

The complaint

Ms T has complained about her let property insurer, Ocaso SA, Compania de Seguros y Reaseguros as it has declined her claim for damage caused to her property.

During the course of this decision I'll refer to locations in the property. In using descriptors such as 'right' and 'left', these are said from the view-point of looking at the property from the front.

What happened

In January 2020 the tenants at Ms T's property noticed an issue with the floor in the rear sitting room (on the left) of the property. Investigations revealed that underneath the laminate finishing surface, the concrete was cracked and breaking up. Ms T had an engineer ("J") assess the property. In July 2020 J found no signs of movement or structural instability. But there had been a water leak the year before and it was felt this might have caused voids to occur in the sub-floor material (in place under the concrete). However, J said further investigations would be needed to establish if this was the cause of the damage to the concrete. J also noted heavy gym equipment in use in the room. Ms T had a contractor provide an estimate for repairs. The contractor estimated £5,876 to replace the concrete floor and repair a window in the rear bedroom above the rear sitting room. Ms T made a claim to Ocaso.

Ocaso began considering the matter and a loss adjuster was appointed in late August 2020, attending the property in early September 2020. The adjuster wanted to see evidence such as J's report and whilst he was considering everything Ms T wanted to progress with works. The adjuster agreed but advised the claim wasn't yet accepted and evidence would need to be gathered as work was done. On 22 September Ms T's contractor removed the concrete floor. On 24 September 2020 the contractor told the adjuster that internal structural walls had collapsed and whilst they'd been supported by props, underpinning was required. Photos and video evidence were provided. A building inspector for the local authority visited and determined "*internal subsidence*" had occurred. The contractor issued an estimate for reinstating the property of £28,200.

Subsequently, Ocaso appointed an engineer ("C") to assess the damage. Following consideration of C's findings, Ocaso declined the claim in full. It noted that whilst the floor had been damaged, the walls prior to the excavation, had not been. So it felt the excavation had caused the walls to fail. It said there was an absence of evidence that the damage to the floor had been caused by subsidence or a previous water leak. So it concluded the gym equipment must have caused the damage gradually over time. It noted a policy exclusion for damage which occurs gradually, meaning the claim was declined in full. In reference to concerns Ms T had raised about the tenants not being re-housed, it noted the policy didn't offer cover for this.

Ms T complained to us. In short she said she wanted to be reimbursed for her outlay in completing repairs and that she felt Ocaso had delayed the claim causing her worry and the property to deteriorate.

When the complaint couldn't be resolved, it came to me for assessment. I felt Ocaso should pay for some but not all of the repairs. I issued the following provisional findings:

"Whilst Ocaso has declined the claim as a whole, there are some very different and distinct areas of damage in question. And I think that a couple of areas referenced by Ms T can, reasonably, be quickly dismissed as most likely unrelated to the core damage which was located in the rear sitting room (at the rear left of the property)."

The rear window in the back bedroom (situated above the rear sitting room) is coming away from the wall. Ms T thinks this has or is being caused by the issues in the sitting room. I don't think that is the case. J said there was no sign of movement in the area of the window, just that the window and frame needed localised repair. And Ms T's contractor said the damage was due to the lintel having swollen – again not suggesting the window had moved because of movement to the structure of the home. And I'm also mindful that the rear wall (which contains the rear window) was not in the vicinity of the damaged flooring or damaged internal walls. They were in the front half of the rear room. So I think it's reasonable to conclude that it's most likely that the upper rear window has not been damaged by the same cause affecting the floor and internal walls of the rear sitting room.

There is damage and cracking to the wall between the front right bedroom and the landing. Including significant crack damage above the bedroom door. This is the opposite corner of the house to the rear sitting room and bedroom. Both J and C said the wall is suffering from movement because it has been built on the upper floor, there is no supporting wall on the ground floor. So two experts have come to the same view about this area of damage. And given its location and suggested cause, I think it's fair to say it is most likely unrelated to damage at the rear left of the property.

