

The complaint

Mrs M complained that Ocaso SA, Compania de Seguros y Reaseguros (“Ocaso”) unfairly declined her claim under her home insurance policy.

What happened

Mrs M made a claim to Ocaso on 11 February 2020 for water damage she identified when she was looking to change the flooring in her bathroom. When she removed some of her flooring, she realised it was wet underneath. Mrs M arranged for a plumber to visit who found a leaking pipe that fed the toilet, so Mrs M had this repaired.

Ocaso appointed a loss adjuster to validate the claim and review the damage. Ocaso said *“during the inspection it was noted there was extensive damage in the bathroom, including rotting of the timber bath support and cupboard, as well as the water starting to spread up the walls, with this information the loss adjuster concluded this would’ve been ongoing for some time”*.

Ocaso wouldn’t cover the claim as the policy that Mrs M had with Ocaso started on 21 December 2019. Ocaso thought the leak had started before Mrs M came on cover with it. So, Ocaso said the claim should be settled by Mrs M’s previous insurer. Mrs M approached her previous insurer and she told our service that the previous insurer provided a *“contribution”* towards repairing the damage.

Ocaso said *“you advised [us] that you approached your previous insurers and they accepted your claim, also they have made an offer of settlement. As this would appear to confirm the view that this incident occurred prior to the period of cover with Ocaso, and your previous insurers accept this.”*

However, the contribution didn’t cover Mrs M for the full damage, so she asked Ocaso to cover the shortfall. Ocaso wouldn’t cover the claim, so Mrs M complained.

Our investigator decided to uphold the complaint. She didn’t think Ocaso had provided evidence when the leak started. So, as the policy with Ocaso covered Mrs M for damage caused by escape of water, our investigator thought Ocaso should settle the claim (less the contribution made by the previous insurer). She thought Mrs M had suffered a significant level of distress and inconvenience, so she awarded compensation of £500 recognising Mrs M’s vulnerable circumstances and living conditions following the leak. Ocaso disagreed, so the complaint has been referred to an ombudsman.

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.

Ocaso said Mrs M’s previous insurer had accepted the claim. If, Mrs M’s previous insurer accepted the claim then there would be no need for Ocaso to cover the claim. So, I have reviewed what Mrs M’s previous insurer said in its final response to her. The previous insurer said,

“Your policy lapsed with [us] on 20th December 2019. You reported this claim to [Ocaso], you confirmed that they referred you to [us] as they believed this leak began when you were insured with us.

However, we found no evidence to support [Ocaso’s] findings. There was no way to determine when the leak began, therefore as you do not have a live home insurance policy with [us] we are not in a position to cover your claim. However, on a without liability basis and in order to bring this complaint to a resolution, I offered you £3000 - £300 policy excess = £2700”.

I understand that the previous insurer’s decision to provide a without liability offer on the claim will have cast some doubt on the claim for Ocaso. However, the offer from the previous insurer hasn’t settled the claim. In Mrs M’s words it seems it has decided to make a “contribution” towards the costs. Therefore, as the previous insurer hasn’t settled the claim, I need to consider if Ocaso has been fair in declining the claim.

The policy does cover damage *caused* by escape of water. I have reviewed the report from the loss adjuster to better understand the circumstances of the claim. The loss adjuster confirmed the damage was likely caused by escape of water, so the damage would normally be covered by the policy. However, Ocaso declined the claim as it said the leak occurred before Mrs M took out cover with it.

The loss adjuster report stated, *“whilst it is not possible to identify how long this leak has been ongoing, we suspect that it has been ongoing for some time”*. The loss adjuster confirmed that he thought the damage was caused by the leaking pipe that Mrs M had fixed by a plumber. I have read the report in detail and I think the report provides a balanced view of what has happened. By the extent of the damage, I think the loss adjuster has been fair in saying the leak has been ongoing for some time. The report stops short of stating exactly when the leak started, but we know it stopped in February when the plumber stopped it.

Therefore, I know for certain the leak was ongoing whilst Mrs M was on cover with Ocaso and she suffered damage whilst on cover with Ocaso. It’s possible the leak started before 20th December 2019, but the loss adjuster hasn’t proven this or estimated when he thinks the leak or damage may have started, although he did say it was likely to have started during the cover of the previous insurer.

In these circumstances, I would expect Ocaso to deal with the entire claim - whether that be to cash settle, replace or make an effective and lasting repair. This is because as the most recent insurer, I know that at least some of the damage has occurred during Ocaso’s policy period, so it’s obliged to deal with that portion of the damage.

However, if Ocaso can show that some of the damage occurred whilst Mrs M was covered by her previous insurer, then Ocaso could decide to cover the full claim and potentially choose to recover any costs they think the previous insurer should contribute. But I’d expect this to be done in the background – with no detriment or involvement of Mrs M.

So, based on what I think is reasonable, I think Ocaso should settle the claim in line with the policy terms, less the contribution Mrs M has already received from her previous insurer. I would ask Ocaso to settle the claim for the damage to Mrs M’s bathroom and surrounding rooms / areas.

I don’t think Ocaso has dealt with Mrs M’s claim fairly. Consequently, she has unreasonably had to make claims and raise complaints against two insurers, being caught in between the two insurers, which would have caused her considerable distress and inconvenience. Her claim was left unresolved and she has been living for a long time in a house where the

bathroom was damp and needed stripping out and where other rooms were potentially impacted. Mrs M's circumstances make her vulnerable, so I think the impact of these issues on her would be greater than the average person. Therefore, I award her £500 compensation for distress and inconvenience.

My final decision

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

- Settle Mrs M's claim for all damage caused by the escape of water (less the contribution she received from her previous insurer)
- Pay £500 compensation for distress and inconvenience

Ocaso SA, Compania de Seguros y Reaseguros must pay the compensation within 28 days of the date on which we tell it that Mrs M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 March 2022.

Pete Averill
Ombudsman