DRN-5005593

## The complaint

Mr and Mrs A have complained about Oakleafe Group Limited which they instructed to act as loss assessors in respect of their water leak claim made to their property insurer.

## What happened

There was a leak at Mr and Mrs A's home in December 2022 and they appointed Oakleafe to handle the clam for them. It was May 2023 when Oakleafe met with the insurer's surveyor at the property and an offer of settlement for reinstatement works (not including stripping and drying) followed on 15 June 2023. The basis for the insurer's settlement offer was shared with Mr and Mrs A in July 2023. They felt that some of the insurer's reasoning was unfair – such as regarding bathroom tiling not needing reinstating. Oakleafe said it would negotiate further with the insurer – but it was unlikely to change its view.

Following a call Oakleafe had with the insurer's loss adjuster in August, Mr and Mrs A were told their choice was to accept the proffered settlement, increased to include drying and stripping work, or let the insurer do the reinstatement. In September 2023 Mr and Mrs A decided to accept the settlement. But they were unhappy about how Oakleafe had handled matters, and they asked it to reimburse some of its fee (taken from the claim settlement sum paid to Oakleafe by the insurer before the remainder was passed on to them).

Oakleafe, in a final response issued in October 2023, said it felt it had handled the buildings claim adequately and within service level agreements. It said its involvement had resulted in a successful settlement. Mr and Mrs A remained unhappy with this response and complained to the Financial Ombudsman Service.

Our Investigator noted there had been delays during the claim. But didn't think the majority had been caused by Oakleafe. He felt Oakleafe though had likely failed Mr and Mrs A when it came to negotiating the claims settlement – he said he hadn't seen evidence which showed Oakleafe had gone back to the insurer with any kind of detailed rebuttal of its stated costs, or detail showing why things Mr and Mr A were concerned about – such as the bathroom tiles – should be included. So he felt Oakleafe could only fairly expect its minimum claim fee from Mr and Mrs A – he said it should refund anything above that sum which it had deducted from the claim settlement sum, plus interest.

Over several emails Oakleafe disputed the findings. It sent what it referred to as additional evidence showing contact it had with all relevant parties after the insurer made its offer. The evidence, it said – some call notes from its contractor and logs of phone calls from its telephone service provider – showed there'd been consistent contact and a good degree of effort put in to negotiate on Mr and Mrs A's behalf.

Our Investigator considered what was sent and explained why that did not amount to evidence of fact-based negotiations occurring. He remained of his view that only the minimum fee could fairly be kept by Oakleafe. The complaint was referred for an Ombudsman's 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.

Having done so, I find I am of the same view as our Investigator, I think Oakleafe failed Mr and Mrs A when it came to challenging the settlement put forward by insurers. In this instance I think it's fair that only the minimum fee is kept by Oakleafe, and anything above that should be paid to Mr and Mrs A, plus interest.

I think it's fair to say that the claim did take time to progress. Like our Investigator I don't think, certainly in the first six months or so of the claim, Oakleafe did anything really wrong in its handling of matters – I don't think it caused much in the way of delay or did anything to prejudice Mr and Mrs A's position regarding the buildings claim.

I also agree with our Investigator though that once the insurer put forward its offer for settlement, Oakleafe really seemed to lose interest in trying to get that increased and its focus seemingly shifted to getting Mr and Mrs A to agree a settlement – a settlement it knew was less than half of the costs claimed.

I note that when Mr and Mrs A first raised concerns about the extent of the work covered by the settlement – that more damage might become apparent during stripping, Oakleafe told them they only had two options. It said they could let it do the strip out for them, in which case it would further negotiate with the insurer – but that would not be quick. In the alternative, they could take the lump sum – meaning that no further negotiation would be possible. To be honest, I find that very poor advice. It was within Oakleafe's ability to negotiate with the insurer on the basis of leaving the reinstatement portion of work open/settled in part only, until stripping had been done. That is entirely usual practice – in fact insurers will often only firmly agree reinstatement works once stripping and drying has been done, exactly because quite often, until that point, the full extent of necessary work can't reasonably be known. Oakleafe as insurance experts should know that.

I accept there was call activity and things going on following the insurer's offer of settlement. But like our Investigator I've seen nothing in Oakleafe's file or the additional data it sent us that shows it took on board Mr A's concerns with the scope, gathered relevant evidence in support of its client (even if that was only asking Mr A to provide such) and returned to the insurer with that evidence in support of negotiating an increased settlement. Or as I said above, even that it asked the insurer to agree the settlement as an interim payment only, keeping things open in case any additional damage was found.

I can see that Oakleafe did do a lot of work on this claim. I accept that it did ultimately achieve a significant settlement offer on Mr and Mr A's behalf. But, also from what I've seen, I think it failed Mr and Mrs A at the last and potentially most crucial part of its work – the settlement negotiation. Mr and Mrs A were relying on Oakleafe to put a fair presentation of the claim forward – and that reasonably, in my mind, includes it making a reasonable, professional and expert challenge to the insurer in respect of concerns raised. I'm satisfied, from what I have seen, that it did not do that.

The fee Oakleafe charged was taken for all of its aspects of work on the building claim. As I've found that it fell short in one crucial aspect, I think it's fair the fee is adjusted to account for that. Oakleafe took its full fee from the claim settlement before passing the remainder on to Mr and Mrs A. Its minimum fee was £2,400 including VAT. So I'm going to require Oakleafe to pay Mr and Mrs A any sum it kept as its fee for work on the buildings claim over and above £2,400. To any payment made to Mr and Mrs A, interest* should be added from

the date the full fee was ‘collected’ (when the remainder of the claim settlement was paid to Mr and Mrs A) until payment is made.

**Putting things right**

I require Oakleafe to pay Mr and Mrs A the total fee it took from their buildings claim settlement, for its work handling that claim, less the sum of £2,400, which it can reasonably keep as its minimum fee. To the sum to be paid to Mr and Mrs A, interest* should be applied from the date the claim settlement was paid to Mr and Mrs A until payment is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Oakleafe to take off tax from this interest. If asked, it must give Mr and Mrs A a certificate showing how much tax it’s taken off.

**My final decision**

I uphold this complaint. I require Oakleafe Group Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A and Mrs A to accept or reject my decision before 29 November 2024.

Fiona Robinson
**Ombudsman**