The damage at the heart of the claim is that to the rear sitting room, but also to the doorway and surrounding (internal) wall of the (rear) bedroom above. Unlike the window in the back bedroom, the damage to the doorway and its surround is directly above some of the key damage in question in the lounge below. The damage in the rear sitting room initially presented as cracking and breaking up of part of the concrete slab. But later the contractor reported and showed photos of brick support walls under the sitting room door to the hall and the internal wall between it and the front sitting room, having failed and fallen away. A building inspector assessed the situation, photos were taken and more of the sub-floor material was removed. Only then did C inspect the property. The contractor gave a view on what had caused this. J didn't complete a further report or offer further comment.

The building inspector felt the structure was unsafe, and has since explained that he didn't issue any notices to that effect because contractors were already on site and dealing with the situation. He referred to there having been 'internal subsidence' due to support walls falling away. But he didn't draw any conclusion as to what might have caused the walls to fall away.

So I'm going to set aside the damaged concrete itself for a minute and concentrate on the damage identified 'post excavation' i.e. the failed support walls which, along with the bedroom wall above, had to be stabilised and reinstated. If these failed due to an event covered by the policy – subsidence or a water leak perhaps, or by some accidental means, then cover might be available. So I've thought about what likely caused the support walls to fail. Only C and the contractor have commented on the cause of the failure of the support walls. I don't think the contractor's view can be given much weight in this respect – I say that not least because an engineer is more appropriately qualified to comment on the cause of structural failure. C believes the support walls failed due to the excavation work completed by the contractor. If I think C's view on this is persuasive, then I'll likely find Ocaso's decline of liability for this damage to be fair and reasonable. That's because "excavation" is not a specific event covered by the policy. There is wider cover for damage caused accidentally but this contains an exclusion for anything caused by faulty workmanship.

Unfortunately for Ms T I think Ocaso's decline is fair and reasonable. I say that because J didn't note any kind of movement to the walls at the property. In fact he specifically said there was no sign of current movement. I think if the support walls below the door and internal wall had failed already – signs of this would have been there in the visible structural parts of the property. The only reference to issues with movement of the walls was made by Ms T's contractor. The contractor made a video to evidence the rear bedroom door wouldn't close. An issue like that might well show the wall and doorframe have moved. And C, reporting after the excavation, does accept that the rear bedroom in this area has been damaged due to the support wall below the rear sitting room door failing. But the video appears to also have been taken after the excavation occurred – although the contractor did say in the commentary that the door had been problematic since they'd been involved. I'm not sure when exactly that is meant to refer to – but I note they were involved soon after J's report – and J found no issue with this area of the rear bedroom. I also must bear in mind that the contractor is not an engineer so he is not considered to be an expert in structural issues. The contractor's comments and views carry some weight, but not as much as those of J and C who are engineers.

In considering whether the foundations were likely damaged before the excavation I've also considered the damaged concrete floor in the rear sitting room. And I don't think the damage to the floor is indicative of failure of the support walls below the internal wall and door. That's because the damage to the floor doesn't extend to the internal wall, with most of the worst damage being towards the centre of the room. There is some damage not far from the doorway. But it seems to me that if the foundations beneath the door were already damaged, one might expect to see symptoms of this in the floor in the immediate vicinity of the doorway, which sees most foot traffic – rather than a few steps inside the room and towards the righthand-side of the door. As was the case here.

So I'm not persuaded that the excavation merely exposed a problem that was most likely already there. The only engineer to view the property before excavation saw no signs of movement and it seems unlikely to me that a fault like this existed without sign of movement until after the fault was exposed. It seems more likely to me that in excavating the sub-floor the support walls were damaged, which caused movement of the internal wall and doors, resulting in readily visible damage.

