

The complaint

Miss M complains about Fairmead Insurance Limited's handling of a claim made under her home insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here. Miss M and Fairmead can be assured that I've carefully considered all the evidence and information we have on file relating to this case.

Miss M has home insurance underwritten by Fairmead to cover her property. She made a claim in December 2021 after an escape of water at her home. Fairmead accepted the claim and moved Miss M and her daughter into alternative accommodation in March 2022.

Contractors were appointed to carry out repairs at the property and those works were undertaken over the following months.

Fairmead hoped to move Miss M back into her home in July 2023. However, she took the view that the property wasn't yet habitable because some works were incomplete, and others had not been completed well.

Miss M made a complaint to Fairmead about the position they were taking - and then brought that complaint to us.

However, before we'd concluded our investigation, Fairmead agreed that further work needed to be done, that the property wasn't yet habitable, and that they'd pay for Miss M's alternative accommodation for a further period.

Fairmead's position at that time was set out in a final response letter to Miss M dated 15 September 2023. And given that everyone was happy with the agreement about the way forward, we closed that complaint.

According to that agreement, Fairmead paid Miss M a sum of money – amounting to a total of around £15,000 – to get the remaining repair works completed by her own contractors.

The agreed plan was that those works would be completed by November 2023 and Miss M would move back into her home at that time.

In November 2023, Miss M notified Fairmead that there was a further problem at the property. It appeared flooring in several of the rooms had been laid incorrectly - and the work would need to be re-done.

Fairmead's loss adjuster agreed a small extension to the alternative accommodation for Miss M. They also arranged for an inspection to be carried out by a surveyor.

The surveyor inspected the property in December 2023 and reported back to Fairmead in January 2024. Their conclusion was that the vast majority of the work agreed in September 2023 had been carried out. They said the property was now inhabitable. But they noted that

Miss M was right about the flooring and it would need to be taken up and re-laid.

Miss M said that she wouldn't move back into the property until the flooring work had been completed, because that would have a detrimental impact on both her own and her daughter's health. Miss M suffers from dystonia and anxiety. Her daughter has conditions which mean she should not be exposed to mould or dust.

She also said Fairmead would need to pay for the re-work to the flooring as that hadn't been covered by the earlier cash payments.

Fairmead didn't agree with that. They felt Miss M should return to the property - and they refused to pay for alternative accommodation after the end of November 2023. They had in fact already paid for December 2023, but said they'd claim that back from the total settlement payment for the claim.

They also said they wouldn't make any further payment – to cover the flooring work – because Miss M hadn't satisfactorily evidenced for them that she'd spent the £15,000 or so that she'd already been paid.

Miss M complained to Fairmead. They admitted some service failings and delays and offered Miss M £350 in compensation. But they maintained their position on the settlement of the claim.

Miss M wasn't happy with this and brought her complaint to us. Our investigator looked into and thought Fairmead hadn't acted fairly towards Miss M.

They said Fairmead should pay for the remaining work on the flooring. And pay for Miss M's alternative accommodation – and associated costs – until the work was completed and Miss M was able to return to her home. But they felt the £350 compensation Fairmead had offered for Miss M's trouble and upset was fair and reasonable.

Fairmead disagreed and asked for a final decision from an ombudsman. They say the money already provided to Miss M was to cover any and all remaining repairs required at the property.

And in the absence of Miss M accounting for how that had been spent, their loss adjuster couldn't reasonably agree to further funds being provided. However, they also noted that a further sum of around £5,750 had been offered to Miss M, in final settlement of the claim – which Miss M had refused.

Because of that, they'd not been able to progress the claim – and so shouldn't be liable for an on-going bill for alternative accommodation.

For the sake of completeness, I should note that Miss M has also said that the £350 compensation offered by Fairmead - and accepted as fair by our investigator – was insufficient given the impact of Fairmead's errors and/or omissions, particularly on her health.

I agreed with our investigator that the complaint should be upheld. But my reasons for coming to that conclusion differed slightly - and I disagreed about what Fairmead needed to do to put things right for Miss M.

So, I issued a provisional decision. This gave both Fairmead and Miss M a chance to provide further evidence or information and/or to comment on my thinking before I issue my final decision in this case.

My provisional decision

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.

