

## **The complaint**

Mr and Mrs G complain that Acasta European Insurance Company Limited (“Acasta”) unfairly declined a claim under their building guarantee.

Any reference to Mr and Mrs G or Acasta refers to any respective agents or representatives.

## **What happened**

The background of this complaint is well known to both parties. So, I’ve summarised events.

- Mr and Mrs G held a guarantee with Acasta that covered works completed by Company A in 2018.
- In September 2020 there was a leak, and Mr and Mrs G contacted Company A to resolve the matter but found it was no longer trading.
- Mr and Mrs G contacted Acasta who carried out an inspection and repairs to the flashings and valley trays. But it said repairs to the internal damage wasn’t covered by the guarantee as it excluded consequential loss or damage.
- Following some back and forth the leak continued, and Mr and Mrs G say they sought the opinions of multiple roofing contractors who confirmed the most likely cause of the leak was Company A’s previous works. So, they appointed Company B to carry out repairs. Following further leaks, Company B carried out further works.
- Mr and Mrs G contacted Acasta again. They said the Company B’s evidence showed Company A’s works were poorly completed and Acasta’s previous inspection was inadequate. And they said the internal damage had become worse due to Acasta’s initial decline causing a delay in repairs. They complained and requested Acasta pay around £5,800 for external works, and £2,100 for internal works.
- Acasta declined the claim. It said its repairs from October 2020 had shown the flashings and valley trays were adequate, and that the original works completed by Company A were limited to re-tilling/slating and valley trays/liners and not the membrane, batten and valley timbers – and that the damage here was caused by an issue with the underfelt and valley timbers which weren’t replaced by Company A.
- Acasta also said it wasn’t liable for any consequential loss or damage and that no cover would be provided for any items or works carried out that wasn’t stated within the supplier’s contract.
- The Investigator looked into what happened and upheld it. She acknowledged the policy didn’t cover works not included within the supplier’s contract – but as this wasn’t available it wasn’t fair to decline these works on this basis.
- She said Mr and Mrs G’s invoice for the external works was not itemised, so it wasn’t reasonable for Acasta to pay these in full, but she asked it to reconsider these costs upon receipt of an itemised breakdown. And in regard to internal works, she said there wasn’t evidence to support these repairs were necessary due to a failure in the works covered by the guarantee.

- Mr and Mrs G said it may be difficult for them to provide a more detailed report.
- Acasta disagreed, saying Company A had not replaced the membrane, batten or valley timbers. And that due to the leaks being caused by a problem with the underfelt and valley timbers – these were not covered. It also said the works carried out by Company B were for new valley timbers and repointing of brickwork and fascia's – all works unrelated to the previous Company A works.
- The Investigator looked again and didn't change her mind. She said it is unreasonable in this case for Acasta to say the cover was limited to the supplier's contract when what was contained within this isn't available to consider.

So, the complaint has been passed to me for an Ombudsman's final decision.

### **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'm upholding this complaint for similar reasons to our Investigator. I'll explain why.

- Mr and Mrs G's guarantee says:  
*"For a period of 10 (ten) years from the Date of Completion noted above, the Company hereby guarantees all materials and workmanship against defects that may appear or incur in the Works after the Date of completion, subject to exclusions and conditions..."*
- The term "Works" here refers to *"Loft extension structure – roof, floor, exterior and interior walls and stairs. Ground floor Box Frame structure, associated beams and walls. Opening for Bi-fold doors. Lateral restraints and associated floor noggins."*
- This means Mr and Mrs G's guarantee provides covers against defects in the materials or workmanship that occur only within the works originally completed by Company A.
- In this case, there's no dispute that Mr and Mrs G's roof had been leaking and that there were problems with the roof. Company A completed repairs to valley trays and flashing around October 2020. But it has said other damage that has since been repaired by Company B falls outside of the scope of the guarantee as it relates to works that were never completed by Company A.
- Mr and Mrs G attribute all of the damage to the works completed by Company A and say they've been given opinions from roofers and Company B that support this. But from what I've seen, the evidence from Company B includes a quote for works and an invoice for works. These simply don't comment on the cause of damage or explain how this relates to Company A's works. Nor have I been given opinions from other roofers or experts that explain how Company A or Acasta's agents who completed a repair were responsible for the damage that followed.
- Acasta has declined this claim in part as it says the works in question were not included within the original supplier's contract. I'm in agreement with our Investigator that it is unfair to limit a claim in this way without being able to provide this contract to show what the limitations are, or any evidence to support how it established this.
- But as a starting point, I'm not satisfied Mr and Mrs G have provided sufficient information to persuade me that all the damage in question is covered under the guarantee. I say this as the invoice provided includes extensive works to the property

which doesn't break down which parts of the damage is related to the previous works nor the cause of it.

- To be clear, it's possible Acasta may be responsible for this damage and works. But at this time and based on the evidence I've been given and seemingly what Mr and Mrs G have presented to Acasta, I'm not satisfied this is the case.
- Mr and Mrs G have also sought to claim for internal damages. They were asked to provide further evidence to support this, but we've not received anything. Acasta has said consequential losses aren't covered by this guarantee. Given I'm not satisfied Acasta is liable for the external works at this time, I'm satisfied it has fairly declined to cover any of the related internal works.
- Mr and Mrs G said obtaining a more detailed report would be subject to further costs. If they do obtain an itemised report detailing the cause and breakdown of the works undertaken by Company B, I'd expect Acasta to reconsider the claim against the remaining terms and conditions of the policy in the light of the new evidence. Acasta should also consider paying reasonable costs of any such report *if* this changes the position of the claim and it leads to the guarantee claim being accepted.

### **My final decision**

For the above reasons, I'm directing Acasta European Insurance Company Limited to reconsider the claim in line with its remaining terms and conditions upon receipt of further evidence from Mr and Mrs G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 22 August 2022.

Jack Baldry  
**Ombudsman**