

The complaint

Mrs H complains that Fairmead Insurance Limited hasn't completed an effective and lasting repair following a claim under her buildings insurance policy.

Where I refer to Fairmead, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In 2019, Mrs H experienced a leak in her home, which is a listed building. She made a claim on her home insurance policy for the damage. Fairmead accepted the claim and repair works were carried out. By June 2021, the claim was considered resolved.

In 2022, Mrs H reported damp in her property. She believes this has arisen because of the works completed by Fairmead; specifically the damp proofing to the floor has had a detrimental effect on the property's ability to allow water to sink into the subsoil beneath it resulting in a build-up of water levels which has caused damp to the walls.

Fairmead say it didn't use a damp proof membrane or a damp proof course. Rather, it used a product described by its maker as a "rapid drying waterproof surface membrane" – which I'll refer to as "the product". It says Mrs H had a damp proof membrane installed in 2006 when she had the floor refurbished and underfloor heating installed, which could be the cause of the damp.

Mrs H raised a complaint, which she brought to our Service. She said the product used was unsuitable for listed buildings.

Our Investigator wasn't persuaded the ongoing problems were as a result of the works Fairmead completed. But he acknowledged Fairmead had failed to get relevant planning permission for the repairs. He said Fairmead should obtain retrospective permission and pay compensation to put things right.

Mrs H didn't agree, so the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

As Fairmead has accepted the claim for the leak under the policy terms and has opted to settle the claim by way of a repair, it is responsible for ensuring that an effective and lasting repair is completed. I'm not satisfied it has done so. I'll explain why.

When Fairmead completed repairs to Mrs H's property, it laid the product on the concrete floors, before laying the wooden flooring. This product is advertised as a waterproof surface membrane which impedes the passage of construction moisture up to 95%.

Mrs H has provided a letter from her MP which says:

“The advice from the manufacturers states that neither [the product] should have been used by the contractors on the project.”

Mrs H has also provided a letter from a Conservation Officer at the local Council which says:

“Two products claimed to have been used by the contractors [the product], neither product appears to be suitable for a historic building when considering its age and construction.”

I'm satisfied the Conservation Officer is well placed to comment on the suitability of materials used in a listed building, so I'm persuaded by what they've said. The information I have, therefore, is that the product Fairmead has used is unsuitable for Mrs H's property due to it being a listed building.

Fairmead has provided a statement which it says is from a surveyor, however the statement is simply in a word document with no letterhead nor is it signed off with any details of the author, including their name, job title, or qualifications / expertise.

This statement advises that the product was used because it was a requirement by the flooring manufacturer to maintain the warranty on the wooden floor. And that it was only used under the areas where the wooden flooring was laid, not under any area of stone flooring.

The author of this statement believes the current elevated humidity is either due to a new unrelated leak or it's associated with environmental factors and inadequate ventilation.

Whilst I've taken this view into consideration, I'm not persuaded by it. I say this because I don't know whether the author has any expertise to reach this conclusion given the anonymity of it. Nor do I know whether the author has inspected the problem first hand and / or carried out any investigations to reach their conclusion. If Fairmead wishes to defend its position that it has completed an effective and lasting repair, I'd expect it to provide a report from a relevant professional who's had sight of the property. I've given it the opportunity to provide this, but it hasn't.

I'm also not persuaded by Fairmead's assertion that the problems could be caused by a damp proof membrane Mrs H had installed in 2006. I say this because Mrs H reported the problems with damp in 2022, directly after the repairs were completed. And I don't think that was coincidental. I've not seen anything to suggest there were damp problems dating back to 2006, so I think it's unlikely the membrane is the cause. The only other causes suggested by Fairmead are unpersuasive and unevidenced.

On the balance of probabilities, I think it's most likely the product has caused the current damp issues given that the product's main purpose is to trap moisture and that seems to be exactly what it's done.

So on the information I have available, I'm most persuaded that Fairmead has used a product which is unsuitable for Mrs H's property, and it hasn't satisfactorily shown that this isn't the cause or contributing factor to the problems Mrs H is now experiencing. It follows that I'm not satisfied it has completed an effective and lasting repair under the policy terms.

Fairmead has also acknowledged that it failed to obtain planning permission. I understand Mrs H received confirmation from the Council that permission wasn't needed if the repair

was on a like for like basis. However, it's now been confirmed by the Council that the application of the product isn't considered a like for like repair and permission would've been required.

