DRN-4799379

The complaint

S has complained about Acasta European Insurance Company Limited's (Acasta Insurance's) decision to decline a claim it made under a Guarantee Insurance Policy ('Insured Guarantee').

S is represented in its complaint by a company I will refer to as 'V'. References in this decision to submissions made by S, also therefore include those made by 'V'. A company I will refer to as 'H' arranged the Insured Guarantee and responded to this complaint on behalf of Acasta Insurance. References to Acasta Insurance in this decision therefore also include H and the other parties Acasta Insurance is responsible for.

What happened

I issued a provisional decision on 12 March 2024, explaining why I was intending to uphold this complaint. This is what I said in the provisional decision:

> *In March 2020, S employed a company, who I will refer to as M, to take over works to complete a new build residential development mainly comprised of 14 residential units. The terms agreed between S and M were detailed in a JCT contract dated 5 March 2020 (the 'first contract'). A minor building works JCT contract was later entered into between S and M for: the replacement of an existing flat roof; replacement of existing Hardie Board Cladding system with Zinc cladding; and associated works and minor other repairs, dated 17 August 2022 (the 'second contract').*
>
> *On 10 February 2021, practical completion of the property was certified. The certificate included a note to say it was issued on the basis that some items remain incomplete which will need to be satisfied in order to relieve the contractor of their duties in relation to construction of the works in full. These included: the issue of the H&S file; repairs to main roof; parapet roof; canopy roof; handrail to staircase; lift commissioning; and items of snagging throughout the building.*
>
> *In February 2021, S took out an Insured Guarantee with Acasta Insurance in relation to issues arising with the roofing installation, providing cover up to a limit of £50,000.*
>
> *Liquidators were appointed for M, referred to as the 'supplier' in the Insured Guarantee, on 6 June 2022, once it had ceased to trade. Notification of the liquidation was received by S on 13 June 2022.*
>
> *On 12 April 2022, S notified H that the development was affected by poor roof installation, and that the roof was leaking. S requested a site meeting to investigate the issue. H didn't respond, so the dispute in relation to the defective roof works was referred to adjudication.*
>
> *On 24 August 2022, an adjudicator confirmed by the Royal Institution of Chartered Surveyors was appointed, under the terms of the contracts. The Adjudicator issued his decision on 28 September 2022. He concluded that the works didn't have sufficient falls away from the building and within gutters so that the water could be adequately drained*

through outlets and into downpipes which was in breach of M's obligations. The roofing rectification work failed to rectify the original defects in the original roofing work, and in fact, the adjudicator said the solution created some new problems. He also said that a solution was adopted 'on the cheap' as it overlayed the first installation and created falls that were not created in the original installation. And he agreed that the product used was not suitable for areas receiving foot traffic and without an aggregate cast it created a likely slip hazard.

The Adjudicator concluded that S was entitled to damages as a consequence of M's breach of obligations in the contract, and failure to construct the works to a reasonable standard.

The sum of £243,403 (excluding VAT and the adjudicator's costs) was awarded as damages in connection with the penthouse balcony flat roofing / perimeter box gutter problems, and the requirement to replace the vertical wall cladding (detailed in paragraph 7.107 of the adjudicator's decision).

The adjudicator's decision also recorded that one of the liquidators confirmed that any award would be an unsecured claim in the liquidation, with payment being made by dividend if there were sufficient funds available. But the liquidator's letter to creditors dated 13 June 2022, listed secured and unsecured debts that were in excess of three times the amount claimed by S.

Following the decision of the Adjudicator, in October 2022, S notified H of the adjudicator's decision. S explained that because H had taken no action following its notification of the leaking roof, in April 2022, it had been left with no option but to take the matter to adjudication. S asked H to pay the sum awarded of £300,252.54 (including VAT and the adjudicator's fees).

In the formal notice of the claim, S stated that the problem first occurred in November 2020, and confirmed that M's professional indemnity and public liability insurers had been notified by S that it considered they were liable to meet the claim. However, both insurers confirmed that their insurance would not respond to meet the liability.

