

## **The complaint**

Mrs D complains Acasta European Insurance Company Limited hasn't treated her fairly after she made a claim on her building warranty policy.

## **What happened**

Mrs D owns an apartment. There are seven apartments in the block. Three are owned by the freeholder, and the other four are owned by leaseholders (such as Mrs D). Each apartment is covered by a ten-year building warranty policy. Three of the four leaseholders are Mrs D, Mr B, and C (a limited company).

Mrs D, Mr B, C, and the freeholder have made various claims for defects and water ingress. Mrs D, Mr B, and C have been jointly represented during the claims by a solicitor, and they have each brought a complaint to our service. Mr B's complaint and C's complaint are being considered under separate cases.

The claims are being handled by the policy administrator, Global Home Warranties Limited, and its appointed loss adjuster. However, the cover is underwritten by Acasta, so it's responsible for the claims and this complaint.

I'll now set out a *broad* timeline of events, based on the correspondence I've seen between the various parties involved and their submissions:

- In April 2019, the first claim at the building was made by Mrs D. The claim was for her leaking roof/terrace. She provided a surveyor's report to support her claim. Acasta arranged for the original builder to carry out repairs at its own cost.
- In November 2019, Mr B claimed for his leaking roof/terrace, and defective windows and doors. He also provided a surveyor's report. Acasta approved a contractor to carry out repairs to his roof/terrace.
- In January 2020, Mrs D made a further claim for her roof/terrace. She was initially referred back to the original builder, but her claim was later accepted.
- In March 2020, C made a claim for its leaking roof/terrace, defective windows and doors, and cracking to the external walls.
- In April 2020, the contractor undertaking the repairs at Mr B's property discovered more extensive damage and recommended a structural survey and movement monitoring.
- In May 2020, Mrs D made a claim for a leak from her bathroom into C's apartment below. The claim was declined at the time. Mrs D also made a claim for drainage issues on her terrace and for cracking to the external walls.
- In September 2020, Mrs D's claim for the drainage issues was declined, and she was told she would need to provide a report for the cracking.

- In October 2020, the freeholder commissioned a report on the structural issues and cracking. The report was by an engineering firm, who I'll refer to as 'M'.
- In November 2020, the freeholder made a claim for the structural damage, and the other claims were put on hold.
- M made seven recommendations: 1) the building should be made weathertight whilst investigations continue; 2) crack monitoring to assess movement; 3) a survey of the current cracking; 4) drawings for the building should be obtained; 5) an assessment of the influence of nearby trees, and the foundations reviewed for adequacy; 6) further investigations dependent on the drawings; and 7) a CCTV survey of the below-ground drainage. Acasta authorised the investigations to proceed.
- In March 2021, M issued an updated report to the freeholder. M set out the following: the crack monitoring had started in December 2020; further drawings were required; the assessment of nearby trees and the foundations had been carried out, but the pre-build geotechnical report was required along with further foundation investigations; and the drainage survey was still outstanding.
- In June 2021, the freeholder passed on M's updated report and comments to the loss adjuster, and it asked for agreement on the recommended actions. The loss adjuster questioned the type of crack monitoring being undertaken, whilst M noted a lack of contact and progress being made by the freeholder. M withdrew from the project citing ill health and frustration with the lack of progress.
- In July 2021, the freeholder appointed a replacement engineering firm, who I'll refer to as 'S'. Mr B also made a claim for leaks to the main roof and skylight. Unhappy with the progress being made on the claims, Mrs D, Mr B, and C also made a complaint to Acasta.
- In September 2021, S made six recommendations in a report to the freeholder. The recommendations were similar to those made by M, but they included 12 months of level monitoring (which had been started in August 2021), and an investigation into the adequacy of the wall ties (with significant concerns raised).
- In November 2021, S wrote to the freeholder noting four of the six recommendations had yet to commence, and it raised significant concerns about the lateral stability of all the outer leaf brickwork. S reiterated the outstanding recommendations and urgency.