The first complaint Miss M made to Fairmead, and then to us, was resolved to everyone’s satisfaction in September 2023. So, in this decision, I can only look at what’s happened since then.

Payment for the further work on the flooring

This is not a straightforward case, because Fairmead’s original response to the claim was to settle it by carrying out the necessary repairs through their own contractors. It was only when all parties agreed that those contractors has failed to complete the works satisfactorily that Fairmead offered Miss M the opportunity to appoint her preferred contractors.

I don’t think I need to resolve exactly how that agreement – in September 2023 – came about and whether it could, or could not, be described as a “cash settlement” of the claim.

I think all parties knew what the agreement was, in practical terms, and how things were to be taken forward.

The evidence we have suggests that Fairmead were content to pay the agreed sum to Miss M and to leave her to resolve the remaining issues at the property.

I can’t see any evidence that they advised Miss M that she would have to account for the use of that money or provide invoices to show that it had been spent on the repairs. That only became Fairmead’s demand after the issue with the flooring came up, in November 2023.

If there is any evidence to the contrary, no doubt Fairmead will be able to point to it and/or provide it in response to this provisional decision.

Fairmead have said, in their latest response to our investigator’s view on the case, that the £15,000 was to cover all remaining repairs at the property – which would, by definition, include the flooring.

I can’t see any evidence to back this up either. In fact, it seems all parties were agreed – in September 2023 – what the remaining issues were which needed rectification.

These were taken from the original schedule of works to be carried out by the contractors and were the items which hadn’t been completed or were known – at that point in time – to have been completed unsatisfactorily.

At that time, no-one know the flooring – the replacement of which had been covered in the original schedule and was carried out by Fairmead’s contractors – was installed incorrectly.

That only became apparent in November 2023, when Miss M was preparing to move back in and noticed unevenness in some areas of the flooring and an odd sound as

she walked across the floors.

Everyone now agrees – after the inspection Fairmead had carried out in December 2023 – that the flooring was installed incorrectly. The odd noise, for example, is explained by the fact the underlay is upside down.

So, in brief, as things currently stand - and in the absence of any further persuasive evidence Fairmead might provide in response to this provisional decision – I will have to conclude that the £15,000 paid to Miss M was to cover other repairs, not the flooring. And that the need for the flooring work to be re-done was discovered only in November 2023.

It follows that the claim has been stalled – by the dispute over the flooring – as a result of Fairmead unfairly refusing to pay for the necessary further work to the flooring.

I don't think they can reasonably ask Miss M to account for where the previous £15,000 has gone before they pay for the flooring work, because that money was never intended to cover further work on the flooring.

And in any case, the report they commissioned in December 2023 concluded that almost all of the remaining work agreed in September 2023 has been completed – by Miss M's contractors. So, what Fairmead regarded as £15,000-worth of work has been completed at the property.

I do note that the loss adjuster offered Miss M a further sum (around £5,750) to get the flooring work done, after November 2023. However, Miss M felt – not unreasonably in my view – that the offer was unfairly conditional on her accepting that she could make no further request for payment if other problems were later discovered.

Could Miss M move back in before the flooring work is completed?

Miss M has told us – and Fairmead – that she and her daughter suffer from health problems. She's provided evidence from her GP and other sources to show that her daughter's problems will be exacerbated by exposure to dust.

Fairmead say Miss M and her daughter could and should have moved back into the property in November 2023 – with the remaining work (including the flooring) being completed around them, as it were.

Miss M has provided a statement from a flooring contractor to say that re-laying the flooring at her home will cause dust to be released into the atmosphere – and that it would likely take around 48 hours for that to settle.

Miss M also suffers with her gait and balance following a road traffic accident in 2022. She says this means she will struggle with uneven surfaces at the property unless and until the flooring is fixed.

I'm particularly persuaded by the evidence about Miss M's daughter's condition. And it does seem to me, as things stand, that Fairmead acted unreasonably in refusing to pay for alternative accommodation after November 2023 on the basis that Miss M and her daughter should have moved back in before the flooring work was carried out.

Summary

So, in the absence of any persuasive further evidence which might be provided in response to this provisional decision, I'm minded to conclude that the claim has stalled due to Fairmead's intransigence when confronted with the (new) flooring issue. And that Miss M and her daughter couldn't reasonably be expected to move back into the property until the flooring repairs had been carried out.

