

## **The complaint**

Mr D complains Ocaso SA, Compania de Seguros y Reaseguros declined a claim he made on his buildings insurance policy for subsidence at a property he owns.

## **What happened**

References to Mr D and Ocaso include respective representatives and agents.

The background to this complaint is well known to the parties so I've summarised what happened.

- Mr D owns a let property insured by a buildings insurance policy underwritten by Ocaso.
- A tradesman identified possible subsidence at the property so Mr D reported this to Ocaso to make a claim on his policy.
- After some investigation, Ocaso declined the claim saying the damage was pre-inception of Mr D's policy. In May 2021, Mr D complained and Ocaso let him know he could refer his complaint to this Service.
- Our Investigator asked Ocaso a number of times to provide information to explain its position but it failed to do this within the timescales. So, he proceeded with his investigation and upheld the complaint.
- Ocaso disagreed, providing information it said supported its position. It reiterated its view the damage occurred pre-inception and said this was shown in the survey Mr D had undertaken before he purchased the property in 2006.
- Our Investigator remained of the view the complaint should be upheld. He wasn't satisfied Ocaso had presented sufficient evidence to show the current damage was linked to what was mentioned in the 2006 survey or that there was subsidence present before policy inception.
- He also said Ocaso had hinted at an allegation of misrepresentation but it hadn't expanded on this nor made it clear what Mr D had been asked at inception. He pointed out the survey hadn't identified the likely cause of damage as subsidence and the surveyor said no further investigation was necessary.
- So he concluded even if Mr D had been asked a clear question, he would have likely relied on what a Chartered Building Surveyor said when answering any question about subsidence and responded to say there wasn't any.
- Ocaso asked an Ombudsman to make a 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.

When making a claim on a policy the onus is on the policyholder to show the claim is covered by the policy. When an insurer seeks to rely on an exclusion to decline a claim, the onus is on it to show the exclusion applies. I'll be assessing this complaint with this in mind together with what I consider to be fair and reasonable.

### *The 2006 survey*

Ocaso's key reason for the claim being declined was that it said the subsidence damage being claimed for was identified in the 2006 survey and was therefore present before the inception of the policy. So, I've gone on to consider the contents of the survey.

The survey was undertaken by a suitably qualified Chartered Building Surveyor before Mr D purchased the property. The report discusses the construction of the property and a number of defects are noted.

The report explains:

*"No evidence of any significant cracking or distortion was noted.*

*The slight movement and distortion noted to the rear wing may be due to initial settlement of the property shortly after construction. However, this may also be due to previous damage or water leakage to the underground drains or incoming water main....The damage appeared longstanding in nature and it is possible that the cause has been repaired".*

Notably, subsidence isn't identified as the cause of the defects seen and the report concludes that no further investigations or repairs are considered necessary. It seems self-evident to me that if, in the professional opinion of the surveyor, subsidence was likely to be the cause of the damage, his report would have specified this. But it doesn't so I'm satisfied, on balance, there was no subsidence present at the time of the survey.

I acknowledge here Ocaso interprets aspects of this report as suggesting there was ongoing movement at the time. But I'm not persuaded by this argument – the survey represents the contemporaneous opinion of a qualified professional and he specifically states there's no sign of any recent movement. There's nothing in the report which suggests he believed there was ongoing movement either. So, on balance, and in the absence of other professional opinion from the time, I'm satisfied it's more likely than not there was no recent or ongoing movement at the time.

Overall, I'm not Ocaso has done enough to show the damage pre-existed the inception of the policy.

### *Movement since*

It's clear from the evidence the main area of damage has become more severe over time. In 2020, I note the loss assessor employed by Ocaso described the damage in 2006 as "...clearly not as severe as it is now."

The loss assessor's site notes from October 2020 identified the damage as level four to five on the BRE scale used to identify subsidence severity. This indicates "4. Extensive damage" to "5. Structural damage". This seems to me to be significantly more severe than the "slight movement" identified in the 2006 survey.

So, on balance, I'm not persuaded subsidence damage started and ended before the policy was inception in 2007 and it seems more likely it occurred during the life of the policy.

### *Implied misrepresentation*

After some confusion between Ocaso and its loss assessors, a repudiation letter was eventually issued. In this, Ocaso said the damage in question should have been declared to insurers.

Our Investigator pointed out a number of times to Ocaso that it hadn't identified the basis of this statement. Nor has it identified a question that Mr D has failed to answer correctly when taking out or renewing the policy or where the requirement to report the damage was made clear to him. Ocaso hasn't responded to this nor has it made a clear and specific accusation of misrepresentation.

So, in the absence of this, I've not seen evidence of an obligation on Mr D to declare the damage to Ocaso. I'm not satisfied it's fair or reasonable for Ocaso to rely on this supposed non-disclosure as a reason for the claim being declined.

### *Earlier reporting*

In its submissions to this service Ocaso says Mr D should have disclosed the damage sooner than he did and may have prejudiced its position because he didn't. Mr D has been clear that a tradesman identified possible subsidence while undertaking work on the property in July 2020 and this was the first Mr D knew of it. He reported it to Ocaso shortly after in the same month.

Given that Mr D has been insured by Ocaso since he purchased the property in 2007, I see no reason why he would have delayed reporting the damage if he had become aware of it earlier. It seems persuasive to me that he reported shortly after it was brought to his attention by the tradesman.

I'm mindful here that this is not a property Mr D lives in and he only visits it occasionally, something acknowledged by Ocaso's loss assessors in internal correspondence in November 2020.

So I'm satisfied, on balance, it's more likely Mr D reported the damage shortly after it was drawn to his attention rather than after any unreasonable delay.

### *Service issues*

Our Investigator detailed a significant number of service issues through the life of the claim, which I don't propose to detail again here. But it is clear to me there's considerable internal communication issues between Ocaso and its agents resulting in confusion and delays in the handling of the claim.

I can see how this would have caused Mr D distress and inconvenience and I'll be keeping in this in mind in my direction.

### **Putting things right**

I will be directing Ocaso to reconsider the claim against the remaining terms and conditions and pay Mr D £150 for the distress and inconvenience it's caused him.

### **My final decision**

My final decision is that I uphold this complaint and direct Ocaso SA, Compania de Seguros y Reaseguros to:

- Reconsider the claim in line with the remaining terms and conditions without relying on the exclusion for pre-existing damage.
- Pay Mr D £150 for the distress and experience he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 March 2022.

Paul Phillips  
**Ombudsman**