Acasta provided a final response to Mrs D's complaint on 9 December 2021. Acasta noted it had accepted liability for the 'ongoing claims'. Acasta offered Mrs D £200 compensation for the claim delays, and to consider her legal fees on receipt of the invoices. Mrs D remained unhappy, so she referred her complaint to our service.

In March 2022, S explained the structural defects are generally built in, rather than related to ground movement. Due to uncertainty about the condition and adequacy of the timber frame, S questioned the viability of carrying out a major programme of structural remedial works to restore structural integrity. S said the building isn't considered to be fit for purpose and consideration should be given to a demolition and re-build.

In August 2022, one of our investigators considered Mrs D's complaint. She said she could only consider matters up to 9 December 2021 (the date of Acasta's final response), and if Mrs D was unhappy about events since then, she would have to make a new complaint to Acasta.

For the period our investigator was considering, she thought there were some delays and a lack of timely updates. She recommended the compensation be increased to £500. She thought Acasta's offer to consider Mrs D's legal fees was fair and reasonable.

Acasta agreed with our investigator's findings. But because Mrs D disagreed, her complaint has been passed to me to decide. I'll summarise the points Mrs D made in response to our investigator's findings:

- Acasta accepted Mrs D's initial claim in April 2019, but the loss adjuster went on to accuse her of knowing about the leaks prior to buying the property at a discounted price. Mrs D says the accusation caused her distress, and she had to engage a solicitor to respond.
- During the loss adjuster's visit in April 2019, Mrs D pointed out roofline cracks; issues with the windows and doors; standing water on the roofs of the apartments; and severe vibration and movement from the passing traffic.
- In January 2020, Mrs D made a claim for a leak from Mr B's terrace. Mrs D was told she would have to pay an excess, even though the repairs should be completed as part of the remediation of Mr B's terrace. Mrs D hasn't heard anything about this claim since February 2020.
- Mrs D made claims in May 2020 for bathroom leaks and terrace drainage issues. Those claims were declined without adequate explanation or any investigation.
- In respect of the bathroom leaks, S's reports show that no transverse timber noggins were installed perpendicular to the joists. Mrs D says this issue had caused damage to her bathroom and the leaks. She says had Acasta investigated, the issue would have been apparent.
- In respect of the terrace drainage issues, images and videos were provided to the loss adjuster. But in September 2020, the claim was declined on the basis the waterproof envelope hadn't been breached. It's unclear how the loss adjuster reached this conclusion without an investigation. Mrs D says all the other damage/issues suggested structural issues were causing the problem.
- Between April and October 2020, the leaseholders notified Acasta of widespread cracking to the brick façade. However, no action was taken by Acasta until the freeholder engaged M.
- It wasn't made clear what issues Acasta would and wouldn't be considering under the policy.
- M fitted a series of crack monitoring devices, but no readings were taken to continue the monitoring exercise. So, between October 2020 and September 2021 limited progress was made.
- The monitoring was abandoned leaving no alternative but to repeat the monitoring exercise. S's September 2021 recommendations were almost identical to M's recommendations eleven months earlier.