And so, I agree with our investigator that Fairmead should pay for the flooring work. And I agree they should pay Miss M's alternative accommodation costs (on receipt of evidence of payment from Miss M) up to the point the flooring work is completed.

Compensation

There is an argument to say that I should only consider compensation for Miss M's trouble and upset up to the date of Fairmead's final response to Miss M's latest complaint (the one I'm considering here). That's because our rules only allow us to look at matters a respondent business has already had the chance to resolve themselves.

If that were the case, I could only consider compensation for Miss M's trouble and upset between September 2023 – when the previous complaint concluded – and around January 2024, when Fairmead's final response to this latest complaint was issued.

I say around January 2024, because we don't at present have a dated copy of that final response – and I'd be grateful for confirmation of the exact date from either or both of the parties, in response to this provisional decision.

However, I don't agree with that interpretation in this case. Miss M complained about Fairmead's service failures and delays in getting her claim resolved – and returning her to her property in a satisfactory and inhabitable condition.

And she said it was Fairmead's failings in the handling of her claim – particularly their unwillingness to pay for the flooring work and/or to accept that she couldn't return to the property unless and until it was completed – that has caused her trouble and upset.

Those remain the exact same issues now. And if I conclude – after any representations from the parties in response to this provisional decision – that Fairmead caused Miss M's trouble and upset in that period (September 2023 to January 2024), then I'd have to conclude that they continued to be responsible for it after January 2024 and indeed up to the date Miss M has her flooring fixed and can move back into her house.

In any case, it would seem absurd for me to award compensation up to January 2024 and tell Miss M that she has to make a further complaint (about the exact same issues that I'm making a decision on here) to be compensated for her further trouble and upset after January 2024. I'm sure Fairmead will agree that would be counterproductive for all concerned.

Coming to the point, I would agree with our investigator - and with Fairmead – that £350 represents fair and reasonable compensation for the trouble and upset Miss M suffered between September 2023 and January 2024.

Miss M's trouble and upset is considerable. She's experienced the stress of not knowing what might happen in terms of payment for or completion of the repairs to her home.

She's had the inconvenience of living in alternative accommodation for a prolonged period, without a clear return date in sight.

And she's had to chase Fairmead for progress on the claim and/or enter into debate with them about how it ought to be resolved.

All of that has been exacerbated by Miss M's health condition, which is severely affected by stress.

Whilst that degree of trouble and upset is adequately compensated by £350 to cover September 2023 to January 2024, I have to take into account that it's been continued to the present date. And will continue, to a greater or lesser degree (after this decision), until Miss M returns to her home.

And so, unless anything changes my mind when I see the responses to this provisional decision, I'm minded to ask Fairmead to pay Miss M £1,000 compensation in total (not in addition to the £350 already offered) to reflect her trouble and upset over that longer period.

Further work at the property

I'm aware Miss M has more recently raised questions about the repair work previously carried out (or not) by Fairmead's contractors as regards the insulation in the ceilings at the property.

This issue has been raised well after our investigation began. It is a new issue – and Fairmead have not had the chance to look into it as yet.

So, I'm not going to consider that issue here or in my final decision. I would informally advise however that it might be worth Fairmead carrying out an inspection, whilst the remaining flooring work is underway, to ascertain whether or not there is another problem – caused by their contractors - which needs fixing."

Based on that reasoning, I said I was minded to require Fairmead to pay the cost of repairing the flooring (on receipt of reasonable and fully costed invoices from Miss M), pay for Miss M's alternative accommodation (on receipt of proof of payment from Miss M) until the flooring work was completed, and pay Miss M £1,000 in compensation for her trouble and upset.

The responses to my provisional decision

Both parties responded in some detail to my provisional decision. I'll summarise their arguments below.

Fairmead's response

Fairmead confirmed that the date of their most recent final response letter to Miss M was 19 March 2024. I'm grateful for that clarification. It doesn't alter anything in terms of the outcome of this complaint.

They say that accounting for expenditure through invoices or receipts is a "*basic tenet of*

insurance" (their own words). And so, their loss adjuster was unable to agree payment for the flooring repairs unless and until Miss M accounted for how and when the £15,000 cash settlement had been spent.