In short, I find C's view persuasive. I'm satisfied that the support walls were most likely damaged during excavation works. That event isn't covered by the policy, and in terms of accidental damage, I think the exclusion for faulty work reasonably applies. I say that as

I think it's reasonable to conclude that the contractor should have foreseen that removing the sub-floor material might affect the stability of the support walls it was in contact with. So I'm not going to require Ocaso to accept and settle this part of Ms T's claim.

Returning to the damaged concrete slab. This was damaged before work started – so it can't reasonably fall outside the policy or be subject to the exclusion for faulty work as I think the other damage described above does. So I've thought about the cover offered by the policy, and whether Ocaso is, therefore, reasonably liable for the cost to repair the floor. The relevant covers on the policy that need to be considered here are subsidence, escape of water and accidental damage.

Given what I've said above about J not finding signs of subsidence movement at the property, I don't think I can reasonably say Ocaso should be covering the damage to the floor under this section of the policy.

In respect of an escape of water having caused voids in the sub-floor material allowing the concrete to crack – J thought this might be a possible cause of damage. And there is a video which shows a void beneath an area of cracked concrete. So the escape of water section of the policy might apply. J also said use of gym equipment in the area might be having an impact on the floor. Damage like that would only possibly fall for cover under the accidental damage section of the policy. C concurred that the gym equipment might likely be a cause of the floor damage. But regarding water damage C said it wasn't clear how water could cause voids in the material which was free-draining sand.

So both agree that the damage might be being caused by gym equipment. That's not conclusive. But as it's the opinion of two experts, and I've seen nothing from a similar expert challenging it as a possible cause, I think it sufficiently establishes an accidental cause of damage most likely occurred.

But J and C disagree on the point of voids being caused by the previous water leak. I note though that J holds the CEng qualification, and C holds the IEng. A CEng qualification is seen to be the higher of the two, which means that J's is considered to be the more senior opinion. J thought the previous water leak might have caused voids and, as I've said, it's been established there was at least one void in the area of the cracked concrete. I think it's fair to say then that the damage to the concrete was, at least in part, most likely caused by voids in the floor caused by the previous water leak.

Therefore, it seems to me that, on this occasion, there were most likely two causes covered by the policy in effect – escape of water and accidental damage. I think, based on the available evidence as discussed above, it's fair to say the two combined resulted in damage being caused to the concrete floor.

Now I note Ocaso has mentioned the general policy exclusion, that applies to all causes of damage, for damage which occurs gradually. And I think it is fair to say that whether in reference to voids or damage by gym equipment, it is likely the cracking has occurred overtime. Regarding the voids they would have damaged the floor by removing its support, allowing it to crack. That is something that happens gradually. And, in my view, it's reasonable to think that if one instance of using the gym equipment had caused this extensive damage to the concrete, the laminate would also likely have been damaged – which it wasn't. So it seems most likely to me that gradually over time, perhaps by method of vibration or similar, use of the gym equipment damaged the concrete below the laminate,

whilst not affecting the laminate. But the important thing to take from this when thinking about the exclusion for gradual cause is that there was no outwardly visible sign of damage to the floor. The tenants did begin to notice an issue with the floor in January 2020. But as the concrete was breaking up, it stands to reason that much damage had already been done by the time the problem became so bad it was detectable through the laminate. At that time it seems Ms T began investigating the cause and this resulted in her obtaining J's report in July 2020.

This service has a long-standing approach to gradually operating cause exclusions. In short we will only let an insurer rely on an exclusion like this to decline a claim where it seems damage was going on that should have been known about without action being taken to investigate it or forestall further damage from occurring. Here it seems the tenant was unaware of damage to the concrete below the laminate until January 2020. And I've seen nothing to make me think they should have been aware before that there was something going on below the floor's finishing surface. I'm satisfied that once this issue was identified to Ms T she began investigating it, culminating in J's report and the claim to Ocaso. In the circumstances I don't think Ocaso can reasonably rely on the gradually operating cause exclusion to decline Ms T's claim for damage to the concrete.