Acasta Insurance considered the claim but declined it on the basis that it was excluded by a number of the conditions of the Insured Guarantee. Unhappy with the claim decision, S complained and Acasta Insurance issued a final response on the complaint on 13 December 2022. In the final response it said:

1. *The documentation provided by S didn't relate to a supplier's contract from M to S or proof of payment of the contract for the roof works;*

2. *The claim wasn't notified within 30 days of the fault first occurring and the claims procedure being adhered to, as the fault first occurred in November 2020 (clause 1 of the Insured Guarantee).*

3. *Acasta Insurance isn't liable for any accidental or consequential loss or damage as a result of the failure of the products or services provided by the supplier (clause 2 of the Insured Guarantee).*

4. *No cover is provided for faults that occurred (whether notified or not) prior to the supplier ceasing to trade (clause 3 of the Insured Guarantee).*

5. *The Insured Guarantee doesn't cover any loss or damage which at the time of happening is insured and/or protected by, or would, but for the existence of the Insured Guarantee, be insured or protected by any other existing insurances (clause 9).*

6. *No cover is provided where the contract has not been completed in full (clause 12).*

Our investigator looked into what had happened and, on 30 June 2023, issued a view not upholding the complaint. He concluded that Acasta Insurance had fairly declined the claim because S hadn't notified it of the fault within 30 days of it occurring in November 2020, and the warranty didn't provide cover for faults notified or not, prior to the supplier ceasing to trade.

S didn't agree with our investigator's view and requested an ombudsman's decision on the complaint.

<u>What I've provisionally decided – and why</u>

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'm intending to uphold this complaint. I will explain why.

It's a well-established principle of insurance that at the outset of a claim, the onus is on the insured to prove their claim and the extent of their loss. However, once it has been established that the insured has a valid claim, if the insurer wants to decline a claim on the basis of an exclusion in the policy terms, then the onus rests with the insurer to prove that the exclusion applies.

In this case there is no dispute that S has established it has a valid claim. The disagreement between the parties arises from the question of whether or not Acasta Insurance has proven any of the six exclusions it has sought to apply to the claim.

In the FRL, Acasta Insurance set out six reasons for rejecting S' claim, which I've detailed in paragraphs 1 to 6 at the end of the background section above. In S' letter referring the complaint to this service it set out its reasons for disputing each of the points Acasta Insurance has relied on in declining the claim.

Having considered the submissions of both parties, I've set out my reasons for provisionally upholding this complaint below, following the same paragraph numbering.

1. <u>Inadequate documentation was provided in support of the claim.</u>

Acasta Insurance said the documentation S had included with the notification of the claim wasn't adequate to satisfy the conditions of the Insured Guarantee because it didn't relate to a supplier's contract from M to S, nor did it provide proof of payment of the contract for the roof works from S to M.

Clause 12 of the Insured Guarantee states that: '…proof or (sic) payments i.e., a statement showing payments have continued or that all payments in full have been made is required at the point you file a claim'.

S has provided a copy of the second contract, which, in my view, satisfies Acasta Insurance's requirement to provide a supplier's contract from M to S. In addition, S has provided a schedule of payments for the roofing works made to M from 9 November 2022 to 24 February 2023 detailing six payments made by S to M, together

with a signed certificate of payment, due for payment on 10 March 2023. So, clear evidence has been provided of proof of payment of the contract works.

Based on the above, I'm not persuaded Acasta Insurance has shown this exclusion can be fairly applied to the claim.

2. <u>The claim wasn't notified within 30 days of the fault first occurring</u>

Clause 1 of the Insured Guarantee says: 'In the event of the supplier of the items under guarantee being unable to undertake any necessary remedial works under the terms of its own long term guarantee due to cessation of trading, Insurers will indemnify the holder of the Insured Guarantee for the cost of such work, providing that (a) the [H] has been notified within 30 days of the fault first occurring and (b) the claims procedure being adhered to. It is understood that cover provided by this Insured Guarantee is limited to the cost of removal, repair, alternation, rectification or remedial work that is required to be undertaken within the terms and conditions of the LONG TERM GUARANTEE issued by the [H] MEMBER COMPANY.'

