

The complaint

Mr and Mrs B's complaint is about a claim on their home insurance policy which was turned down by Ocaso SA, Compania de Seguros y Reaseguros.

All references to Ocaso include its appointed agents.

What happened

- In August 2020, Mr and Mrs B noticed water escaping from their kitchen sink. They made a claim under their home insurance and Ocaso appointed a loss adjuster to inspect the cause of damage to the pipe. Ocaso turned the claim down as it said the policy didn't cover damage due to any gradually operating cause and it said there was no evidence that the issue was linked to an insured event under the policy.
- Mr and Mrs B weren't happy about this and complained to Ocaso.
- Ocaso didn't respond to Mr and Mrs B so they brought their complaint to our service.
- After investigating, our investigator concluded that the complaint should be upheld because they were persuaded that Ocaso had applied the gradually operating cause exclusion unfairly. They concluded the pipe's loss of function could be considered as damage. And they didn't find the damage could be considered gradual as Mr and Mrs B weren't aware of the problem until water began to back up and escape from their kitchen sink. So, they recommended Ocaso reconsider the claim in line with the remaining policy terms.
- Mr and Mrs B accepted our investigator's findings. Ocaso didn't respond, so the complaint has been passed to me to make a final 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 agree with the conclusions reached by our investigator for these reasons:

- Ocaso's expert report says *"there is no evidence that the drain has suffered any damage or breakage on a set date and the miss [sic] alignment of the pipe would appear to be a gradual action over the life of the installation"*.
- Our service's approach is that a pipe's loss of function can be considered as *"damage"*. And the circumstances show that the alignment of the pipe and blockage were contributing to the loss of function.
- Accidental damage in Mr and Mrs B's policy is defined as *"An unintentional and unexpected one off incident that causes damage to your **buildings or contents.**"*

- I haven't seen anything in Mr and Mrs B's policy which excludes this type of damage through loss of function. And I'm satisfied Mr and Mrs B weren't reasonably aware there was an "*incident*" until water in the sink backed up and overflowed. So, I'm persuaded that they took reasonable action in letting Ocaso know as soon as they did become aware of the problem. Therefore, I agree that the gradually operating cause exclusion has been applied unfairly here.
- Mr and Mrs B have fairly shown that there is "*Accidental damage*" to the pipe which is covered under their policy. And in any event, Ocaso has been given a reasonable opportunity to challenge our investigator's findings but hasn't. So, I would expect it to deal with Mr and Mrs B's claim promptly and fairly moving forwards.
- Ocaso must reconsider the claim, subject to any remaining policy terms and conditions.

For these reasons, I uphold this complaint.

My final decision

My final decision is that this complaint should be upheld. In order to resolve Mr and Mrs B's complaint, Ocaso SA, Compania de Seguros y Reaseguros must:

- Reconsider the claim subject to the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 11 March 2022.

Dan Prevett
Ombudsman