing than Type A. Mr F has accepted that external work would be significantly disruptive and isn't asking Fairmead to carry it out. He'd like Fairmead to keep to its earlier agreement to carry out Type C internally.
- I know Mr F considers it fundamentally unfair for Fairmead to change its position. I can understand why. It must be very disappointing, frustrating and upsetting for Fairmead to agree to do one thing and then later change. Particularly as Fairmead told Mr F in 2023 that it had thoroughly considered all the evidence, including M's report, before agreeing to follow its recommendations. And it's not clear what prompted it to change position, which it did *before* it took advice from A in 2024.
- Nonetheless, I'm not persuaded Fairmead was required to maintain its position. In principle, it was entitled to change – provided the new position treated Mr F fairly and reasonably. But I would also have expected it to consider the impact on Mr F of the change, bearing in mind the particular circumstances of the claim.
- So, the question for me is whether the new position treated Mr F fairly and reasonably. And, as a secondary point, the impact on Mr F of the change.
- Fairmead has given three main reasons for the change: the limitations of policy cover, the cost of the work, and supposed 'betterment' as a result of the work.
- Mr F made a claim for subsidence. Fairmead accepted it and carried out repairs to put the damage right. The subsidence claim and the associated repairs are limited by the policy cover. But during repairs, Fairmead caused water damage to Mr F's building by blocking a drain. That water damage wasn't caused by subsidence and didn't form part of the subsidence claim – nor was it subject to a separate claim in its own right. Fairmead has effectively agreed to put right the water damage as

compensation for causing it. Compensation isn't limited by the policy cover – and that means the terms of the policy aren't relevant to this complaint.

- However, I don't think it would be fair and reasonable to take that to mean there are no limits whatsoever on what Fairmead should pay. In my view, the key principles are as follows: Firstly, Fairmead should seek to put Mr F back in the position he was in prior to the water damage – or as near as possible. That means a damp free building. And, secondly, any work Fairmead proposes to achieve that should be likely to provide a lasting and effective remedy to the damage. That means the building remaining damp free for a reasonable period of time.
- I agree with Fairmead that it's relevant to consider the cost of the work, and whether it amounts to 'betterment'. But I don't think these are the main factors when deciding what a fair and reasonable outcome is. If there's only one way to fulfil the key principles, it's likely I'd require Fairmead to pay for it, even if it was expensive or betterment – as that's the only way to treat Mr F fairly. But if there were more ways, then the cost and/or perceived betterment are likely to become more relevant. And the fair way to treat Mr F would likely turn on the specific circumstances.
- So I need to consider whether Fairmead's proposal to carry out Type A fulfils the two key principles I set out above.
- Whilst it seems to be agreed that Type C is a 'better' method than Type A, that isn't what matters. Fairmead need only provide a method which is 'effective enough' to fulfil the key principles.
- Two professionals with relevant experience and qualifications have inspected the building and given recommendations for damp proofing. I consider those professional opinions are crucial when deciding whether the key principles have been fulfilled.
- M's 2023 report said Fairmead's original suggestion – a cement waterproof coating, which I understand is in line with Type A – was likely to trap moisture in the wall and lead to further problems. So it recommended Type C internally.
- Fairmead accepted this initially. And, even when changing its position, it said the age and nature of the house meant it was better to allow some moisture to pass through. It also said sealing the materials could trap moisture and cause problems. This all seems to be consistent with what M said – and using the Type C method instead.
- Fairmead also said it had discussed the matter with A and the only other option was a water management system – which I understand is in line with Type C. Fairmead's reservation about this method was the level of disruption it would cause Mr F and the cost, especially if the external work was also required. So it took advice from A.
- A's 2024 report said Type A or C internally were both appropriate methods in the circumstances. It described how it thought each method should be carried out, but I can't see that it recommended one over the other. So it seems to be Fairmead that chose A over C – but I'm not persuaded this choice was supported by the professional opinions of M or A, or Fairmead's earlier comments.
- A quoted for both methods and Type C was nearly twice the cost of Type A – but the actual difference between them was relatively modest, especially compared to the total claim cost. Both will involve a degree of 'betterment' as damp proofing will be installed where there was none before – but this is only because it's been accepted

that damp proofing is the only way to put right the damage Fairmead caused. Fairmead has seemingly accepted the betterment brought about by Type A is reasonable, but not the betterment brought about by Type C. I haven't seen persuasive reasoning to make that distinction. So, I'm not satisfied the cost or betterment would make it unreasonable for Fairmead to pay for Type C.

