

## The complaint

Mr B and Mrs B complain about the handling of a claim under their home insurance policy by their insurer, Ocaso SA, Compania de Seguros y Reaseguros (Ocaso).

## What happened

In July 2019 Mr B and Mrs B noticed water damage to oak flooring at their property, caused by a leak from a dishwasher. They had the leak repaired and contacted Ocaso to make a claim for the damage. Ocaso appointed a loss adjuster (L) and a surveyor (S). S inspected the property and based on their inspection L concluded that the leak came from a feed pipe in the utility room. It had been leaking for some time and had spread across the concrete under the flooring, causing damage in the utility room, kitchen and lounge. To repair the damage would involve replacing the flooring. To allow this, the kitchen would have to be removed and re-fitted, together with replacement of skirting board and redecoration of walls.

Mr B and Mrs B decided to purchase replacement flooring themselves, and this was reimbursed (£4,213). Separate interim payments were made in respect of estimated costs of redecoration (£3,802) as Mr B and Mrs B said they wanted to do this themselves and skirting boards (£379). The replacement flooring was subsequently fitted by a sub-contractor (C) in July 2020. During the fitting Mr B and Mrs B raised concerns about the quality of the work by C, who asked for a 'snagging list' of issues from Mr B and Mrs B. The list was approved so the issues could be resolved.

Before this could happen, Mr B and Mrs B noticed the floor was 'cupping' and also raised concerns that a liquid damp proof membrane didn't appear to have been applied to the flooring as the specification for the repair work required. Ocaso initially said the issue was due to the flooring provided by Mr B and Mrs B not being treated – but they provided evidence this wasn't the case.

Unhappy with the issues that had arisen, Mr B and Mrs B appointed their own loss adjuster (A) in January 2021. He drew up a schedule of reinstatement work he assessed to be required to resolve the outstanding issues (totalling £22,855).

In April 2021 the flooring was inspected by an independent flooring expert appointed by Mr B and Mrs B (with L and S present). The expert concluded the flooring had been incorrectly laid, without moisture suppressants. As a result, the flooring had cupped and would need to be replaced, together with application of the correct waterproof membrane. The cost of the expert report (£600) was reimbursed to Mr B and Mrs B.

Unhappy at the issues that had arisen and the time being taken to resolve them and complete the reinstatement work, Mr B and Mrs B complained to Ocaso. In their final response in July 2021 they offered three alternatives to resolve the situation, being either:

- Option A: a cash settlement of £8,956;
- Option B: the work be passed to Ocaso's national flooring specialist for them to complete the rectification work in full; or
- Option C: the original contractor (C) carry out the rectification

Ocaso appreciated that while their preferred option was Option C, given the concerns Mr B and Mrs B had about C then Option B would be their (Ocaso's) preference. Ocaso also considered various additional items Mr B and Mrs B said should be included in settlement of the claim, but concluded these either weren't necessary under the claim, or the cost had been included in the cash settlement offer.

Mr B and Mrs B then complained to this service, unhappy at how their claim had been handled, the time taken to carry out reinstatement work and the problems that had arisen. They asked for a cash settlement to enable them to complete the reinstatement work, based on the estimate provided by A (£22,855). They also wanted the costs of additional items not included in A's estimate to be included in settlement of the claim.

Our investigator upheld the complaint, concluding Ocaso needed to do more to put things right. He thought the reinstatement work had taken too long (even allowing for the impact of the Covid pandemic) and it was clear the flooring hadn't been replaced properly, given the issues that arose and the flooring expert's findings. On the options provided by Ocaso to resolve the situation, the investigator wasn't sure why there was such a big difference between the Ocaso's cash settlement figure and A's estimate. But he thought the former didn't include the cost of fully rectifying the issues, so Ocaso's figure would need re-visiting.

While understanding Mr B and Mrs B's reservations, the investigator thought the option of using C to complete the repair work was reasonable, as was the option for Mr B and Mrs B to appoint their own contractor to complete the work. He also felt that there were some additional items that should be added to the snagging list to be fixed and that Ocaso should reimburse Mr B and Mrs B for the cost of their loss adjuster's report. Given the length of time the reinstatement work had taken, and the inconvenience caused to Mr B and Mrs B he thought Ocaso should pay £500 in compensation.