S has argued that the fault could only be notified after the works had been completed, and the opportunity for issues with the works to be rectified by M, had passed, in accordance with the terms of the contracts. S more specifically explained that under the first contract, clause 2.30 provides that defects must be notified within 14 days of the end of the Rectification Period, (defined as 24 months from the date of practical completion of the works). Practical completion of the works was certified on 10 February 2021. So, the defects needed to be notified at the latest, by 24 February 2023. S says that a reasonable period of 21 days was allowed for the rectification works to commence. S also says that the notice it provided, of the fault, on 12 April 2022 was within 30 days of the first default / failure to put right the works after completion of the works.

However, Acasta Insurance, says the fault was first apparent in November 2020, as detailed in the claim form.

I note that the Insured Guarantee didn't come into effect until February 2021. In my opinion, S would therefore have had no reason to notify Acasta Insurance of any issues arising with the works, three months prior to taking out the Insured Guarantee.

To assess whether cover would engage under the Insured Guarantee, in these

circumstances, it first needs to be established whether the notification has been given, 'within 30 days of the fault first occurring'. There is no further clarification provided in the Insured Guarantee, to indicate when this 30-day period should reasonably commence. So, I've looked at the contracts and other evidence to establish what that date ought reasonably to be. Having done so, I'm currently minded to conclude that the fault was notified in time. I will explain why.

In deciding what a reasonable definition of 'fault' is, I think it's reasonable to apply the ordinary meaning of the word, which simply put is 'a failing or defect'. The part of the works covered by the Insured Guarantee is primarily comprised of the roofing and nearby parts of the building. Acasta Insurance says that for cover to engage, notification needed to be given within 30 days of any problems becoming apparent with the roof. However, the Insured Guarantee provided cover for works described as the 'Supply and installation of GRP roof works to penthouse terraces and main flat roof above penthouses', for a period 'Up to 10 years from the completion date and commencement

of guarantee issued by the contractor'. So, the works which were being covered were completed works, not works in progress.

The Insured Guarantee doesn't purport to cover each and every thing that might go wrong during the period of the works as detailed in the contracts. With regard to the roof works, the insurances which are applicable to such risks are detailed in section 5 of the second contract. And it wouldn't be fair or reasonable to exclude from cover each and every issue that arose, and was then rectified, during the construction of the development. That would in effect make the Insured Guarantee worthless. I think that Acasta Insurance's approach in deciding the fault should have first been notified in November 2020 is therefore unreasonable and incorrect.

The purpose of the Insured Guarantee as set out in clause 2 is to provide an indemnity for the cost of undertaking remedial works that the supplier is liable to undertake as required by the terms of its own long-term guarantee, but is unable to do so, due to cessation of trading.

'LONG TERM GUARANTEE' isn't defined in the Insured Guarantee. So, taking account of the other provisions of the guarantee, and the purpose for which the guarantee was taken out, I think it's reasonable to conclude that this refers to the professional indemnity insurance that M was required to take out under the terms of the contracts, detailed in section 5, to cover its liabilities for expenses, loss, claims or proceedings in respect of any loss injury or damage to property in so far as they arise out of the carrying out of the insured works, and are due to any negligence on the part of M (see clause 5.3 of the second contract).

Taking all of these factors into account, I think a more reasonable explanation of when a fault is likely to first arise, for the purpose of the Insured Guarantee, is broadly along similar lines to that submitted by S.

The contracts set out the process that needed to be followed by M in delivering the works detailed in the contracts which includes the rectification of issues identified during the period allowed on completion of the development. It reasonably follows that it's only after the works have been completed, a 'fault' can arise, because it's only at that time that it could be determined whether there is a failing or defect with the completed development, for which M could be liable.

As I've already mentioned, the certificate of practical completion was issued on 10 February 2021, with a qualification included in relation to outstanding works being

completed to the roof. Following practical completion, the contract provided 24 months in which any issues with the development could be notified to M, so that rectification works could be carried out.

