

## **The complaint**

Mr C complains Acasta European Insurance Company unfairly declined a guarantee insurance claim.

Acasta's been represented by an agent for the claim and complaint. For simplicity I've referred to the agent's actions as being Acasta's own.

## **What happened**

In 2017 Mr C used a contractor to re-roof an extension to his property. The contractor provided a ten-year guarantee for the work. Alongside it, it provided Mr C with a Acasta guarantee insurance policy. The policy is intended to protect Mr C in the event that the contractor became unable to, due to ceasing trading, fulfil its guarantee.

In September 2023 Mr C made a claim against the Acasta policy. He said the roof had been installed incorrectly but the contractor had ceased to trade. In the same month Acasta sent Mr C a letter declining the claim. It said the fault occurred prior to the contractor ceasing trading. It set out a term that restricted cover to faults or matters Mr P became aware of after the contractor ceased to trade. I'll refer to this as the 'ceased to trade term'.

Mr C responded to the decline. He said the relevant fault had only been correctly identified in August 2023 – after the contractor had ceased to trade. He added that the ceased to trade term doesn't form part of his insurance policy.

In October 2023 Acasta issued a complaint final response letter. It said the fault Mr C was claiming for isn't covered by the terms and conditions of his policy. The letter referred again to the ceased to trade term. It also set out a 'benefit term' from Mr C's policy. Mr C wasn't satisfied with the response, so came to the Financial Ombudsman Service. To resolve his complaint he would like Acasta to accept liability for the required remedial work.

Our Investigator felt Acasta couldn't fairly rely on the ceased to trade term to decline the claim. However, he said Mr C hadn't complied with the benefit term as he had failed to notify the insurer of the fault within 30 days of becoming reasonably aware of it. So overall he felt Acasta's decision to decline the claim to be fair. As Mr C didn't accept that outcome the complaint was passed to me to decide.

I issued a provisional decision. In it I explained why I didn't intend to require Acasta to settle Mr C's claim or to do anything differently. I also invited both to provide any further comments or evidence they would like me to consider before issuing a final decision.

### **what I've provisionally 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 intend to come to a similar outcome to the Investigator – but for different reasons.

As this is an informal service I'm not going to respond here to every point or piece of

evidence Mr C and Acasta have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

Acasta's explanation of its reasons for declining the claim have been unhelpfully unclear. However, ultimately, I can't say its decision was unfair or unreasonable.

I've first considered Acasta's application of the ceased to trade term to the claim. The full term is:

'I understand that my guarantee insurance is intended to deliver the benefits of my supplier's guarantee in the event that my supplier ceases to trade, and that therefore the insurance should only apply in respect of faults or matters of which I become aware after my supplier has ceased to trade. Until such time, I should obtain redress from my supplier under the terms of the supplier's guarantee as soon as I am able.'

Acasta's position is that the fault occurred prior to the contractor ceasing trading in February 2021.

Mr C said the ceased to trade term doesn't form part of his insurance policy. So Acasta can't rely on it to decline the claim. He says as its part of a tear off and return 'registration form' it doesn't form part of the 'full terms and conditions' of the policy.

I disagree with that interpretation. The term is found on a tear off and return 'registration' part of the policy documentation. Above 11 numbered terms the document does, as Mr C points out, say '*These are the full terms and conditions*'. The ceased to trade term isn't found within the 11. But it's set out below them and on the same single page. And Mr C signed immediately below the cease to trade term. So I think, in context of the positioning and nature of the policy, it's reasonable to consider it to form part of the policy terms.

In addition I feel it's fair for Acasta to rely on the ceased to trade term to decline the claim. The term restricts coverage to 'faults or matters' Mr C becomes aware of after the contractor ceased to trade.

When making the claim to Acasta Mr C described 'problems and damage' being apparent since about 2019. He first discussed them with the contractor in 2020. He's said he probably first ascribed the problems to the re-roofing work in early 2021. He explained he tried to raise the issue with the contractor at that point. It responded with explanations and excuses – but failed to provide practical assistance.

Mr C's provided detailed discussion of what constitutes a 'fault'. He makes some reasonable points. But I'm satisfied, based on the above timeline, that he was aware of a fault - or in the very least of a 'matter' - before the contractor ceased trading.