Mr B and Mrs B disagreed with the investigator's conclusions and requested an ombudsman review the complaint. They still maintained the figure of £22,855 from their loss adjuster didn't include additional costs they thought should be covered. These included: the cost of alternative accommodation while the reinstatement work was being carried out (which they estimated at £2,030); damage to their front door (£1,400); the cost of redecoration they'd had to carry out given the length of time the work had been ongoing (£3,802); and the cost of their loss adjuster (which would be 10% of the total cost of the claim). They also thought £500 in compensation wasn't enough for the distress and inconvenience they'd suffered, including unprofessional behaviour by the contractors (C). They restated their view that they should be given a cash settlement instead of C completing the repairs.

In my findings, I noted the time that had elapsed during this case, together with Mr B and Mrs B's clear desire to bring matters to a conclusion. So, I sought to arrive at an outcome I thought would be fair and reasonable for both parties. But also one that would minimise the scope for further delays and enable matters to be drawn to a swift conclusion.

On the main issues in the complaint, with respect to the reinstatement work needed to fix the issues with the flooring, given what had happened I concluded a cash settlement would be a reasonable way to settle the claim (as it was one of Ocaso's options and was also the clear preference of Mr B and Mrs B). Given the difference between the cash settlement figures from Ocaso and from A two figures, bearing in mind the length of time from the original incident, then I think a fair and reasonable outcome would be to base a cash settlement figure on the average of the two estimates (as adjusted to make them comparable). I calculated that figure as £18,012.

On the question of other costs raised by Mr B and Mrs B, on alternative accommodation I thought it was fair and reasonable to include a figure based on Mr B and Mrs B's estimate (£2,030) as part of the settlement.

On the question of damage to the front door, I didn't think a new door would be required as the damage appeared aesthetic. So, I didn't think Ocaso needed to do anything more.

On the issue of damage to a fridge freeze, I thought the dent appeared to be minor so I didn't think it should mean the whole fridge-freezer being replaced. But I thought a nominal amount should be included as part of the compensation for distress and inconvenience.

On the point about the cost of redecoration. Mr B and Mrs B said they redecorated due to the long period the claim had been outstanding, so the cost needs to be included. However, I also saw separate evidence that this sum was included (alongside a sum in respect of skirting boards) as part of an interim payment of £4,182 made to Mr B and Mrs B. If that's the case (unless there's other evidence to show the payment wasn't made) then I thought it had already been covered. Given the uncertainty (and what Mr B and Mrs B have said) I asked them and Ocaso to respond specifically on this point before I made my final decision.

On the need for replacement and painting of the skirting boards (and doors) Mr B and Mrs B said it was included in A's estimate. But Ocaso said the skirting boards weren't damaged and that removal and refitting is standard industry practice in reinstatement work of this type. Also, their cash settlement offer includes an element for removal and refitting. Given what I concluded would be a fair and reasonable outcome on the cash settlement issue, I didn't think there was anything specific that I should include on this point (nor require any further action by Ocaso).

I also considered the issue of the fee for Mr B and Mrs B's loss adjuster (A). Mr B and Mrs B said this is calculated on the basis of 10% of the total value of the claim. Ocaso didn't make any reference to this element in their final response. I thought about what would be reasonable in the circumstances of the case. I thought it was reasonable for Mr B and Mrs B to engage their own loss adjuster and, given this, I thought it reasonable for A's fee to be considered as part of the settlement I was proposing. I thought a fair outcome would be (if A's fee is levied at the rate of 10%) a 50:50 split between Mr B and Mrs B and Ocaso, based on the settlement figure for reinstatement I calculated (£18,012). Assuming a 10% rate, that would indicate a fee of £1,801 (say £1,800). A 50:50 split would mean Ocaso reimbursing £900.