Putting things right

I intend to direct Fairmead to undertake repair works to all areas of Mrs H's property which are affected by damp where the product has been used, in order to achieve an effective and lasting repair. This may include stripping back and removing the product.

If the product isn't removed, Fairmead will need to apply for retrospective planning permission.

I've no doubt Mrs H would've suffered a great deal of distress and inconvenience as a result of this failed repair and Fairmead's refusal to take responsibility for it. So I intend to direct it to pay compensation of £350 for what's gone wrong here.

Responses to my provisional decision

Mrs H has responded to my provisional decision. I don't intend to set out her comments in full. Instead, I've summarised what I consider to be the key points she's raised below.

- Mrs H had works carried out to her home in 2008 and she sought the required planning permission. This didn't include a damp proof course.
- Fairmead has provided a document alleging that a meeting took place in January 2021 with Mrs H present. This is false, and Mrs H can provide proof that she was elsewhere on that date and time. The document says that the application of a liquid damp proof membrane was discussed. Had she been at that meeting, she would've told Fairmead that listed building consent would be required. She didn't find out until March 2024 that the product had been used.
- Fairmead's claims handling throughout 2019 to 2021 was poor. Examples include the stripping out contractors arriving before her property had been emptied of furniture, and the agreed payments for her alternative accommodation were late every month. Some kitchen appliances were damaged as they weren't dried out prior to being placed in storage, which caused them to corrode and need replacing.
- It's not clear why the reinstatement works were considered to be completed in May 2021 when they are still incomplete.
- A second water leak occurred as a result of copper pipes not being replaced as advised. Had Fairmead not applied the product, the water from this leak would've sunk into the subsoil beneath the property. As it was blocked by the product, it's travelled into and up the walls.
- The wet walls have caused detrimental harm to Mrs H's physical and mental health. She's suffered a loss of enjoyment of her home as she's unable to have friends and family over to visit and her television's signal is interfered with by the dampness in the property.
- Fairmead's handling of the claim for the second water leak has been poor. And extensive stripping out work is required. If an effective and lasting repair had been completed under the first claim, Mrs H wouldn't be in this situation.

- Mrs H's property is well ventilated, and her bedroom window is open all year round.
- Mrs H is out of pocket for various expenses including an unnecessary boiler replacement and lost water. These expenses amount to almost £5,000.
- It's not clear why the amount of compensation has changed from what our Investigator originally recommended, to what I intend to award.

Fairmead has provided an email from the author of the statement previously provided. The author is an Engineering and Technical Manager working at a firm appointed by Fairmead to handle the claim. The email sets out their qualifications. In the email, the following points have been made:

- It's not disputed that the product is unsuitable for a listed building. It was recommended by a contractor whose flooring specialist insisted it was used as a prerequisite for installing the hardwood flooring.
- It's acknowledged that planning permission should've been sought for these works. It was a genuine oversight that this wasn't done.
- The second leak occurred within or under the existing floor whilst the product was applied to the surface. If the product stops moisture movement, it will prevent moisture from rising into the property rather than sinking into the subsoil.
- When Mrs H installed underfloor heating, a modern cement-based material was used. And contractors also found evidence of a damp proof membrane and polystyrene insulation board. These materials suggest the floor was already constructed with non-breathable components.
- They remain of the opinion that the damp issues are likely caused by environmental factors, including inadequate ventilation. Alternatively, they believe the moisture is likely to be connected to unresolved issues with the underfloor heating system. The author acknowledges that they are not a damp expert but says they're suitably qualified to comment.
- The original leak was confirmed as being associated to corrosion of copper pipework. As a result of the second leak, a section of pipe within the floor was isolated and redirected above the floor. As such, it's likely other areas of pipework are in a similar corroded condition and may have sprung further leaks.
- The author acknowledges that whilst they attended the property during the reinstatement works, they haven't returned to inspect the damage since the development of the damp issues.
- The author recommends that Fairmead address the application of the product in line with Conservation Officers' requirements whilst also conducting thorough investigations to identify the true source of the damp. Without this, the issue may persist regardless of rectifications to the product.

