

The complaint

Mr B complains Acasta European Insurance Company Limited hasn't treated him fairly after he made a claim on his building warranty policy.

What happened

Mr B 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 Mr B). Each apartment is covered by its own 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. Mrs D'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 Mr B's complaint on 9 December 2021. Acasta noted it had accepted liability for the 'ongoing claims'. Acasta offered Mr B £200 compensation for the claim delays, and to consider his legal fees on receipt of the invoices. Mr B remained unhappy, so he referred his 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 Mr B's complaint. She said she could only consider matters up to 9 December 2021 (the date of Acasta's final response), and if Mr B was unhappy about events since then, he 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 Mr B's legal fees was fair and reasonable.

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

- A more thorough investigation was warranted from the outset, not a brief inspection. At the very least, Acasta should have formally declined the window aspect of the claims or outlined the further investigations necessary to decide on liability. Had Acasta done so, investigations would have been carried out which would have uncovered the inadequate fixing of the brick facade.
- Investigating the brick façade would have reduced the process which, in March 2022, led to S to conclude the building needs to be demolished and rebuilt. That conclusion could have been reached much sooner and minimised the unnecessary harm suffered.
- 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.
- Between April 2020 and October 2021, Mr B's terrace was in a deconstructed state. During warm weather the greenhouse effect from the tarpaulin cover caused the apartment to reach temperatures up to 40°C; rainwater would pour in when it rained; and there was almost a constant sound of the tarpaulin rattling.

- Since November 2019, the window next to Mr B's sofa has been stuck open. It offers no sound deadening and allows a cold draft to cover the sofa in winter. Many of the remaining windows can only open partially or are stuck shut. Mr B can't open them wide enough to create a sufficient draft or use a portable air conditioning unit. He's had to sleep in his living room most of the summer months this year.
- Despite the windows in Mr B's bedroom being stuck shut, the structural movement means they can't form a good seal, so there's poor noise reduction performance. Mr B is regularly woken up by noise from outside.
- Mr B hasn't been able to use his en-suite since October 2020. Not only is this an inconvenience, but it frequently smells of mould and sewage, forcing him to sleep upstairs.
- As the back wall and roof of the apartment move in the wind, Mr B is scared he's in a dangerous structure. There aren't any rooms in his apartment that don't show signs of major damage. Mr B is also living with the constant uncertainty he may have lost the money he has invested into his property.
- Mr B has sent thousands of emails to various stakeholders and continues to incur monthly legal costs.
- Mr B constantly worries he has lost his home and will have nowhere to live. He experiences frequent and debilitating bouts of fear, anger, sadness, and anxiety. Mr B's skin condition is exacerbated by stress, causing outbreaks that affect his quality of life and force him to take increased dosages of medications.
- Acasta has caused unreasonable delays of about 24 months since Mr B's initial claim.
- Mr B's initial plan when he bought the property was to live in it for a short time and then rent it out. Mr B considers it reasonable to assume his property would have achieved a rental income of £13,000 per calendar month. So, he calculates his financial loss over the 24-month period of delay to be £312,000.
- Mr B also considers it reasonable to assign two hours a day to physical and mental suffering, at £77 per hour based on his earnings. So, based on an average 30 days per month, he considers £110,880 to be fair and reasonable compensation for the 24-month period of delay.

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

In November 2022, Mr B made a further complaint to Acasta, copying in our investigator. He set out his dissatisfaction at the way his claims continue to be handled, and he explained he was seeking £1,762,840 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.

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

However, our service has an award limit which is well below the £1,762,840 being claimed. Therefore, Mr B 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 Mr B accepts a final decision from our service, he might not be able to go to court to ask for more compensation.

April 2019 to April 2020

I understand Mr B'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.

Mr B's surveyor thought the issues with the windows were due to the timber frame altering in position through shrinkage or settlement. Acasta's loss adjuster thought the issues could be due to shrinkage or settlement, or poor installation. But either way, Mr B's surveyor didn't suggest an invasive survey or point towards potential significant defects. The surveyor simply recommended the window reveals be enlarged so the windows could operate correctly.

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.

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 Mr B. However, I'm only considering Acasta's responsibilities and actions as the insurer (and only for the period of April 2020 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 Mr B should be compensated for the five-month period of delay. But whilst Mr B has set out how he would like compensation to be calculated (£154 per day), his 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 Mr B had to do; the damage he 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 he 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

Mr B says he has lost out financially by not being able to let his 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 Mr B says he intended to do with his property at some point in the future. Ultimately, Mr B's apartment wasn't being let at the time of the claims, but rather, he was living there.

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

Other issues

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

Acasta also needs to provide Mr B with a decision about his 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 Mr B doesn't consider Acasta is clear about those points when communicating the claim decisions, or if he's unhappy with what Acasta decides, he 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 Mr B £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 Mr B to accept or reject my decision before 17 January 2023.

Vince Martin
Ombudsman