Having reached these conclusions on each of the main issues within Mr B and Mrs B's complaint, I considered the issue of compensation for the stress and inconvenience to Mr B and Mrs B. Our investigator thought £500 was reasonable compensation for the distress and inconvenience. But having thought about all the circumstances of the case, I concluded that a higher sum would be fair. Having done so, I thought £800 would be fair and reasonable. Because I reached different conclusions to our investigator and was proposing what I thought would be a fair and reasonable outcome to the case, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'd first want to say to Mr B and Mrs B that I appreciate the impact that their experience has had on them and their family, given the claim has been ongoing for over two and a half years from the incident that caused the damage. I also appreciate the impact of having to live in the property over the period, which would have been stressful. I also sympathise with the*

impact on Mrs B's health described to us when making their complaint. I'm also aware that Mr B and Mrs B's family circumstances have changed, and they are looking to move from the property. I've borne this in mind when deciding whether Ocaso have acted fairly towards Mr B and Mrs B.

Given the length of time that's elapsed during this case, together with Mr B and Mrs B's clear desire to bring matters to a conclusion, I've sought to arrive at an outcome I think is fair and reasonable for both them and for Ocaso, but also one that seeks to minimise the scope for further delays and would enable matters to be drawn to a swift conclusion.

Coming back to the issues in Mr B and Mrs B's complaint, there are several main elements, which I'll consider in turn.

First, there's the issue of the reinstatement work required. From the evidence it's clear the original reinstatement work wasn't carried out properly, leading to the replacement floor 'cupping' because the necessary moisture suppressant hadn't been applied. That's clearly down to the sub-contractor. So, the issue is what needs to happen to make good the flooring, to return the property to how it was before the incident. Mr B and Mrs B have clearly stated their preference for a cash settlement to enable them to carry out the necessary reinstatement work (perhaps through a contractor overseen by A). Given what's happened (including concerns and complaints they made about C) I think that's understandable. It's also one of the three options provided by Ocaso in their final response. So, the issue then is what would be a fair and reasonable cash settlement.

Looking at the figures, there's a significant difference between Ocaso's offer (£8,955) and the estimate from A (£22,855). Looking at the breakdown of both figures, while some of the detail is consistent (for example, the floor areas of the rooms needing reinstatement) what differs significantly are some of the costs. From what I can see, a significant part of this relates to the flooring itself (as opposed to the work to remove and fit the new flooring). I can't see that Ocaso's figure includes a cost for the flooring itself, whereas A's estimate does. When the reinstatement work was first carried out, S's original estimate also excluded the cost of flooring as this was purchased directly by Mr B and Mrs B (at a cost of £4,213). Assuming that new flooring will be required for the current reinstatement, then I think this needs to be added to Ocaso's cash settlement figure. While the cost of flooring may now be different from that originally purchased by Mr B and Mrs B, adding the same original cost (£4,213) to Ocaso's cash settlement offer (£8,956) would give a figure of £13,169. But this would still be significantly less than A's estimate.

Given the difference between the two figures, bearing in mind the length of time from the original incident, then I think a fair and reasonable outcome would be to base a cash settlement figure on the average of the two estimates. That would be £18,012.

Having considered what would be a fair and reasonable cash settlement offer, I've also thought about the points raised by Mr B and Mrs B about other costs they don't think are covered in A's estimate (nor Ocaso's cash settlement offer).

The first point relates to alternative accommodation. Mr B and Mrs B say that they would need to move out of the property while the reinstatement work is carried out (given the impact on the kitchen and living areas affected by the work). This isn't something that was covered in Ocaso's final response. Mr B and Mrs B have provided their own estimate of what they think would be the cost of rented accommodation in their area for the estimated two week period the reinstatement work is thought to take (£2,030 based on 14 nights at £145 a night). While this issue hasn't been considered by Ocaso, given the length of time the claim has been ongoing then I think Mr B and Mrs B's estimate is reasonable, so I think including it within the settlement I'm proposing would be fair.