- Also, the drawings for the property weren't obtained, which could have led to an understanding of the defects, and the conclusion the building needs to be demolished, much sooner.
- Limited progress continued between September 2021 and November 2021, when S issued a letter confirming as much.
- In March 2022, S concluded the building isn't fit for purpose, and there are no viable remedial works that would restore its stability and integrity. Acasta is yet to provide an update, despite being chased weekly.
- In April 2019, there were leaks into two bedrooms, which caused a mould infestation throughout Mrs D's apartment. Acasta declined the claim and unreasonably delayed the remedial works. Mrs D and her daughter had to sleep in their living room for six months.
- Since May 2020, Mrs D's patio doors haven't opened fully. Also, most of her windows only partially open or are stuck shut. So, on a sunny day the apartment reaches 30°C, and on a hot summer day it reaches over 40°C.
- Both of Mrs D's bathrooms leak. They smell of mould, dampness, and sewage which means that at times it's unbearable to be at the property. Mrs D also has leaks into her living room, staircase, and hallway from various places.
- Despite the windows in Mrs D's bedroom being stuck shut, the structural movement means they can't form a good seal, so there's poor noise reduction performance. Mrs D is regularly woken up by noise from outside.
- As the back wall and roof of the apartment move in the wind, Mrs D is scared she's in a dangerous structure. There aren't any rooms in her apartment that don't show signs of major damage. Mrs D is also living with the constant uncertainty she may have lost the money she has invested into her property.
- Mrs D has sent thousands of emails to various stakeholders and continues to incur monthly legal costs.
- Mrs D constantly worries she has lost her home and will have nowhere to live. She experiences frequent and debilitating bouts of fear, anger, sadness, and anxiety.
- Acasta has caused unreasonable delays of about 32 months since Mrs D's initial claim.
- Mrs D's initial plan when she bought the property was to live in it for a short time and then rent it out. Mrs D considers it reasonable to assume her property would have achieved a rental income of £15,000 per calendar month. So, she calculates her financial loss over the 32-month period of delay to be £480,000.
- When Mrs D moved into her apartment in March 2019, she spent £124,279 replacing the kitchen and various fixtures and fittings. Due to the structural movement over the last four years, these fittings have suffered damage and warped beyond repair. Mrs D wants these costs to be reimbursed.
- Mrs D would also like to be reimbursed £2,382 for the survey she had to obtain when making her initial claim in April 2019.

- Mrs D also considers it reasonable to assign two hours a day to physical and mental suffering, at £54 per hour based on her earnings. So, based on an average 30 days per month, she considers £103,680 to be fair and reasonable compensation for the 32-month period of delay.

In October 2022, Mrs D provided our service with an update. She explained Acasta doesn't accept the findings of S, and it has suggested an independent report be carried out. She noted that S was instructed on the recommendation of Acasta's loss adjuster.

In November 2022, Mrs D made a further complaint to Acasta, copying in our investigator. She set out her dissatisfaction at the way her claims continue to be handled, and she explained she was seeking £2,340,233 for financial losses and compensation.

### **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.

#### *Scope of this final decision*

As explained by our investigator, this case is only covering up to the date of Acasta's final response (9 December 2021). Acasta has to be given the opportunity to respond to a complaint about events after that date before our service can become involved.

Mrs D has now made a further complaint to Acasta, and it will need to consider events since 9 December 2021 when responding. Mrs D can return to us should she not receive a final response from Acasta within eight weeks of when she made her complaint, or if she's unhappy with Acasta's final response.

However, our service has an award limit which is well below the £2,340,233 being claimed. Therefore, Mrs D may wish to obtain independent legal advice before deciding whether to pursue a further complaint through our service, and equally, before deciding whether to accept my final decision on the complaint I'm considering here. If Mrs D accepts a final decision from our service, she might not be able to go to court to ask for more compensation.

#### *April 2019 to April 2020*

I accept it was upsetting for Mrs D when the loss adjuster raised prior knowledge of the leaks and the purchase price of her property. However, I don't consider those lines of enquiry were unreasonable given the policy terms specifically exclude anything the policyholder knew or ought to have known about at the time of purchase, or anything for which they received a reduction in the purchase price.

Also, from the correspondence I've seen, the loss adjuster explained the claim hadn't been formally declined, but rather, he was making enquiries with the relevant parties – and the original builder had since agreed to complete the repairs.

I understand Mrs D's frustration that the potential for structural defects wasn't identified until April 2020, and the issue with the wall ties until September 2021. However, I haven't seen Acasta responded inappropriately to the initial claims made at the building by Mrs D and Mr B, or to the two surveys they provided. Neither of those surveys pointed towards structural issues.

So, overall, I'm not persuaded Acasta caused delays, or acted unfairly or unreasonably, between April 2019 and April 2020.

