

## **The complaint**

Mr B, Mrs B and Mrs R are complaining about the way Brooklin Claims Consultants Ltd (BCC) handled a claim, as a loss assessor, that they made on their buildings insurance policy.

Mr B has led in the handling of the claim and complaint. For ease of reference I'll refer to him mainly in my decision.

## **What happened**

In February 2020 Mr B, Mrs B and Mrs R's property, and an annex they rented out as a holiday let, were damaged in a flood. So they claimed for the damage on their buildings insurance policy. Mr B says BCC contacted him to offer to assist with handling the claim on his behalf. Mr B entered into a contract with BCC for it to act as a loss assessor on the claim. Mr B, Mrs B and Mrs R moved into alternative accommodation in March 2020.

Due to the impact of Covid-19, drying work didn't start until July 2020. Following this, BCC engaged with the insurer to look to get the repair work started. BCC then instructed a building company – who I shall refer to as K – to carry out the works. K, in turn then subcontracted the work to another company – who I shall refer to as BJ.

Repair works started in March 2021. Mr B says the work was due to be completed by June 2021, which is when his contract to stay in the alternative accommodation was due to end. As a result of this, he says he'd accepted a number of holiday lets to start from July 2021.

However, the work wasn't completed in June 2021. As Mr and Mrs B had to vacate the alternative accommodation, they agreed to move into the annex. But they said the property didn't have any washing facilities available. They also said there were a number of issues with the works that had been carried out. After this, Mr B says the relationship broke down between them and BJ for the following reasons:

- He says the works were supposed to be completed by June 2021, but only a small part of the works were carried out and there were numerous snagging issues with the areas they did work.
- BJ were double charging them VAT – meaning they could have paid over £600 more than they should have.
- BJ left the property on July 2021 and didn't return, despite numerous promises they would do so.
- Mr B says BJ damaged appliances – such as the flu – while carrying out the works.
- The proprietor of BJ left a defamatory post on social media about Mr B.

Following this, Mr B contacted BCC and said they were reluctant to allow BJ to return to complete the works. He says BCC said he had no option but to instruct his own contractor and it would cash settle the claim. He says he wanted BCC to instruct a new contractor to carry out the works, but it wouldn't do so. So he said he was essentially forced into instructing someone himself to complete the works.

Mr B later referred his complaint to this Service to review. I issued a provisional decision upholding this complaint and I said the following:

*“What can we look at?”*

*In the first instance, I need to set out the extent of this Service’s remit as there are a number of issues that Mr B has raised that we can’t comment on.*

*Mr B’s complaint essentially relates to the quality of work that BJ has done to resolve the damage arising from the flood. But I also need to take into account that Mr B decided to take the opportunity to redesign parts of the house and also to add additional flood prevention measures. This work wasn’t covered under the terms of the insurance policy, so Mr B agreed with BJ that he would cover the costs of any work that it did that wasn’t covered by the insurance policy. So, in doing so, Mr B essentially had two contracts with BJ:*

- 1. To repair any loss or damage arising from the flood that was covered under the terms of the insurance policy; and*
- 2. To carry out any additional work Mr B asked BJ to perform.*

*This Service doesn’t have jurisdiction to consider a complaint about BJ itself – we can only consider the actions of BCC in exercising its contractual responsibilities to assist in the administration of the claim. However, given BCC essentially instructed BJ – through its actions in instructing K to carry out the work – BCC can be held responsible for anything BJ did or didn’t do in carrying out repairs required under the insurance policy. However, I can’t consider anything BJ did regarding the private works BJ agreed to complete for Mr B as these were carried out separate to the contract of insurance.*

*Further to this, I can also only consider BCC’s (and in turn BJ’s) actions up to the point BCC responded to Mr B’s complaint and he referred his complaint to this Service. I can’t see that BCC ever formally responded to Mr B’s complaint, but he referred his complaint to this Service on 23 February 2022. So, in this decision, I’m unable to consider anything that’s happened after this date. If Mr B wishes to complain about anything that’s happened since then, he’ll need to raise a new complaint with BCC.*

*So, in summary, in this decision I’m considering BCC’s actions in the way it administered Mr B’s claim up to 23 February 2022. In doing so, I’m also considering whether it should compensate Mr B for anything BJ did regarding its responsibilities to carry out any required insurance related work.*

*Should BCC compensate Mr B?*

*I’ve carefully and thoroughly considered Mr B’s complaint and it seems to me that he’s complaining about what’s happened after the repairs started. So, while I have thought about what happened before this date, I haven’t commented on this in this decision.*