I've next considered the benefit term. The full text is:

*'In the event of the supplier of the items under guarantee being unable to take any necessary remedial works under the terms of its own long term guarantee due to cessation of trading, Acasta will indemnify the holder of the insured guarantee for the cost of such work, provided that a) the claims handler has been notified within 30 days of the fault first occurring and b) the claims procedure is adhered to.'*

Acasta hasn't provided a clear explanation of its reasons, in reference to the benefit term, for declining the claim. However, the term provides the key benefit of the policy. So for me to require Acasta to settle the claim I'd need to be persuaded Mr C had reasonably shown his loss to be covered by the term.

For the benefit to be payable it's required for the contractor to have been unable to take remedial works due to 'cessation of trading'. However, that doesn't seem to have been the situation here. As set out above Mr C made the contractor aware of problems. He held talks with it as early as 2020. It didn't, as far as I'm aware, investigate the problem.

Mr C said that from early 2021 he regarded the problems as being due to the reroofing work. So whilst he wasn't aware of the exact cause, he did flag the issue again to the contractor. Again it failed to take necessary remedial works. But that wasn't because it had 'ceased to trade' as required by the terms, but instead because it decided to give explanations and excuses rather than investigate and resolve the problem. So I can't say Mr C's shown his loss is covered by the policy benefits.

There's been some discussion about whether Mr C met the benefit term's requirement to notify the claims handler within 30 days of the fault first occurring. I haven't considered that issue here. My position on it wouldn't make a difference to the outcome of the complaint. Even if I felt he had complied I'd still, for the other reasons set out above, find Acasta's decision to decline the claim to be fair and reasonable.

### **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.

Acasta didn't respond to my provisional decision. Mr C didn't accept my findings and proposed outcome. He provided further arguments to support his position. I've responded to his points where I feel it necessary. But I would like to assure Mr C that I have considered everything provided.

Mr C provided some comment on the intended purpose of the contract of insurance. He provided some sales information to support his position. He concludes there's no need or requirement for a fault to have arisen before or after the contractor ceases to trade – instead the insurer is simply an alternative point of recourse for the consumer.

I've considered Mr C's points on this – including his redrafting of the ceased to trade term. He feels his version clarifies the authors actual intention. I note his experience in the subject.

The actual ceased to trade term is clear enough when it says '*...therefore the insurance should only apply in respect of faults or matters of which I become aware after my supplier has ceased to trade*'. It's clear it intends to cover only faults/matters the policyholder became aware of after the contractor ceased to trade. That's consistent with the benefit term limiting cover to remedial works the contractor's unable to undertake due to cessation of trading.

It seems reasonable and likely, considering the terms, the insurer didn't intend to provide cover for known issues that weren't addressed, for whatever reason, by a contractor before it ceased to trade.

I accept Mr C's point that intention, and reading of the terms, could potentially result in an unreasonable outcome. But that doesn't automatically invalidate a term. He gives an example of a contractor ceasing to trade one day after a policyholder becomes aware of a fault or matter. I may consider that an unfair outcome. However, that isn't what happened here. I've instead considered the actual circumstances.

The ceased to trade term refers to awareness of 'faults or matters'. My provisional decision said I was satisfied, based on a timeline I set out, Mr C was aware of a fault - or in the very least of a 'matter' - before the contractor ceased trading.

I've considered Mr C's argument he was only, prior to cessation of trading, aware of some non-specific potential roof related issues. He said he had no solid foundation for pursuing any claim against the contractor – until August 2023.

But I'm still satisfied he was at the very least aware of a 'matter', and had raised it with the contractor, a long time before cessation of trading. It's unfortunate it didn't choose to take different actions to fulfil Mr C's guarantee. But considering the circumstances, including my understanding of the intention of the policy, I still feel it's fair for Acasta to rely on the ceased to trade term to decline the claim.

Mr C's made points about the benefit term. However, I haven't addressed those here. Doing so wouldn't make a difference, as I've already found it was fair and reasonable for Acasta to decline the claim.

### **My final decision**

For the reasons given above, I don't require Acasta European Insurance Company to pay Mr C's claim or to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 July 2024.

Daniel Martin  
**Ombudsman**