

The complaint

Mr S complains that Acasta European Insurance Company Limited (Acasta) has unfairly declined his claim under his Guarantee Insurance Policy.

Any reference to Acasta in this final decision includes its respective agents unless specified otherwise.

What happened

The background of this complaint is known in detail to the parties involved so I'll summarise what I've found to be the key points.

- In 2018, Mr S had a resin bound driveway installed over tarmac at his property by a company that I'll refer to in this decision as "B". B provided Mr S with a ten-year insurance backed guarantee which was underwritten by Acasta.
- Under the guarantee, should B cease trading, Acasta would take over the responsibility of indemnity to the guarantee holder on receipt of a claim from them subject to certain terms and conditions.
- In 2019, Mr S contacted B about cracks that had started to appear on the resin surface of the driveway. Mr S says B attended the property and accepted that the faults were due to installation defects and therefore carried out repairs to the affected areas.
- The repairs didn't work. But by that point, B had ceased trading. Therefore, Mr S made a claim for the damage under his Guarantee Insurance with Acasta. Acasta's engineer inspected the damage and found there to be several cracks to the resin bound surface as well as cracking to the subbase it had been laid upon.
- Acasta said that under the terms and conditions of Mr S's guarantee, it doesn't cover damage caused by "*sinkage, tree roots and deformation of any of the underlying structural layers*".
- After reviewing its engineer's findings, Acasta concluded that the existing surface upon which the resin bound aggregate was overlaid onto had moved and cracked which then reflected in the resin bound surface. It said this demonstrated the damage being claimed for was due to *deformation of the underlying structural layer* – which isn't covered under the original installers guarantee, so it declined the claim.
- Mr S disagreed and obtained an independent report to assess the damage. He said this supported his claim that the resin wasn't properly installed by B which led to the cracking in the surface.
- Acasta maintained its position on the claim. It said that regardless of the faults identified in how the resin was installed, it was still of the opinion that the cracking would always have occurred due to the movement of the subbase. And as Mr S's independent report also referenced the cracks to the subbase and that it was prone to movement, it said this further supported its conclusion on the cause of damage.
- Unhappy with Acasta's response, Mr S brought a complaint to this Service and our

Investigator upheld it. Based on the evidence she'd seen, she found there to be multiple problems with the installation of the driveway which on balance she was persuaded was most likely the result of poor installation by B.

- While our Investigator acknowledged the cracking to the subbase, she wasn't persuaded this was the main cause of the damage. She said Acasta should deal with the claim and pay Mr S £100 compensation for distress and inconvenience caused. Acasta disagreed, so the case has been passed to me to decide.

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. I'll explain why.

Acasta say that the cover available to Mr S under the Guarantee Insurance is limited to the cover provided under the original installers own long term guarantee and subject to terms and conditions.

From what I've seen, Mr S's original installers guarantee states that B offered a full 10-year guarantee against *"all product and installation defects"*. It goes on to say that if the *"resin bound surface should lose adhesion from the subbase within the 10 years then B will carry out the necessary repair work free of charge"*. So this is my starting point in this case.

Mr S is claiming for an installation defect and from what I've seen, it appears the resin bound surface has lost adhesion from the subbase within 10 years, so on the face of it, he appears to have demonstrated, on balance, that an insured event has most likely occurred.

But, like most products of this nature, the cover under his Guarantee Insurance is subject to certain terms, conditions and exclusions – one of which states that *"the guarantee does not cover damage caused by sinkage, tree roots and deformation of any structural layers"*. Acasta has also pointed to its own terms and conditions which state that *"no cover is provided for any claim that is the consequence of subsidence or earth movement of any kind, caused by any reason whatsoever"*.

Acasta is satisfied that the damage to Mr S's driveway is the result of ground movement, so it says it's fairly declined the claim in line with the guarantee terms and conditions. I've considered the evidence it's provided to support this argument.

As far as I'm aware, Acasta hasn't carried out sufficient testing to establish whether or not any subsidence or earth movement has actually occurred at Mr S's property. It's conclusion on this appears to be based mainly on the fact that the subbase (tarmac) showed signs of cracking. But arguably, cracking to Mr S's previous tarmac driveway could have occurred for several reasons other than those listed in the terms above, which Acasta hasn't investigated. So, on balance, I'm not persuaded that it's done enough to show that subsidence, earth movement, tree roots or sinkage was most likely the cause of the damage.

This then leaves the deformation of any structural layers. The parties don't dispute that cracks are evident in the subbase of Mr S's driveway, but Mr S (and our Investigator) don't think this was the main cause of the damage and they're satisfied Mr S's independent report supports this. Acasta doesn't dispute Mr S's report findings, but it notes the report also references movement in the base layer, which it thinks supports its argument that this was the main cause of the damage being claimed for. So, I've considered what the report says.

Mr S's report states that the porous resin material top surface had been installed over an existing tarmac subbase which is found to be non-porous. And that – *“Installing a porous material on to an existing nonporous subbase will result in any water passing through the surface holding up underneath, causing a “puddling” affect, and during the cold winter months, water will freeze and expand. This will cause the final finish surface to delaminate from the subbase, weaken the product and eventually lead to the top surface cracking”*. The report goes on to say – *“This is exactly what has happened with this surface.”*

The report also highlighted that – *“The actual installation of the finished surface was very inconsistent in depth with areas only being installed at 3mm to 5mm deep. The depth quoted originally was 18 – 20mm. The stone size used on the installation was 3 – 5mm so no bonding between the stones was evident. This has led to the surface breaking up in several areas and will over time only get worse. There is also evidence of insufficient binder being used within the surface. This has led to numerous dry spots within the product which has resulted in delamination of the surface both from the sub-base and also within the product.”*

It went on to say that – *“Cracks were also evident in the existing surface meaning a base layer prone to moving. This will also lead to cracks in the final surface layer”*.

I find Mr S's independent report detailed and persuasive. It demonstrates that there are multiple issues and defects with Mr S's resin driveway. And on balance of what I've seen, I'm more persuaded the main cause of this damage is B's workmanship and not Mr S's subbase.

I say this because, while I acknowledge that the report *also* references the cracks to the subbase and that this is suggestive of a base layer prone to moving, I've not seen sufficient evidence to show when or how these cracks most likely occurred. And the cracks to the subbase are cited in the report as something that would also lead cracks in the surface – not the only or main cause.

There are multiple other defects cited in the report linked to poor installation. For example, the report states the subbase wasn't suitable for the resin product due to its nonporous nature and no steps appear to have been taken by B to address or mitigate this at installation. I don't think Mr S can reasonably be held responsible for this failing by B. In addition, the required depth of the product was inconsistent and not as quoted to Mr S and insufficient binder was used. The report concludes that all of this led to the delamination of the surface products to the subbase and led to the top surface cracking.

It's also worth noting that that B made attempts to repair the damage when it was still trading. I think this most likely demonstrates it was satisfied the cracks were due to an installation defect rather than an issue with the subbase, because under the terms of the guarantee, if it deemed the subbase was the cause of the damage it's unlikely it would have covered any repairs.

With all that in mind, I'm not persuaded that Acasta has done enough in this case to demonstrate that the exclusions it's sought to rely on to decline Mr S's claim fairly apply.

Acasta should therefore deal with Mr S's claim in line with the remaining terms and conditions of the Guarantee Insurance. It should also pay him £100 compensation for the distress and inconvenience caused to him as a result of its claims handling.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint.

Acasta European Insurance Company Limited should now deal with Mr S's claim and pay him £100* compensation for the distress and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 December 2024.

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

Rosie Osuji
Ombudsman