

The complaint

Mr M complains that Acasta European Insurance Company Limited (Acasta) has declined his claim under a deposit protection insurance. He would like the claim paid.

What happened

Mr M placed an order for windows and doors to be supplied and fitted by a business I'll call F. It said that a significant deposit would enable a faster turnaround time which was important to Mr M who was having a house built. F said that the deposit would be protected by an insurance policy with Independent Warranty (IWA), which was underwritten by Acasta. Mr M paid F a deposit of over £11,000, which was 65% of the total contract value in October 2019.

Mr M says when the original delivery and installation dates were missed, he began pressing F for updates. F said everything was in hand and it was chasing the European based manufacturer. After further reassurances stretching into March 2020, Mr M learned that F had gone into administration and that his deposit hadn't been paid to the manufacturer.

Mr M made enquiries and contacted IWA. It said F had confirmed Mr M's order when he paid the deposit. It said it had set up the cover and sent a policy certificate to him by email. Mr M said he'd not received this. IWA reissued a numbered policy certificate. This resulted in Mr M making a complaint about IWA which was referred to our service in 2020. Mr M subsequently made a further complaint about his lost deposit.

Acasta said this was the same complaint as had already been made about IWA. Our investigator said it was a different complaint as it was about the claim not about the delay in issuing the policy certificate. Acasta agreed to consider the claim. Mr M was asked to provide proof that he'd paid the deposit and did so.

After an overall delay of around four months Acasta rejected the claim and Mr M's complaint in its final response of 16 July 2021. It said the policy was only valid for 60 days from the date of the payment of the deposit which meant the "*cover had expired*" in December 2019, meaning there was "*no cover in place*" when F went into administration in March 2020. Acasta apologised for the "*unusually long delays*" in processing the claim and dealing with the complaint and offered Mr M £100 in compensation for this.

Our investigator looked into the complaint about the claim, but she didn't uphold it.

She agreed something had gone wrong but said she couldn't hold Acasta responsible as it hadn't made an error and its actions hadn't led to the loss of the deposit. She said the policy wasn't appropriate for Mr M because F couldn't complete the work within the 60-day timeframe. She also said the policy only provided for a return of a maximum deposit of 25% of the contract amount not the 65% Mr M had paid.

Mr M said the policy had been mis-sold as it was worthless. As he hadn't been provided with the certificate, he didn't know the policy was inappropriate and had been given false "reassurance". He said Acasta should be responsible for the actions of F and IWA and should be at least responsible for paying 25% of the contract value. Our investigator said whilst F had arranged the policy for Mr M it wasn't acting for Acasta.

As Mr M doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 7 February 2022, I explained the reasons why I was planning to uphold the complaint. I said:

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'm planning to uphold the complaint in part. However, I am unable to tell Acasta to pay Mr M's deposit. I'll explain why.

Acasta is responsible for the actions of its agents and whilst F might not have been its agent, IWA is and has arranged the policy and handled the claim. F offered the policy to provide its customers with comfort about paying deposits. The policy certificate refers to the customer as being the person named on the certificate, which is Mr M. It also gives him statutory rights to cancel the policy. I'm satisfied the purpose of the policy was to protect him. Mr M says he didn't initially receive the certificate, and he made a separate complaint about that, which I'm not considering here.

The claim

Acasta declined the claim saying the policy didn't cover what had happened, as F went into administration more than 60 days after the deposit was paid. I note the certificate does provide for the cover to be extended at the discretion of Acasta. This needs to be requested within the first 60 days, so Mr M would have needed the policy certificate to know this. But as any extension is discretionary it might not have been granted and it appears a further extension may have been needed. And, as F did fail more than 60 days after the deposit was paid, the policy doesn't cover what happened. So, I can't ask Acasta to pay this claim.

Acasta has only referenced the 60-day time limit as its reason for declining the claim but F had gone into administration in March 2020. The facts about this were well known to Acasta by April 2021, when it agreed it would consider Mr M's claim. So, I think it should have been dealt with promptly. But I also think its relevant that the policy doesn't appear to have ever provided Mr M with any cover for his deposit. I'll explain why I think this below.