*The second point relates to damage to the front door at the property, which Mr B and Mrs B says was caused (by C) due to flooring primer during the original reinstatement work. Ocaso dispute that the door was damaged. Mr B and Mrs B have provided photographs of the damage, looking at them there is marking to the door frame. Mr B and Mrs B say they haven't been able to remove it despite trying various cleaning agents. However, while the marking is visible, I don't think it requires a new door, particularly as the damage appears to be aesthetic. So, I'm not going to require Ocaso to do anything more on this point.*

*Similarly, Mr B and Mrs B say that a fridge freezer was dented while being moved by C during the original reinstatement work. Again, they've provided photographs of the dent. Looking at the photographs, together with Mr B and Mrs B's version of how the dent happened, I don't doubt what they've said. But the dent appears to be minor, so I don't think it should mean the whole fridge-freezer being replaced. I think a nominal amount should be included as part of the compensation for distress and inconvenience, which I'll consider later.*

*The third point relates to the cost of redecoration. Mr B and Mrs B say they have redecorated due to the long period the claim has been outstanding, so the cost needs to be included. They refer to the original cost of redecoration provided by S (separate to the main reinstatement work) of £3,802. I've seen that estimate, which is separate. However, I've also seen separate evidence that this sum was included (alongside a sum in respect of skirting boards) as part of an interim payment of £4,182 made to Mr B and Mrs B. If that's the case (unless there's other evidence to show the payment wasn't made) then I think it's already been covered. Given the uncertainty (and what Mr B and Mrs B have said) I would like them (and Ocaso) to respond specifically on this point before I make my final decision.*

*The fourth point relates to replacement and painting of the skirting boards (and doors) as part of the snagging list. Mr B and Mrs B say it's included in A's estimate. In their final response, Ocaso say the skirting boards aren't damaged (nor would have been when removed and refitted during the original reinstatement work) and that removal and refitting is standard industry practice in reinstatement work of this type. Also, their cash settlement offer includes an element for removal and refitting. In considering both views, I've also noted the point above about the inclusion of an element for skirting boards in one of the interim payments (assuming it was made). However, given what I've concluded would be a fair and reasonable outcome on the cash settlement issue, I don't think there's anything specific that I should include on this point (nor require any further action by Ocaso).*

*The fifth point relates to the fee for Mr B and Mrs B's loss adjuster (A). Mr B and Mrs B say this is calculated on the basis of 10% of the total value of the claim. Ocaso haven't made any reference to this element in their final response. I've thought about what would be reasonable in the circumstances of the case. I've noted the fee for the flooring expert's report (£600) was reimbursed by Ocaso. Similarly, I think it was reasonable for Mr B and Mrs B to engage their own loss adjuster given their doubts over Ocaso's estimate, to provide a second opinion on the reinstatement work required (and its cost) While I'm not proposing to require Ocaso should make a cash settlement based on A's estimate, as I'm proposing the cash settlement should be based on the average of Ocaso and A's estimates, I think it's reasonable for A's fee to be considered as part of the settlement I'm proposing. I think a fair outcome would be (if A's fee is levied at the rate of 10%) to be split 50:50 between Mr B and Mrs B and Ocaso, based on the settlement figure for reinstatement I've calculated above (£18,012). Assuming a 10% rate, that would indicate a fee of £1,801 (say £1,800). A 50:50 split would mean Ocaso reimbursing £900.*

*Having reached these conclusions on each of the main issues within Mr B and Mrs B's complaint, I've thought about the other issue raised by Mr B and Mrs B, that of compensation for the stress and inconvenience caused by the delays in their claim and the issues that*

*arose with the quality of the work on the initial reinstatement. Mr B and Mrs B have also provided evidence of their unhappiness with how Ocaso have dealt with the claim and the issues arising, as well as specific concerns about how they were treated by both S and C. I've also considered the length of time from the date of the leak (July 2019). It took a year for the reinstatement work to commence. While some of the delay can be attributed to the impact of the Covid pandemic and the restrictions brought in in response, that wouldn't explain why the reinstatement work didn't start in the eight months from the leak to the first national lockdown in March 2020.*

