

## **The complaint**

Mr I is unhappy that Ocaso SA, Compania de Seguros y Reaseguros (Ocaso) stopped paying him for loss of rent after he claimed under the Household Building Insurance for Local Authorities for water damage to his rental property.

The local authority is the policyholder for the overall building insurance. Mr I, as owner and leaseholder of a flat within the building, is a direct beneficiary of the policy. Therefore, I'm able to consider his complaint. For ease, I'll refer to Mr I throughout my decision as if he is the policyholder.

## **What happened**

Mr I claimed under the insurance policy in July 2019 for water damage. His tenants stopped paying rent in October 2018 but only vacated the property in July 2019. During that time, Mr I was unable to enter the flat and although he knew there'd been a leak, he understood it had been fixed.

When Mr I regained access to the flat, he raised a claim with Ocaso for the water damage. It declined his claim to begin with but, after he appointed a loss assessor (LA), Ocaso overturned its decision.

Ocaso agreed to pay the loss of rent between October 2018 and July 2019 when the tenants still lived in the flat. It also paid the loss of rent from when Mr I made his claim in July 2019, until February 2021. During that time, the flat was stripped out, dried, suffered further leaks, and dried again.

Because the new leak seemed to be coming from the flat above, Mr I was reliant on the local authority investigating it. Due to Covid restrictions, that investigation was delayed. Mr I asked Ocaso to continue payment for loss of rent from February 2021 onwards. But Ocaso rejected his request because it thought Mr I could've progressed some repair work during the interim to make the flat habitable, so he hadn't mitigated his loss.

Ocaso paid the remaining repairs settlement in July 2021. But Mr I remained unhappy that it wouldn't pay for loss of rent and he complained about the time taken to handle his claim.

Our investigator upheld Mr I's complaint. She said the evidence pointed to Mr I following the expert's directions in relation to waiting for repairs, so she didn't think he'd delayed repairing the flat unnecessarily. Because of that, our investigator thought Ocaso should continue to pay for loss of rent in line with the policy terms and conditions.

Mr I was happy with the outcome but, despite reminders, Ocaso didn't respond. So, the complaint was 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.

I've decided to uphold Mr I's complaint for broadly the same reasons as our investigator.

There's a lot of information available to me regarding this complaint, including photos of extensive damage, and communication between Ocaso and Mr I's LA. I won't comment on each piece of evidence – and I'm not required to. Instead I'll consider the overall complaint and explain why I've reached this decision.

The overriding issue is that Ocaso stopped paying Mr I for loss of rent while his flat was waiting to be repaired following water damage.

On the face of it I can see why Ocaso thought Mr I could've been progressing works during the many months it paid his loss of rent. But, looking at the LA's report, I can see why he didn't. The report says:

*ceiling surfaces specifically above the bathroom and hallway towards rear bedroom are now wet again. Perceived obvious source is [flat above] with whom we have been unable to make contact or have any authorising Mandate to access/ investigate; ... from the... bathroom photos the ceiling areas where paint barrier removed/ scraped were wet, now much larger spread is wet so will require further drying when ceased and also recent mould spores.*

*every effort has been made to mitigate and progress towards reinstatement on behalf of Mr I but the source and issue continues hence unfeasible to reinstate further until confirmed as resolved. The adjacent communal area staircase and hallway now also appears in worsened condition, reflecting that surfaces are continually sodden with ingress potentially towards [Mr I's flat].*

I've noted Ocaso's point that there was evidence of some work done in Mr I's flat. But, given the content of the LA's report, it's clear that if Mr I had completed extensive repairs, it's likely they would've needed to be done again once the source of the leak was identified and fixed. That work was outside of Mr I's control.

So, having looked at Mr I's reason for not progressing repairs, I'm satisfied it was reasonable because he was simply following the expert's advice.

Looking at whether Mr I caused delays, I haven't seen any evidence to support that. The circumstances around the time of the damage were unusual, with restrictions on contact with other people. Mr I was reliant on the local authority to investigate the cause of the leak which originated from outside his property, so he had no control over the timing. I don't think it's fair for Ocaso to hold him responsible for those delays or limit his loss of rent claim when claim progression was out of Mr I's hands.

Overall, I can see that Mr I has been in difficult circumstances, here, and I can understand his frustration with being unable to repair the damage to his property because he was waiting for action by other organisations over which he had no influence. Therefore, I can't fairly say he caused the delays in repairing his flat, so I see no reason for Ocaso to reject his claim for further loss of rent.

## **Putting things right**

To put matters right, I'll be asking Ocaso to continue to pay the loss of rent to the date the flat is habitable, or the terms of the policy allow it to cease those payments, whichever is sooner. As Mr I hasn't had access to that rental income, so I'll also be asking Ocaso to pay simple interest on it at a rate of 8% per year from the date the payments stopped to the date of settlement.

## **My final decision**

For the reasons given above, my final decision is that I uphold Mr I's complaint and Ocaso SA, Compania de Seguros y Reaseguros must:

- pay the loss of rent from the date it stopped paying, in line with the terms of the policy, and
- pay 8% simple interest\* per year on the loss of rent from the date the payments stopped to the date of settlement.

\*If Ocaso considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr I how much it's taken off. It should also give Mr I a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 24 March 2022.

Debra Vaughan  
**Ombudsman**