*I don’t think it’s disputed that the relationship broke down between Mr B and BJ. Further to this, I also think it’s accepted that Mr B had some fair and valid concerns about BJ’s actions. It’s clear that there were some issues with the work BJ carried out – BCC has accepted that. I’m also satisfied that BCC has agreed to pay to put these issues right. But I also think that the breakdown in the relationship was primarily down to issues relating to the private works. I’ve read Mr B’s complaint submission and he’s set out that he was primarily concerned, at first, about the amount BJ was charging – in particular regarding VAT and I understand also regarding the labour rates that BJ was charging. And, as I said above, I can’t hold BCC responsible for that. However, I do agree that there were some avoidable issues arising from*

*the insurance related works.*

*I haven't seen anything to show that concerns were raised about BJ's actions prior to June 2021 when Mr and Mrs B moved back into the property. I recognise that the work wasn't completed by this point, but I also haven't seen anything to show that BCC said all the work would be done by then. I also find that it's unlikely it would have said that the work would be completed within three months given the extent of work that was required.*

*I think it's likely BCC would have explained Mr and Mrs B could move back in by June 2021, which they did. I'm satisfied BCC would have known when Mr and Mrs B's tenancy on the alternative accommodation came to an end. And I think it should have ensured their property was habitable on their return. But I'm persuaded by what Mr and Mrs B have told us that they didn't have access to washing facilities when they moved back in and I don't think that was fair. BCC should have ensured that these basic facilities were available.*

*I've also considered Mr B's comment that BCC gave them no option but to source their own contractor. I don't think BCC would have said it couldn't source another contractor. But I do think it's most likely that it said it couldn't give any guarantee when it could get someone else to complete the work. However, I'm conscious that this was a very challenging time in the building trade due to the impact of Covid-19. And I'm persuaded that this impact was likely to be the primary reason that caused the unavailability of BCC's appointed contractors to complete the works, which was out of BCC's control. So, I don't think it was unreasonable at this point for BCC to give Mr B the option to instruct his own contractor – and in fact I would have expected it to do so.*

#### *Outstanding works*

*I note Mr B has set out that there were still a lot of the insurance work still outstanding after BJ stopped working. BCC agreed to pay Mr B's contractor to resolve these issues subject to the costs being reasonable. So I'm satisfied it took steps to put this right. As I set out above, I'm unable to consider in this decision anything that's happened after 23 February 2022.*

*BCC is also not responsible for the actions of Mr B's contractor. So I can't comment on any works that were carried out by him. I note BCC has asked for guidance for how to resolve some outstanding issues at the end of the claim. But it's not for this Service to give advice to either party, nor are we here to assist with the handling of the claim. And, as I said I'm unable to consider in this decision anything that's happened after 23 February 2022.*

*However, Mr B says some issues that BJ carried out haven't been resolved – in particular he says he hasn't received electrical and window certificates. BCC has set out that this is because Mr B hasn't paid all the outstanding invoices. In particular it's said that only 65% of the electrical works has been paid for. BCC says it needs BJ to provide the certificate and it won't do until it's received full settlement. And it seems this matter has ended in a stalemate.*

*However, it seems to me that this largely remains a private dispute between Mr B and BJ. I'm satisfied from what BCC has shown us, it's settled the claim by paying the amount payable on the scope of works. So I think any shortfall is likely to be down to Mr B's dispute with BJ regarding private works. That said, BCC entered into a contract with Mr B to assist with the administration of the claim. And I also think these certificates weren't provided due to BJ stopping working in July 2021. Had it continued to complete the insurance related works, I think the certificates would have been issued.*

*Ultimately, BCC was required to arrange to complete all works as required under the terms of the insurance policy. Given everything that's happened, I don't think it would be fair or reasonable to insist that BJ should return to the property to issue any certificates. So, I think*

*BCC should arrange for an independent company to provide any outstanding certificates as required to confirm the safe completion of the window and electrical works. It would then be for any dispute regarding outstanding money to be resolved privately between Mr B and the individual contractors.*

### **Summary**

*It's clear that Mr B, Mrs B and Mrs R have suffered a significant amount of distress and inconvenience from the claim. And I naturally sympathise with the situation they've found themselves in. But I need to distinguish between the following:*