#### May 2020 to October 2020

In April 2020, the contractor carrying out the repairs to Mr B's roof/terrace emailed Global and recommended a structural survey and movement monitoring. In June 2020, the loss adjuster said he didn't have any concerns about the work progressing as there was only minor cracking. As such, it took the loss adjuster about seven weeks to respond to the contractor's concerns (although I understand from the submissions that Covid related restrictions meant the works had stopped during this period anyway).

The works at Mr B's apartment didn't restart in June 2020 because he was concerned about them going ahead without an understanding of the structural defects, and how they might affect the work being carried out.

I've seen that between July and October 2020, Mrs D, Mr B, and C were all chasing the loss adjuster and/or Global for responses to their communications, and for updates on the claims relating to roofs/terraces, cracking, and windows and doors.

I understand in September 2020, the loss adjuster told the leaseholders and the freeholder a report would be required on the cracking. The freeholder went on to commission a report by M, who visited on 9 October 2020.

So, there were about five months between May and September 2020, until a clear message was given about the next steps in respect of the cracking and wider structural concerns. I've not seen Acasta progressed matters in a meaningful way during that period, and based on the correspondence I've seen, the lack of communication was unreasonable.

However, with regards to Mrs D's bathroom leak claim that was raised in May 2020, Global declined the claim on the date it was received. This was on the basis the building warranty policy doesn't cover such issues. I'm not persuaded Acasta is responsible if the issue was left unrepaired. I'll explain why.

It *may* well be that the leak from Mrs D's bathroom was prematurely declined if it was caused by structural issues (and I'll comment on the need for Acasta to revisit previous declinations under a heading below). However, once the claim was declined, it was for the leaseholders and/or freeholder to repair the leak and damage, *or* for them to show something covered by the policy had caused the problem. I haven't seen this claim was pursued following the declination. Therefore, I'm not persuaded Acasta is responsible if the leak or resulting damage wasn't repaired.

#### November 2020 to December 2021

M was appointed by the freeholder to support the claim(s) for the structural cracking. Delays then followed because the freeholder didn't pass on M's updated report to the loss adjuster for two and half months, and the freeholder was struggling to appoint a firm for the soil investigations. However, those circumstances aren't something Acasta can be held responsible for.

In June 2021, when the loss adjuster received M's updated report, he questioned the type of monitoring being carried out. He highlighted that the installed equipment (tell-tales) wouldn't identify heave, and level monitoring was more appropriate. Notably, S recommended level monitoring too. He also asked if any readings had been taken from the tell tales. M said no readings had been received yet. As such, I'm persuaded there were delays caused by the wrong type of monitoring being undertaken, and in any event, readings not being taken. Those circumstances aren't something Acasta can be held responsible for either.

The loss adjuster asked when the next tell-tale readings would be taken, and the timescales for the internal site investigation. M explained it had now removed itself from the project due to health reasons and frustration with the lack of progress. M said the questions needed to be directed at the freeholder, as it was the freeholder dictating the timeline. M's departure caused a further delay until July 2021, when S was appointed. Acasta can't be held responsible for the delay caused by M's decision to no longer be involved.

In September 2021, S made six recommendations in a report provided to the freeholder, and in November 2021, S wrote to the freeholder noting four of the six recommendations had yet to commence. As I understand it, those actions were with the freeholder. I haven't seen the freeholder was waiting on Acasta, or Acasta was delaying the freeholder from carrying out S's recommendations. So, I'm also not persuaded Acasta can be held responsible for the lack of progress between September and November 2021.

Ultimately, in November 2020, the leaseholders' claims were all put on hold whilst the wider structural concerns were investigated by the freeholder. It follows that any remedial work or claim decisions would need to wait for the results of those investigations, as the structural defects are likely to have a bearing on those matters.

Arguably, Acasta could have taken a more hands-on role in the freeholder's investigations to ensure the right investigations were being carried out and progressed promptly. But overall, given the freeholder is responsible for the building, I don't consider it unreasonable the emphasis was placed on the freeholder to investigate the structural issues in the first instance.

I also note that when the loss adjuster became aware of the delays with the investigations in June 2021, he tried to assist. He clarified the type of crack monitoring that was needed and suggested a firm for the level monitoring and soil investigations. He also tried to assist the freeholder's appointment of a replacement engineer, by recommending S.