In my view, the period 'within 30 days of the fault first occurring' could only reasonably commence on a date after practical completion, (and the completion of the outstanding roofing works referenced in the practical completion certificate). And the actual date of the 'fault first occurring' would need to be a date during the rectification period, 21 days after notice had been given to M and M had failed to commence repair works. So, Acasta Insurance's date of November 2020, couldn't reasonably be the commencement date.

S has said that when it notified Acasta Insurance of the leaking roof on 12 April 2022, that notice was given within 30 days of awareness that M would not carry out the repair works.

I haven't been provided with the exact date of notification of the roofing issues to M within the rectification period. However, I'm more persuaded by S' arguments that the fault was notified in time, than Acasta Insurance's argument that the notification was made too late.

Acasta Insurance therefore haven't persuaded me that it has fairly applied this exclusion to the warranty.

3. Liability for any accidental or consequential loss or damage

I can't see anything in the evidence I've been provided to suggest that S has made a claim for accidental or consequential loss or damage, so I am not going to consider this element of complaint further, other than to say, I don't think it's relevant to the claim decision.

4. No cover is provided for faults that occurred (whether notified or not) prior to the supplier ceasing to trade

Liquidators of M were appointed on 6 June 2022, so I think it reasonable to conclude that at that time M had ceased to trade.

As I've explained under section 2 above, in the circumstances of this case, I'm satisfied that faults could only reasonably be considered as such, once the rectification period ended and it was clear that M (or its insolvency practitioners) wasn't going to comply with the terms of contract in relation to any defect notified to it.

As outlined under section 2 of this provisional decision, the rectification period ended on 10 February 2023, and it was only after this time that a 'fault' could arise in accordance with the contract terms, which was after 6 June 2022. So, it follows that on a plain reading of the clause, a 'fault' couldn't have been notified to M before it ceased to trade. And while I appreciate the claim was raised in April 2022, I don't consider this to have a material impact on the provisional decision I've arrived at because I'm not currently persuaded that S had to notify Acasta Insurance of the 'fault', any sooner than it did, for cover to engage under the Insured Guarantee.

Secondly, as S has highlighted, condition 3 of the Insured Guarantee says cover will be provided for faults that occurred prior to the supplier ceasing to trade that arise from breaches of Building Regulations. S says that it is their understanding that the defect was a result of the roof not having been built in accordance with the Building Regulations. This is supported by references to a report on the works referenced in paragraphs 6.41.5, 6.41.6 and 6.58.13 of the adjudicator's decision. The Adjudicator didn't quantify which proportion of the rectification works might be required to put right breaches of Building Regulations.

However, I think it likely that part of the works required were necessary to address breaches of building regulations. I also note that the limit of cover provided by the Insured Guarantee is substantially less than the total amount of damages awarded by the Adjudicator in relation to the roofing works. Therefore, based on the information provided, I don't consider it unreasonable to conclude that, on balance, it's likely that rectifying the building regulation breaches would cost the £50,000 policy limit.

So, taking everything into account, for the reasons given, I'm not persuaded that Acasta Insurance has fairly applied this exclusion to the claim, and I'm intending to decide that it is therefore fair and reasonable in the circumstances, for the claim to be paid.

5. <u>The Insured Guarantee doesn't cover any loss or damage which is insured and/or protected by any other existing insurances</u>

S has provided copies of letters from M's professional indemnity insurers and professional liability insurers which confirm that those policies will not engage to provide cover for M's liability to S as quantified in the adjudicator's decision. I'm therefore of the view that this exclusion also can't be fairly applied to the claim.

6. <u>No cover is provided where the contract has not been completed in full.</u>

As I've already explained, a certificate of practical completion was issued for the works. And, S has provided evidence of payments made as required by the contracts. I've not seen anything to suggest that any payments have been withheld by S. Also, the adjudication decision which detailed the costs incurred and amounts claimed for made no reference to S holding back any payment due to M for the works. I'm therefore of the view that the contract has likely been completed in full.