To settle this aspect of the claim I think Ocaso should pay Ms T £5,552, less two policy excesses, plus interest. This is taken from her contractor's original estimate for works, compiled before excavation began, which totalled £5,876. This detailed work necessary to reinstate the damaged concrete floor slab but also to repair the rear bedroom window. The latter is work that I've said I'm satisfied Ocaso isn't reasonably liable for. The contractor didn't separate out the costs, but Ocaso's loss adjuster noted a copy of the estimate, indicating he thought the window work would cost £324. For supplying a lintel and window as well as fitting them, that doesn't seem an unreasonable figure. So I've deducted it from the estimate's total. The remaining £5,552 is what I consider to be the reasonable cost for repairing the damaged concrete floor. I've said there were two causes of damage and for each cause Ocaso can reasonably deduct the applicable policy excess from the cost to repair. To the sum remaining, Ocaso should add interest*.*

Mrs T has shown me that she began paying for the work in September 2020, and by 20 October 2020, she had made payments equalling a little more than that due for the cost of repairing the floor – which I've found, less the policy excesses, is the amount Ocaso is liable for. I propose to award interest to Mrs T, to be applied on the sum of £5,552 less the policy excesses, from 20 October 2020 until settlement is made.

Ms T has complained that Ocaso didn't look to re-house the tenants. But her policy doesn't cover her for this type of loss, in fact it specifically excludes it.

I appreciate that Ms T feels Ocaso delayed this claim. I know she has constantly expressed worry for the tenants living in unsafe conditions and that delay caused deterioration at the property. But I think there was no evidence of conditions at the property being unsafe until after excavation work occurred. J, in July 2020, said there was no concern about the property's structural stability. The floor was excavated on 22 September 2020 and the contractor told the adjuster at that time that it was believed subsidence had occurred but the property had been supported with props. The adjuster was then waiting for written details from the contractor which weren't received until 2 October 2020. The adjuster then assessed everything and made a report to Ocaso which resulted in it authorising the appointment of C, who visited on 21 October 2020. I understand that a month was a long time for Ms T – but

I don't think it took that long due to unreasonable and avoidable delays caused by Ocaso. The adjuster couldn't reasonably make a full report to Ocaso until all the information was received, and Ocaso then had to consider that. I don't think it took an unreasonably long

time to do so. So I'm not going to award compensation for damage caused to the property,

or for distress and inconvenience, caused by a perceived delay, because I'm satisfied there was no delay.

Whilst I've found Ocaso should pay for the concrete floor repair – I don't think it's declining this damage as part of the whole really caused Ms T any upset in isolation. Rather I think she was generally distressed about the major structural damage being declined. Which I've said I think was fair and reasonable. So I'm not going to award compensation."

Ocaso acknowledged my findings but provided no further response. Ms T made a number of points in reply. I've summarised them as:

- J's report was only based on a visual assessment, it wasn't a full structural inspection and he does note "*some cracking*", and there was a crack in the hallway by the rear living room door.
- The area of damaged concrete runs from the door to the hallway to the other side of the room. It isn't in the center of the room. And the wall the door is on joins the damaged internal wall (between the rear and front sitting rooms). The area of cracking is less than a metre from the rear and front sitting room wall.
- The question to ask is how could the rear and front sitting room wall not have been compromised by the voids.
- The concrete floor could not be repaired without repairing the wall.
- Her contractor is highly experienced and qualified, as can be seen by a letter setting out his expertise and qualifications – it is highly unlikely he did faulty work.
- Ocaso had asked for photo evidence of the damage and it got that on 24 September 2020 – it didn't need to wait for more evidence before arranging to send someone to the property. And after the visit there was a further two-week delay for the report to be written. In the circumstances that was all too long.