It was Miss M's (and her loss assessor's) failure to provide evidence of that expenditure which led to the deadlock in progressing the claim to a conclusion. And that led to Miss M being in alternative accommodation after November / December 2023. So, Fairmead should not be responsible for those alternative accommodation costs.

They also say the December 2023 inspection report said the property was uninhabitable, so Miss M should have moved back in at that point. And if there were issues whilst the flooring was being repaired, she could have moved out again for that period only.

Fairmead provided – again – emails from the loss adjuster to Miss M and/or her loss assessor asking for proof of expenditure.

They summarised by saying that, for the reasons above, my provisional decision was "*unfair and impartial*" (again, their own words). Much as I might like to think otherwise, I'm assuming they meant unfair and *not* impartial.

Miss M's response

Miss M sent a large volume of information, including phone call recordings and copy documents, in response to my provisional decision.

Much of that was a repetition of information or arguments we already had or were aware of, although I understand Miss M's keenness to make sure that her most compelling evidence and arguments were in the forefront of my mind.

The information provided is I think intended to reinforce the idea that Miss M was treated badly by Fairmead and/or their agents, particularly the building contractors who carried out the initial works at the property. And to show that Fairmead have never apologised for any of their (or their contractor's) errors.

There's at least an implication that Miss M thinks the compensation suggested in my provisional decision is not enough to reflect the trouble and upset she's experienced as a result of Fairmead's errors or omissions.

I won't rehearse here all of the arguments Miss M has put forward which *support* the findings in my provisional decision. That's not to say I haven't read and understood Miss M's submissions. But there's little point in setting out in detail here the areas where Miss M agrees with the provisional decision set out above.

Turning to some of the detail, Miss M says the further offer (of £5,750) made by Fairmead to finally settle the claim did not include a payment for the flooring repairs.

She says that she (and her loss assessor) *have* in fact provided invoices, receipts or other proof of the work done at the property after the £15,000 cash settlement was paid over to her.

She notes my comments on the ceilings at the property but thinks I should make it a formal requirement that Fairmead carry out an inspection.

Miss M also appears to suggest that there are outstanding funds still payable by Fairmead to cover the work she had carried out up to November 2023. I think she's saying that the

£15,000 may not have been enough to cover all the work she commissioned to get the necessary repairs carried out.

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.

I'll first say something about the agreement Fairmead and Miss M came to in mid-2023, that she would get the remaining works completed in return for £15,000. Both parties appear to now want to re-interpret that agreement in a way which is favourable to them.

Fairmead appear to suggest that this was an agreement that, in return for £15,000, Miss M would effectively make no further claim on them. Miss M may now be suggesting that £15,000 wasn't enough to get the repairs carried out.

I should say there was no contract here. And no single e-mail or list of terms which sets out the detail of the agreement. I can only go on the numerous communications between Miss M (and/or her loss assessor) and Fairmead (and/or their agents) at the relevant time.

I explained in my provisional decision what I thought the best and fairest interpretation of that agreement was.

In essence, the parties agreed (or at least gave the impression they were agreeing) that Fairmead would pay Miss M £15,000 – and Miss M would then get the repairs carried out that were in the original scope of works but either hadn't been attempted by Fairmead's contractor or had been attempted but needed re-doing.

I'm aware Fairmead's loss adjuster later asked for invoices and/or receipts – but I don't think it was part of the original agreement that Miss M would have to provide them.

Miss M says she *has* in fact provided them. But I don't think I need to get into that particular and detailed argument about who provided what to whom and whether that's sufficient.

The agreement was that Miss M would get those specific repairs completed – in return for £15,000. The inspection report from December 2023 says the vast majority of that work has been completed (so Miss M has paid to have it carried out).

And as I said in my provisional decision, when the £15,000 was agreed – for the other works – no-one knew or suspected that the flooring had been laid incorrectly.

So, I don't think Fairmead can reasonably or fairly re-interpret that agreement to suggest that the flooring re-work could – or should – be covered under the £15,000.

If they had wanted this to be an agreement that Miss M took £15,000 and that was and end to it, they should have made that offer to Miss M at the time. Not that she'd have taken the offer if it *had* been put in that way, I suspect.