Again, on the basis of the information I've currently been provided with, I don't think Acasta Insurance has shown that this exclusion can fairly be applied to S' claim.

In summary, Acasta Insurance hasn't discharged the onus of proof that rests with it to

demonstrate that any of the exclusions can reasonably be applied to the claim. So, I'm intending to conclude that Acasta Insurance should accept and settle the claim up to the limit of the Insured Guarantee, and pay interest on the settlement sum, as I've detailed below.

<u>Compensation for inconvenience</u>

I don't have the documents from the time of sale of the Insured Guarantee, so I'm not able to say with certainty, what information was provided to Acasta Insurance when cover was requested. However, I think it reasonable to assume that the underwriters would have considered the documentation relevant to the supply of services by M to S, when agreeing to provide indemnity under the Insured Guarantee. When a claim was made by S, under the terms of the Insured Guarantee, I think it reasonable to expect that Acasta Insurance would have considered the claim, in the context of the documentation relevant to the claim, as I have set out in this provisional decision. However, from the brevity of response from H to S' concerns about the claim decision, it appears that Acasta Insurance has not undertaken any detailed consideration of this claim.

In my opinion, Acasta Insurance has unfairly and unreasonably declined S' claim and has caused S' inconvenience for which it should be compensated. As S is a limited company, I'm not able to award compensation for distress, however, for the reasons detailed below, I am intending to award £750 compensation to S, for the inconvenience it has suffered as a result of Acasta Insurance's poor handling of its claim, and its decision to unfairly decline the claim.

S has had to pursue a fair resolution of the claim for almost 15 months following receipt of the FRL in December 2022, in which Acasta Insurance reiterated its decision to decline the claim. S has also explained that it incurred additional consultant's costs which could have been avoided if Acasta Insurance had dealt with the claim fairly. S also said that it has suffered damage to its reputation as the failure to respond to the claim delayed the sales of the two penthouse flats.

In addition, S has requested that interest be awarded on the claim settlement sum from the date that the claim should have been settled in full, in their opinion, 12 May 2022 (30 days from notice of the fault being given to Acasta Insurance by S). S says that it has had to fund the entirety of the claim and therefore is entitled to be compensated for loss of interest at 8%.

However, while I'm currently of the view that 8% interest should be awarded on the settlement sum, I don't agree that it should be paid from 12 May 2022.

On 31 October 2022, S submitted a signed claim form to Acasta Insurance, giving formal notice of the claim. Taking account of the complex documentation relating to the claim, I think it reasonable to make allowance for a period of six weeks from that date, after which time Acasta Insurance ought to have provided an appropriately reasoned decision on the claim. So, I therefore conclude that interest should be paid on the £50,000 from 14 November 2022 to the date that the awards detailed in the final decision that will follow this provisional decision, are paid to S.

I concluded by saying that I was intending to uphold the complaint against Acasta European Insurance Company Limited and require it to pay the claim, together with interest on the claim settlement amount and £750 compensation for the inconvenience its actions have caused S.

I asked the parties to provide any final new arguments or evidence they wanted me to consider before making my final decision on this complaint, by 26 March 2024.

S responded to confirm it accepted the provisional decision.

Acasta Insurance repeated arguments it had previously made, which I've summarised below. Acasta Insurance refers to its agent 'H', however, I've referred to 'Acasta Insurance' on the basis that H was acting on its behalf and Acasta Insurance is responsible for the actions of H. In summary, Acasta Insurance has said:

1. It had not received any correspondence from the Financial Ombudsman Service with regard to the original view dated 30 June 2023.

2. It hasn't received a copy of the contracts between S and M or any schedule of payments or any signed certificate of payment. Acasta Insurance maintains its stance that S has failed to supply relevant information in accordance with the terms and conditions of the policy.

3. On 12 April 2022, S notified it of a potential claim. Acasta Insurance says it responded on the same day asking for confirmation of cessation of trading, but says no response was received.