*I've also considered other factors, including Ocaso initially seeking to attribute the problems with 'cupping' to the flooring purchased by Mr B and Mrs B (which wasn't the case). Also, that Mr B and Mrs B had to engage a flooring expert to show that the problems were down to poor installation by C, as well as engaging their own loss adjuster. Together, all these factors meant that two years elapsed between the leak and Ocaso's final response (and Mr and Mrs B bringing their complaint to this service). For a reinstatement job that should have taken around a fortnight to complete.*

*Our investigator thought £500 was reasonable compensation for the distress and inconvenience, but Mr B and Mrs B don't think this is sufficient for what they've experienced. I agree. I've thought about all the circumstances of the case and I've concluded that a higher sum would be fair. Having done so, I think £800 would be fair and reasonable.*

#### *My provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Mr B and Mrs B's complaint. I intend to require Ocaso SA, Compania de Seguros y Reaseguros to:*

- Settle Mr B and Mrs B's claim by a cash settlement of £18,012 based on the average of Ocaso's adjusted offer (£13,196) and A's estimate (£22,855).*
- Pay Mr B and Mrs B £2,030 in respect of the estimated cost of alternative accommodation during the reinstatement work.*
- Pay £900 towards the fee from Mr B and Mrs B's loss adjuster (being 50% of the assumed 10% fee on a settlement figure of £18,012).*
- Pay Mr B and Mrs B £800 in 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 Mr B and Mrs B accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.*

Mr B and Mrs B responded, specifically on the issue of redecoration as I'd requested in the provisional decision. They confirmed they received an interim payment of £4,182 as part of their initial claim, to cover the cost of redecorating, including replacing the skirting boards. Given the delay in rectifying the faulty flooring, they said they'd already used the £4,182 to replace the skirting boards and redecorate. Given this, they said that when the faulty flooring is replaced and the new skirting boards removed, damage would be caused to the walls and paintwork, meaning redecoration would again be needed. They thought it wasn't reasonable for them to have to pay the cost of further redecoration, so the cost (£3,802) should be part of any settlement.

Ocaso responded to acknowledge receipt of the provisional decision. Our investigator asked Ocaso to respond substantively by the date requested in the provisional decision, but a response wasn't received.

## **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.

My role here is to decide whether Ocaso have acted fairly towards Mr B and Mrs B.

As Ocaso haven't provided a substantive response, the only response for me to consider is that from Mr B and Mrs B on the issue of redecoration. I've considered their response carefully. But I'm not persuaded I need to include an additional element in the settlement. I say that for two reasons. First, I've considered Ocaso's points about the need for new skirting boards and I think it's reasonable that (with care) as they're relatively new, they can be removed and reinstated as part of the work to replace the flooring.

Secondly, I've looked again at A's estimate for the cost of reinstatement (which I've used along with Ocaso's estimate as the basis for calculating what I think is a fair and reasonable cash settlement). I can see it includes items that appear to be redecoration. For example, priming, undercoat and gloss of new surfaces, and the existing door and window in the hallway (and landing). And coat of emulsion to existing surfaces in the stairway. Taken together, I'm not persuaded it's reasonable to include a further element of the settlement for redecoration. So, I haven't changed my view on this point.

## **My final decision**

For the reasons set out above, it's my final decision to uphold Mr B and Mrs B's complaint. I require Ocaso SA, Compania de Seguros y Reaseguros to:

- Settle Mr B and Mrs B's claim by a cash settlement of £18,012 based on the average of Ocaso's adjusted offer (£13,196) and A's estimate (£22,855).
- Pay Mr B and Mrs B £2,030 in respect of the estimated cost of alternative accommodation during the reinstatement work.
- Pay £900 towards the fee from Mr B and Mrs B's loss adjuster (being 50% of the assumed 10% fee on a settlement figure of £18,012).
- Pay Mr B and Mrs B £800 in 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 them Mr B and Mrs B accepts my final decision. If they pay later than this, they 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 Mr B and Mrs B to accept or reject my decision before 21 July 2022.

Paul King  
**Ombudsman**