Similarly, Miss M can't now expect to re-negotiate the agreement and ask Fairmead to pay more for the works that were agreed to be covered by the £15,000. If indeed, that's what she's now asking. As I say, it's not entirely clear from Miss M's response to my provisional decision.

In any case, that particular issue (the £15,000 not being enough) was not included in the complaint Miss M made to Fairmead and/or brought to us. So, I can't look at that in this

decision.

It follows from my reasoning above that I don't accept Fairmead's argument that the delay in the resolution of the claim was down to Miss M and/or her loss assessor not evidencing the spending of the £15,000.

I remain of the view that it was Fairmead's intransigence that caused the hiatus and that they should cover Miss M's alternative accommodation costs until such time as the flooring is re-laid.

I note Fairmead's suggestion that Miss M could have moved back into the property and then taken alternative accommodation only for the period the works to the floor were being carried out.

I can see why Miss M might think that inconvenient. But I don't need to get into that, because in any case, I'm not aware of any attempt by Fairmead to put that proposal to Miss M at the relevant time. Instead, they simply said they wouldn't pay alternative accommodation costs after November 2023 – and the current deadlock, with Miss A remaining in alternative accommodation, was the result.

I was also aware when I issued my provisional decision that the inspection in December 2023 said the property was inhabitable. And to be fair, in normal circumstances, it likely was inhabitable.

However, the surveyor who produced that report was unaware of the evidence about Miss M and her daughter's health conditions. And it was these – in particular, the effect of the dust on Miss M's daughter – which show that it would have been inappropriate to ask Miss M and her daughter to move back in whilst the work was on-going.

I suggested in my provisional decision that Fairmead might want to get the ceiling insulation at the property checked out whilst the flooring work is underway. Miss M wants me to make that a formal requirement of Fairmead.

I can't do that, for the reasons explained in my provisional decision (above). This is not an issue that was raised in the complaint to Fairmead (and then to us) and so Fairmead have not had a chance to consider or respond to it.

I maintain that it would be a good idea – assuming that there is no good reason Fairmead might have for not doing it – in the interests of bringing this claim to a successful conclusion as soon as possible. But it's not something I can legally require Fairmead to do.

I have to ask Miss M to understand the nature of our service. We're here to consider, when we get a complaint, whether the financial business concerned has made an error or errors (by definition, in the past) which they need to put right.

We can't deal with new issues which arise in the course of our investigation of a complaint. And we aren't here to act as a substitute claims handler – or a referee – in an on-going claim.

If Fairmead do something in future that she's not happy with, she'll be entitled to make a complaint to Fairmead about that – and bring that complaint to us if she's not happy with Fairmead's response.

I get the impression from Miss M's response that she's not entirely satisfied with the level of compensation I suggested in my provisional decision. She's provided evidence (some of it repeated) to show that she wasn't treated well by the contractors and/or, at times, by Fairmead.

The compensation I suggested reflects that fact the Fairmead and/or their contractors made mistakes in their handling of the claim which had an adverse effect on Miss M. I was aware of those errors – and the likely effect on Miss M – before I made my provisional decision.

I can't see any reason to change the amount of compensation in this case on the basis of Miss M's response to my provisional decision. I still take the view that £1,000 is fair and reasonable compensation for Miss M's trouble and upset – for the reasons explained in detail in my provisional decision.

In summary, I appreciate the time Fairmead and Miss M have taken to respond to my provisional decision in detail. And I understand their arguments. But neither Miss M nor Fairmead has given me any compelling reason to change my mind about the outcome of this case

Putting things right

That being the case, I remain of the view that in order to put things right for Miss M, Fairmead need to take the actions specified in my provisional decision (above) and set out again below.

I strongly recommend that both parties now work together cooperatively to implement the findings of this decision and to bring this clam to a satisfactory conclusion as soon as is practically possible.

My final decision

For the reasons set out above, I uphold Miss M's complaint.

Fairmead Insurance Limited must:

- pay for the cost of repairs to Miss M's flooring (on receipt from Miss M of a reasonable and fully costed invoice for that work);
- pay for Miss M's alternative accommodation and associated costs (on receipt of proof of payment from Miss M) up until the work on the flooring is complete; and
- pay Miss M £1,000 in compensation for her trouble and upset

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 December 2024.

Neil Marshall
Ombudsman