4. When S instructed the Adjudicator on 24 August 2022, S hadn't made any further contact with Acasta Insurance in relation to a potential claim. The Adjudicator concluded that S was entitled to damages as a consequence of the breach of obligations in the contract however Acasta Insurance was not liable for these breaches as they included a number of other items that were not part of the actual roof installation.

5. It received no contact whatsoever from S until October 2022, at which point it issued a claim form.

6. Before the policy was issued there were clear breaches of the contract by M that S should have notified Acasta Insurance about.

7. H accepted our investigator's view dated 2023 and Acasta Insurance received no further communication until the provisional decision was sent on 12 March 2024. Acasta Insurance says it is unreasonable for it to pay interest for six months or indeed past the date of the view that was issued in June 2023.

In summary, Acasta Insurance said it has discharged its responsibilities in accordance with the terms and conditions of the Insured Guarantee. Acasta Insurance maintains that S has failed to follow the claims procedure has not given H sufficient information with regard to the appointment of the Adjudicator, and therefore their position stands that they do not consider this to be a valid claim.

I've taken Acasta Insurance's submissions into account in making my final decision on this complaint.

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 not been persuaded to come to a different decision on the complaint. I will explain why, following the paragraph numbering I've used above, when summarising Acasta Insurance's responses to my PD.

1. Acasta Insurance said it had not received any correspondence with regard to the investigator's original findings dated 30 June 2023. However, other than the view and covering email that the investigator sent to Acasta Insurance on 30 June 2023, there was only one further communication sent, in August 2023, informing it that S had requested an ombudsman's decision on the complaint. Our investigator has now sent Acasta Insurance a further copy of that email. Otherwise, the situation is as I had outlined in the provisional decision.

2. With regard to Acasta Insurance's submission that it hasn't received a copy of the contracts between S and M or any schedule of payments or any signed certificate of payment, I would direct it to the final response letter issued on its behalf, by H, on 13 December 2022, which includes a detailed list of documents received, including those documents. After considering all of the available evidence, I conclude, on balance, that S likely did provide the information required by the Insured Guarantee's terms, in support of its claim.

3. Acasta Insurance said that while it was notified on 12 April 2022, of the potential claim, it requested confirmation of M's cessation of trading at that time, but no response was received. As I explained in the provisional decision, M only ceased trading on 6 June 2022 and S was only notified of that on 13 June 2022. So, on 12 April 2022, S wasn't in a position to provide any such confirmation to Acasta Insurance as M was still trading at that time.

4. Acasta Insurance has said that when S instructed the Adjudicator on 24 August 2022, it hadn't made any further contact with Acasta Insurance in relation to a potential claim. But I don't consider this has any bearing on the claim decision I am considering. At that time S was seeking a decision on the amount M was liable for before it submitted its formal claim to Acasta Insurance. I don't consider Acasta Insurance reasonably needed to be involved at that stage.

   Acasta Insurance also said the Adjudicator concluded S was entitled to damages as a consequence of the breach of obligations in the contract however it was not liable

for these breaches as they included a number of other items that were not part of the actual roof installation.

Again, as I set out in the provisional decision, the amount the Adjudicator awarded was almost six times the amount S is claiming under the Insured Guarantee. In paying £50,000 of the total amount included in the Adjudicator's award, I don't consider Acasta Insurance is covering any of the costs relating to breaches that didn't relate to the roof installation.

I set out my reasons in the provisional decision for why I considered Acasta Insurance should pay the claim up to the limit of indemnity of the Insured Guarantee, and I haven't been persuaded by its submissions to change my decision on that point.

5. Acasta Insurance says it received no contact whatsoever from S until October 2022, at which point S issued a claim form. I'm not sure what Acasta Insurance is seeking to establish here, but I don't consider S had any obligation under the terms of the insured warranty to contact Acasta Insurance before then, for the reasons detailed in the provisional decision.

6. Acasta Insurance has also argued that before the Insured Guarantee was issued there were clear breaches of the contract by M that S should have notified Acasta Insurance about. No further detail has been provided to support this assertion.

   I've not considered the sale of the Insured Guarantee and who did what at that time, so I'm not in a position to comment on this point.