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 was aware when making my provisional decision of the nature of J's report. But as I also said provisionally, if the support walls had been damaged at that time, I think it's fair to say that would likely have manifested itself in damage to the general structure of the property, readily visible to an expert. J did note cracks in the internal parts of the ground floor of the property. But his conclusion was:

"[I] found no significant distortion in the main structural elements.....cracking internally....was of small scale and considered likely to be the result of minor factors such as....thermal movement...and so on....[I] found no obvious evidence of recent or continuing movement and saw no grounds for concern over the long term stability of the structure as a whole".

In my view that is quite categoric. I can't reasonably find that an engineer, completing a visual assessment of a property with a view to determining if it is suffering structural damage and whilst stating that very clear conclusion, must most likely have done so whilst missing readily visible cracking suggestive of recent, on-going movement.

From the photos I've seen the area of damaged concrete did not extend into the doorway or up to the wall in which the doorway sits. The damaged area extended towards the other end of the room, roughly in line with the corner of the chimney breast. The room is not that big, so it may be that, in places, the edge of the damaged area was within a metre of the rear and front sitting room wall. But I stand by my assessment that the high-traffic area in the

doorway was not damaged and that the damage was mostly situated towards the centre of the room (running in a line across it towards the chimney breast).

I don't agree with Ms T that the question to answer is 'how could the internal wall not have been damaged'. Rather I have to look at the evidence before me to decide what I think most likely happened. And in a technical case like this that means me relying heavily upon an assessment of the evidence provided by experts. It would be remiss of me to, outside of that evidence, and in respect of a highly technical area, hypothesise about how something could not have happened. I believe I have assessed the evidence available to me to reach a fair and reasonable decision.

I don't doubt that once the walls had suffered damage they had to be repaired. But as I've found the damage to the walls sits outside the policy, due to the faulty workmanship exclusion, it wouldn't be fair and reasonable for me to make Ocaso cover the cost of that work.

The letter Ms T has presented has a logo on it which is similar to that used by her contractor. But the letter contains no business name and no signature or details of the author. The letter refers to the (unknown) author having a Bachelors and an Advanced Technical Certificate in engineering. Ms T thinks this helps show that her contractor couldn't have completed faulty work. But, with regret for any disappointment this causes Ms T, I don't find this evidence very persuasive. This unsigned letter might be from anyone – and the invoices presented by the contractor during the course of the claim are unsigned too. They don't give any detail of any individual and the business name is "[XX] *Building and Plumbing*" – there is nothing to indicate a qualified engineer is involved in the business or works.

What is important for me though is that although I've set out a lot of detail in my provisional decision as to why I think it's reasonable for Ocaso to consider that faulty workmanship occurred – no defence of that has been given. Such as for the contractor to explain what precautions they took or what methodology they applied when undertaking this work, with a view to showing reasonable care was taken. Even without the concerns I've noted with the letter provided, I don't think that being told the contractor had engineering qualifications is enough. Not in light of the evidence of damage and views from J and C. I remain of the view it is reasonable for the faulty workmanship exclusion to be relied upon.

Ocaso, when considering that the floor might have been damaged by voids, did ask for photo evidence of that. But it also asked to be advised if the contractor found anything "*different to that expected*". It was 24 September 2020 when the contractor called it to advise of the damage to the walls and, that this was likely the cause of the damage to the floor. I'm satisfied that, at this time, Ocaso asked the contractor to confirm that in writing. I think that was fair and reasonable in the circumstances – the claim had changed and accordingly so did the view on what evidence was needed to progress it. I accept that a delay at this time was frustrating for Ms T – but I don't think it could reasonably have been avoided.

Putting things right

I require Ocaso to pay Ms T:

- £5,552, less the two applicable policy excesses, plus interest* applied from 20 October 2020 until settlement is made, in full and final settlement of her claim for the damaged concrete floor at her let property.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires Ocaso to take off tax from this interest. It must give Ms T a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold this complaint. I require Ocaso SA, Compania de Seguros y Reaseguros to pay the redress set out above at *"putting things right"*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 27 May 2022.

Fiona Robinson

Ombudsman