- 1. what's been suffered as a natural consequence of the significant event that took place which resulted in them having to make a claim in the first place and the inevitable impact Covid-19 was going to have on the claim journey;*
- 2. the avoidable issues relating the way the insurance related repairs were carried out; and*
- 3. the issues relating to the private works Mr B wanted completed.*

*BCC is not required to compensate Mr B, Mrs B and Mrs R for the issues relating to (1) and (3). As I said above, I do think there were some issues regarding (2) which I think BCC should compensate them for. But I think the impact was minor in comparison to the other issues. And I think BCC's offer to pay £750 in compensation is fair and reasonable in these circumstances."*

Mr B, Mrs B and Mrs R responded to my provisional decision and, in summary, they raised the following points:

- They said BCC told them as part of the promotional material that it doesn't use sub-contractors. And they feel that the fact the work was subcontracted to BJ is one of the primary causes of what went wrong.
- They disagreed that the breakdown of the relationship was primarily down to the private works. They said it was due to BJ not completing the insurance work on the studio annex by the date promised. They set out that the annexe is an important source of income for them and BJ were repeatedly reminded of the timescales involved. They highlighted there were times of inactivity and poor claims management that caused these delays.
- They said that BCC hasn't covered all outstanding snagging costs regarding the insurance related works. And they set out some invoices they've sent which haven't been settled.
- They said they also hadn't received the gas safety certificate for the studio annex. And they said regarding any outstanding invoices, it had nothing to do with the private works. They said they'd supplied three invoices for insurance works to BCC, but BCC hadn't paid them.
- They said they paid all of BJ's invoices as the private work was being carried out. But, it was only when they saw that BJ was double charging for VAT on materials that they held some money back and asked for sight of all invoices for materials, so that they could check how much they'd been overcharged. They said that, initially BJ supplied copies of some of the invoices, but there are still a number that they've not seen. And they agreed that this is a private matter.

BCC responded to accept my provisional 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.

I've taken Mr B, Mrs B and Mrs R's response into consideration but I've largely come to the same conclusion as I did in my provisional decision.

I note they've raised that BCC hasn't paid three invoices and they've asked that I direct BCC to pay them. BCC has in turn set out that it believes these invoices are for works that BJ had previously done. So they questioned why they were being asked to pay for this again. However, as I said in my provisional decision, I'm unable to comment on anything that's happened after February 2022. If Mr B, Mrs B and Mrs R believe that BCC hasn't paid everything that it's required to pay, then they'll need to raise a new complaint regarding this. However, for the avoidance of doubt, I would expect BCC to pay for works that were required to rectify or finish any issues regarding the insurance related work BJ did or didn't finish.

I've also considered Mr B, Mrs B and Mrs R's comments that the primary issues related to the delays in resolving the issues with the studio annex. As I said, I recognise that there were issues outstanding with all aspects of the property and, in particular, the studio annex wasn't finished by the time Mr B, Mrs B and Mrs R needed it to so they could continue with their rentals. It does seem that there was some confusion about when the work would be completed and I think this process could have been handled better.

However, I also haven't seen enough to show that all the delays were avoidable – i.e. that BJ could have reasonably ensured that all the works to the studio annex would be finished by the date required. I think it's *most* likely some of these issues are down to the significant amount of works that were required to be rectified under the claim. I recognise that the start of the relationship breakdown would have come from the fact the repairs weren't completed in the way Mr B, Mrs B and Mrs R expected. But I still believe the fundamental issue that caused BJ to stop working and resulted in the final breakdown in the relationship was down to the issues with the private works.

That said, Mr B, Mrs B and Mrs R are entitled to be compensated for the distress and inconvenience caused by the way the insurance works were handled. But I still think £750 is fair compensation for what's happened.

Finally, no parties have made any comments around my intended instruction that BCC should arrange for an independent company to provide any outstanding certificates as required to confirm the safe completion of the window and electrical works. So I see no reason to comment on this further. However Mr B, Mrs B and Mrs R have also highlighted that gas certificates haven't been provided either. For all the same reasons I set out in my provisional decision, I think BCC should also arrange for this to be provided if it hasn't already done so.

### **My final decision**

For the reasons I've set out above, I intend to uphold this complaint and require Brooklin Claims Consultants Ltd to settle this complaint by:

1. arranging for an independent company to provide any outstanding certificates as required to confirm the safe completion of the window, electrical and gas works; and
2. pay Mr B, Mrs B and Mrs R £750 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B, Mrs B and Mrs R to accept or reject my decision before 16 November 2023.

Guy Mitchell

**Ombudsman**