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'd like to reassure both parties that whilst I may have condensed what they've told us in far less detail and in my own words, I've read and considered all submissions. I'm satisfied I've captured the crux of the complaint and the points raised. I don't need to comment on every point individually, or possibly in the level of detail they'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

It's now accepted by Fairmead that the product used was unsuitable for Mrs H's property and that relevant consent to use it wasn't sought or obtained.

What remains in dispute is whether the use of the product has caused damp within the property, meaning that an effective and lasting repair hasn't been completed.

Fairmead has offered various explanations for why there is damp. This includes environmental factors, such as inadequate ventilation, unresolved issues with the underfloor heating system, a damp proof membrane or unbreathable materials installed by Mrs H several years prior, or corroded pipework.

As I've said in my provisional decision, these possible causes are unpersuasive and unevicenced. I say this because they're just a list of theories of what might've caused the problem. It doesn't seem to be based on any investigations. I haven't been provided with a professional opinion from someone who has seen the damp issues at the property which sets out what the most likely cause of the damp is and, most importantly, why that conclusion has been reached. I've given Fairmead multiple opportunities to provide this evidence, but it hasn't done so.

Whilst the leaks may have arisen from corroded pipework, Mrs H's argument remains that the water hasn't been able to sink into the subsoil due to the presence of the product. And this has caused a damp issue in the walls.

I accept Fairmead's point that if the leaks have occurred below the product, it's unlikely this is the reason why the water isn't sinking into the subsoil. But, as I've said, Fairmead had the opportunity to provide a report from a suitably qualified professional who has seen the damp issues to confirm what is causing the problem and it hasn't. So I can't say with any certainty that it is a leak from corroded pipework causing the damp and where that leak is located.

I remain unpersuaded that the damp issues have been caused by works Mrs H did previously. This is because the problems were reported in 2022, not prior. And without sufficient evidence to show me that there was a pre-existing problem, I can't fairly conclude that there was one.

In summary, I'm satisfied that Fairmead used a product which was unsuitable for Mrs H's property and Fairmead accepts this. Following the use of that product, Mrs H experienced damp problems and Fairmead failed to adequately investigate why that was. So I have to decide, on the limited evidence provided, whether I think Fairmead has carried out an effective and lasting repair. And based on what I've seen, given the lack of investigations as well as the timing of the damp, I'm not persuaded it has. So it needs to put this right.

I agree with the Engineering and Technical Manager's comments that Fairmead should carry out thorough investigations to identify the source of the damp.

I've considered the points raised by Mrs H, but these don't alter the redress I intended to award.

Mrs H has raised several new points which I can't consider here. The scope of this complaint is whether Fairmead carried out an effective and lasting repair following the claim made in 2019. And I'm not able to comment on anything outside of that scope. If Mrs H now has further leaks or losses or any other concerns, she'll need to raise a new complaint to Fairmead in the first instance which she can escalate to our service in the same way she has with this one.

I've noted Mrs H's out of pocket expenses. But I haven't seen significant evidence to show me that there's a causal link between these losses and Fairmead's actions. Specifically, Fairmead says Mrs H told its contractor that her boiler wasn't very good and kept cutting out. As it was at least 18 years old, the contractor recommended she replace it which she did. So I can't fairly say this was unnecessary or that Fairmead told Mrs H she needed to replace it to solve the problems she was having. But if Mrs H has evidence to support that it should be covered as part of this claim, she should provide this to Fairmead in the first instance for it to consider.

I'm aware that the compensation I'm awarding is of a lesser amount than what our Investigator originally recommended. But I'm not bound by any previous findings made by our service. Rather, I've looked at the case afresh to determine what I consider to be a fair outcome to the complaint. Awarding compensation isn't an exact science, there is no way to quantify feelings of distress and inconvenience. I've considered the impact Mrs H has experienced as a result of Fairmead's failure to carry out an effective and lasting repair following the 2019 claim and I'm satisfied £350 fairly reflects this.

My final decision

For the reasons I've explained, I uphold the complaint and direct Fairmead Insurance Limited to:

- undertake repair works to all areas of Mrs H's property which are affected by damp where the product has been used, in order to achieve an effective and lasting repair. This may include stripping back and removing the product.
- obtain retrospective planning permission for the use of the product, if it isn't removed as part of the repair works.
- carry out thorough investigations to identify the source of the damp.
- pay £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 31 December 2024.

Sheryl Sibley
Ombudsman