So, overall, I'm not persuaded Acasta can reasonably be held responsible for the delays that occurred between November 2020 and December 2021.

#### Compensation for distress and inconvenience

I don't doubt the impact the situation has had, and continues to have, on Mrs D. However, I'm only considering Acasta's responsibilities and actions as the insurer (and only for the period of April 2019 to 9 December 2021).

Importantly, Acasta didn't cause the building defects and it's not responsible for the actions of the builder that built the building. Equally, much of the claim delay during the period I'm considering was due to necessary investigations that were under the control of the freeholder.

As explained above, between April 2019 and 9 December 2021, I've seen there were about five months of delay for which Acasta can reasonably be held responsible for (and that was between May and September 2020).

It follows that Mrs D should be compensated for the five-month period of delay. But whilst Mrs D has set out how she would like compensation to be calculated (£108 per day), her suggested method isn't in-line with our general approach.

When considering what's fair compensation for the five-month period, I've kept in mind the chasing Mrs D had to do; the damage she had to live with in respect of the claims being considered by Acasta (based on the photos and reports from around that time); and the personal circumstances and impact she has described. *Overall*, I consider the £500 recommended by our investigator to be fair and in-line with our general approach.

### Compensation for financial loss

Mrs D says she has lost out financially by not being able to let her property. However, whilst I've accepted Acasta caused about five months of delay, I can't reasonably assign financial loss to that period on the basis of what Mrs D says she intended to do with her property at some point in the future. Ultimately, Mrs D's apartment wasn't being let at the time of the claims, but rather, she was living there.

In respect of Mrs D's legal fees, I find Acasta's offer to consider those costs on receipt of the invoices to be fair and reasonable. Mrs D can make a further complaint if she's unhappy with Acasta's response to those invoices.

In terms of Mrs D's damaged kitchen, and fixtures and fittings, those losses aren't something I can consider as part of this complaint. This is because liability for the claims need to be established before the settlements are considered.

Mrs D has raised the cost of her survey, which she commissioned at the time of making her initial claim in 2019. She says Acasta has refused to cover this cost. However, I don't know its reasons and I've not seen Mrs D has previously complained to Acasta about this point. Therefore, I won't comment further here. However, in my view, Acasta needs to provide clarity about the survey costs, which I'll cover under the next heading.

### Other issues

If Acasta hasn't yet done so, it needs to respond to Mrs D's latest complaint for events since 9 December 2021.

Acasta also needs to provide Mrs D with a decision about her claims and explain its intended method of settlement. I won't comment on whether it's reasonable for Acasta to carry out or commission further investigations first, because that matter will need to be considered as part of the further complaint.

It follows that Acasta will need to be clear about the following points when communicating its decision on the various claims:

- Liability – it's not clear from the submissions which claims Acasta has accepted and which it has declined. Acasta's final response to the leaseholders notes the claims have been accepted. But given the uncertainty expressed by the leaseholders, Acasta needs to provide clarification to them, giving reasons if any issues are declined. Acasta should revisit the previous declinations, bearing in mind the structural issues that have since come to light.



- Excesses – I haven't seen Acasta has been clear about how the policy excess is to be applied. Acasta will need to set out how it intends to apply the policy excess to each of the accepted claims, bearing in mind the policy terms and what's fair and reasonable in the circumstances.
- Survey costs (since April 2019) – Acasta needs to confirm which survey costs, if any, it's covering. If Acasta isn't covering certain costs, it should explain why.

If Mrs D doesn't consider Acasta is clear about those points when communicating the claim decisions, or if she's unhappy with what Acasta decides, she can raise a further complaint.

### **My final decision**

For the reasons I've set out above, I uphold this complaint in part.

My final decision is Acasta European Insurance Company Limited should:

- pay Mrs D £500 compensation, in total (if £200 has already been paid, a further £300 would be due).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 17 January 2023.

Vince Martin  
**Ombudsman**