But I think Acasta would have been aware from its own records at outset that no claim would ever be paid. In these circumstances I think it took an unreasonably long time to decline the claim. This left Mr M hopeful that he might get his money back for another four months when there was no prospect of this at all. In the circumstances I think the compensation of £100 offered for this delay and the additional inconvenience of being asked to provide further evidence of his claim is too little and it should be increased by another £100 to £200.

Was Mr M's deposit ever protected

As well as the 60-day limit, the policy also states that the maximum deposit that would be covered was 25% of the contract value. It continues that if the deposit was more than 25% of the contract value the policy would not cover the initial deposit and would "render the actual deposit paid covered by this policy null and void". The policy certificate reissued by IWA

records the monetary deposit paid as advised by F. This was considerably more than 25% of the contract value, and also nearly double the overall maximum cover limit of £6,250.

The certificate doesn't elaborate further but in contract law null and void means the contract was never valid and has no legal effect. As the deposit protection didn't offer any other benefit, I think it's reasonable to say it offered no cover and there was never any prospect of it paying a claim. This leaves me with the impression that issuing the certificate is potentially worthless as no cover could apply. Acasta hasn't explained why the policy was still operative or what benefit Mr M would be able to derive from any cover left under the policy.

It isn't my role to tell Acasta how to run its business, but I can consider whether its procedures have resulted in a fair outcome for Mr M. I don't think they have. At best issuing certificates offering no cover is confusing. It's very likely to lead to misunderstandings and I can understand Mr M's additional frustration over this.

Mr M didn't have any details of the policy when he paid his deposit and wouldn't have known the policy limits. If he had, I think he'd have raised queries then. But Acasta was fully aware of the level of deposit having received the details from F. Which it entered into its records and on to the policy certificate despite it being significantly over the maximum.

Clearly F was also at fault here, but I don't think it's reasonable that Acasta set up a policy when it knew it was actually providing no cover at all and then subsequently blame F for not following procedures. As I think the purpose of the policy was to benefit Mr M, I think in order to have treated him fairly Acasta should have explicitly clarified that the policy had failed at the earliest opportunity.

By failing to inform Mr M there was no cover it allowed him to think his deposit was insured when it wasn't. I think this exacerbated the distress caused by F's failure. I think it's fair that Acasta should pay Mr M compensation of £150 for the additional distress and inconvenience that this has caused him.

Taking everything into account at this stage I thought Acasta should pay Mr M a further £250 in compensation for delays and the trouble and upset he has been caused.

I asked for any more comments or evidence be provided by the 7 March 2022.

Response to provisional decision

Mr M said he agreed with my decision. He said he'd never expected to get his money back, but said it was *"reassuring to read that the certificate was not worth anything as I had suspected"*. He asked if Acasta and its agent IWA should apologise for what had happened and whether Acasta would have to declare the information about my decision.

Acasta said it had nothing further to add.

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've decided to uphold the complaint.

As explained in my provisional decision I think Mr M was treated unfairly by Acasta from outset and again when it said it would consider a claim. At outset it allowed Mr M to believe he had the benefit of insurance on his deposit when he did not. It then took an excessively long period to decline the claim which had no chance of success.

I think Mr M is correct in saying that Acasta should offer an apology for what happened. Regardless of the actions of F, Acasta caused Mr M unnecessary trouble and upset and made a terrible situation worse rather than better.

Whilst Acasta doesn't need to disclose the outcome of this complaint to future customers, decisions made by our service can be viewed on our website. The financial services regulator's (the FCA) fair treatment of customers principle says a business "*must pay due regard to the interests of its customers and treat them fairly*". This includes the provision of clear information, before, during and after the point of sale, which I don't think happened here.

Putting things right

As I don't think Acasta has treated Mr M fairly it should offer him an apology and it should pay him a further £250 in compensation for his trouble and upset.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Acasta European Insurance Company Limited.

I direct Acasta European Insurance Company Limited to pay Mr M a further £250 in compensation for the trouble and upset he has been caused. It should also apologise to Mr M for what has happened.

Acasta European Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Acasta European Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell how much it's taken off. It should also give a certificate showing this if Mr M asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 April 2022.

Nigel Bracken
Ombudsman