   Nonetheless, as I explained in detail in the provisional decision, the contracts set out a detailed process for the parties to follow in resolving any contractual issues prior to practical completion.

   It was only after practical completion that cover could engage under the Insured Guarantee, so I don't consider S's alleged failure to notify Acasta Insurance of any issues affecting the development prior to its completion, is relevant to my consideration of this complaint.

7. Acasta Insurance has also said it accepted the final decision issued by the investigator in June 2023. As it received no further communication on the complaint until 12 March 2024, Acasta Insurance believes it is unreasonable for it to pay interest for six months past the date of the original decision.

   In response to this point, I'd first clarify that the view issued by the investigator was a first view, satisfying the first stage of our process. It was not a decision. I would also clarify that our investigator wrote to Acasta Insurance on 3 August 2023 to advise it that the complaint was going to be reviewed by an ombudsman. A further period of time passed while the decision was awaiting consideration by an ombudsman, then, given the complexity of the complaint, additional time passed while I considered the elements of the complaint and prepared my provisional decision on the complaint.

   Finally, in addressing Acasta Insurance's submission about the period of time during which interest should be paid on the claim, I've considered all of the evidence to decide when S ought reasonably to have been given a reasonable decision on the claim by Acasta Insurance. In the provisional decision I concluded that interest should be paid on the claim settlement sum from 14 November 2022 to the date that the awards detailed in the '*Putting things right*' section below, are paid.

When considering what an appropriate period is for interest to be paid (as I have the power to do under DISP 3.7.8R) I have allowed for a reasonable period of time for Acasta Insurance to consider, investigate and pay the claim. I've explained in detail in the provisional decision, why I don't consider Acasta Insurance has fairly applied the exclusions discussed under headings 2 and 4 in the provisional decision. I'm aware that in giving my reasons for those conclusions, I have referred to a number of different dates some of which are hypothetical, based on the processes set out, for example, in the construction documentation.

However, for clarity, when explaining why I consider interest is payable from 14 November 2022, I am referring to actual dates on which events relevant to the claim and this complaint actually occurred.

In April 2022, S approached Acasta Insurance about the issues with the leaking roof. In June 2022, M had liquidators appointed, then on 31 October 2022, S submitted a signed claim form to Acasta Insurance, giving formal notice of the claim. Once formal notice of a claim is provided to an insurer, ICOBS 8.1.1R(1) says that an insurer must handle claims promptly and fairly.

We generally consider a period of one month to be a reasonable time for an insurer to comply with this rule, when considering a claim. However, due to the added complexity of the claim made by S, I've allowed a period of six weeks. By the end of that period, as I explained in the provisional decision, I consider Acasta Insurance ought to have provided an appropriately reasoned decision accepting the claim.

Acasta Insurance's submissions in response to the provisional decision haven't persuaded me to come to a different decision on this point. So, I therefore conclude that interest should be paid on the claim settlement sum from 14 November 2022 to the date that the awards detailed in this final decision are paid to S.

While I note that Acasta Insurance maintains its position that S hasn't made a valid claim, I disagree. Having carefully considered Acasta Insurance's response to the provisional decision, I haven't been persuaded to come to a different conclusion on this complaint. So, for the reasons detailed in this final decision, and the provisional decision included above, I uphold this complaint and require Acasta Insurance to pay the awards detailed below**.**

Putting things right

I uphold this complaint and require Acasta European Insurance Company Limited to:

- Pay S' claim up to the limit of indemnity in the Insured Guarantee (less the deduction of any excess) (the 'claim settlement sum');

- Pay 8% interest* on the claim settlement sum from 14 November 2022 to the date that the awards payable under the final decision on this complaint are paid; and

- Pay S £750 compensation for the inconvenience it has suffered as a result of the way Acasta European Insurance Company Limited has handled this claim.

*If Acasta European Insurance Company Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell S how much it's taken off. It should also give S a certificate showing this if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and require Acasta European Insurance Company Limited to pay the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 12 June 2024.

Carolyn Harwood
Ombudsman