- In summary, taking everything into account, I've not been persuaded by Fairmead that Type A fulfils the two key principles. I'm satisfied Type C does – and it would be fair and reasonable in all the circumstances for Fairmead to pay for it.
- Fairmead has already agreed to pay £300 compensation for the impact on Mr F of the change. Whilst I'm intending to require Fairmead to undo that change and revert back to its original agreement, I still consider it should pay this amount of compensation for the way its handled things within the scope of this complaint.
- The claim had been ongoing for a number of years and the need for damp proofing had arisen from a problem caused by Fairmead during repairs. In these circumstances, the change would have been particularly impactful on Mr F. But I'm not persuaded Fairmead thought about that. It focused on the policy wording, which wasn't relevant, and I think it placed more weight on the potential cost and betterment than the two key principles I set out above. I'm not satisfied this treated Mr F fairly and has clearly caused avoidable delays, distress and inconvenience.

### **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.

- Mr F accepted my provisional decision.
- Fairmead responded to make a number of points, which I'll go on to consider below.
- Fairmead questioned whether I intended it to carry out any external damp proofing. I don't. Mr F had already said prior to the complaint that he was prepared to compromise and forego the external damp proofing recommended by M, given how disruptive it was likely to be. His focus was on ensuring that internally the damp proofing was Type C rather than Type A, in line with M's recommendation. He's agreed with my provisional decision, so I have no doubt that's the position.
- For the reasons given in my provisional decision, I was persuaded the professional opinion and evidence showed that internal Type C was the method more likely to provide a lasting and effective solution to the problem. In summary, M actively recommended it. A said both types were suitable but didn't make a recommendation. Fairmead's comments indicated it supported Type C in principle but thought that betterment or cost arguments meant Type A was more reasonable. However, I didn't consider those arguments outweighed the key principle that Mr F should be returned to the position he was in prior to the problem, ie a damp free building, and Type C had been shown to be the more likely way to achieve that.
- In response to my provisional decision, Fairmead has provided more information about the difference between the two types of damp proofing. It's said Type C is disproportionately costly and disruptive, in part because the cost difference is greater than I'd previously been made aware of. I'll look at each point separately.

- Fairmead says Type C would be more disruptive than Type A. I don't think that's in doubt. And Mr F was aware of this when he said he thought M's recommendation of Type C internally should be followed. In my view, the extent of disruption isn't a problem for Fairmead – only for Mr F. He's accepted there would be greater disruption with Type C but is prepared to suffer that in order to ensure a lasting and effective solution to the problem.
- Fairmead says Type C would be more costly than Type A. Again, I don't think that's in doubt, although the extent of the difference might now be. The installation costs provided by A were roughly £7,000 for Type A and £12,000 for Type C, which is why I said the latter was nearly twice the former. In response to my provisional decision, Fairmead says there would be additional costs for Type C that weren't included by A. It estimates the total cost for Type C to be around £25,000, which means it's more like 3-4 times as expensive than Type A – rather than 2 times.
- I question why, if that were the case, it wasn't included within A's report – or pointed out by Fairmead at an earlier stage – particularly when part of its argument was based on the cost of the work. I also understand it's a desktop estimate, rather than a schedule of work and/or a quote from A or a similar company. Neither of these points necessarily mean the estimate is wrong or inaccurate – but it does make the estimate less persuasive and reliable. And, because it wasn't raised at an earlier time, Mr F hasn't been given the chance to challenge it, take further advice about it, or comment on it. So it may not be fair for me to rely on it.
- But the key point is this: as above, cost and/or betterment are, in my view, secondary to the key principle of ensuring Mr F is put back in the position he was in prior to the problem caused by Fairmead. I've been persuaded Type C is the more likely method to provide a lasting and effective solution to the problem. As a result, I consider it fair and reasonable for Fairmead to pay for Type C. Whilst that method may be more expensive than I previously understood, I don't think it's so expensive as to outweigh the key principle I explained.
- Having taken everything into account, including Fairmead's comments in response to my provisional decision, I remain satisfied Fairmead should carry out Type C internally. I don't think it needs to carry out any external damp proofing. And, as neither party commented further on compensation, my view on that remains too.

### **My final decision**

I uphold this complaint.

I require Fairmead Insurance Limited to:

- Carry out the internal Type C method of damp proofing.
- Pay £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 November 2024.

James Neville  
**Ombudsman**