

The complaint

E complains about the way Ocaso SA, Compania de Seguros y Reaseguros dealt with a claim on a property insurance policy.

When I refer to Ocaso, that includes its agents and claims handlers acting on its behalf.

What happened

E is the leasehold owner of a flat which was let to tenants. The building is insured through an insurance policy underwritten by Ocaso. The freehold owner of the building is the policyholder but E is able to claim for certain perils relating to the flat.

In August 2021 E contacted Ocaso to make a claim in respect of water damage to the flat after a flooding incident. Ocaso says it asked for information about the cause of the damage and as it hadn't received anything by October, closed the claim.

The freeholder emailed E on 1 February 2022 confirming the property was covered for accidental damage. It advised E the claim had been closed due to lack of contact and recommended that E contact Ocaso again to reopen the claim.

Ocaso reopened the claim but didn't progress with it, saying it still needed to know about external work done by the freeholder.

Ocaso asked E if the external issue had been resolved and how they would like to proceed, saying if the external work had been completed it could arrange for contractors to visit or appoint an inspector to carry out a survey relating to the internal work needed in E's flat; or if E wished to appoint its own contractors, it should provide two quotes for Ocaso to consider.

E told Ocaso the external issue had not yet been repaired. Ocaso said it would arrange an inspection once the leak was repaired. The status of claim recorded by Ocaso was that it was awaiting confirmation of the repair and would then arrange an inspection.

E reported a further incident of flooding to the freeholder on 1 March 2022.

In May 2022 Ocaso spoke to E's representative, apologised for the delay getting back to him and asked if the work was now completed. Ocaso advised the representative he should send everything relating to the work. But when E provided details of the work it wanted to claim for Ocaso rejected the claim, saying work had been carried out without authorisation, in breach of the policy terms.

Our investigator initially thought Ocaso's decision was reasonable but after considering further information from E he was persuaded that E was told the claim wouldn't be covered and had done some repair work before being told the claim would be reopened. He didn't think it was fair to reject the claim on the grounds that work had been done without authorisation in these circumstances.

He asked Ocaso to reconsider the claim in line with the policy terms, and said if it considered there was another reason to reject the claim it should explain that to E.

The investigator also asked Ocaso to pay compensation of £300 for the inconvenience caused to E by the delays in dealing with the claim.

Ocaso disagreed and requested an ombudsman's decision.

I issued a provisional decision saying I intended to uphold the complaint but with a different remedy from that proposed by the investigator. I set out my reasons as follows:

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides cover for flood damage and for accidental damage, which is defined as "Damage which has not been caused on purpose by external and visible means." Where a claim is covered, Ocaso will pay "the cost of repairing or replacing the damaged parts of the buildings, including fees and other costs."

Ocaso rejected the claim relying on the following exclusion:

"You must not admit, settle, reject, negotiate or promise to pay any claim without our written permission. We will not unreasonably hold back our permission."

This term refers to admitting, settling or negotiating a claim, or promising to pay a claim, without Ocaso's consent. So this relates to negotiating or agreeing to pay claims being made against the policyholder (which might be covered under a different section of the policy). It's not clear how this would relate to a claim for damage to the property – where E wouldn't be negotiating or settling a claim. I don't think it's fair for Ocaso to reject the claim relying on this term, which doesn't apply in these circumstances.

Having said that, Ocaso hasn't been able to inspect and authorise the work. While on the face of it this was a valid claim, Ocaso would normally assess what repair work would be needed before either arranging the work itself or authorising E to arrange the work. That didn't happen here. I appreciate E's frustration at having to wait for the claim to be considered but on the other hand, it didn't let Ocaso know what it was doing or seek any authority. E says that's because it had been told the claim wasn't going to be covered. But Ocaso's notes don't reflect that – it says it was simply waiting to hear from E once the freeholder had dealt with any external repairs needed to the building.

Ocaso says it was waiting for information about work done by the freeholder but it didn't contact the freeholder at all (even though the freeholder was the policyholder). It could have done more to assist with the claim rather than sitting back and taking no action. When E corresponded with the freeholder it got in touch with Ocaso and the claim was reopened. If Ocaso had assisted with the claim and contacted the freeholder that may have happened much sooner.

There was poor communication between the three parties involved – E, Ocaso and the freeholder. I don't think it fair to say E is solely responsible for that. There were delays that could have been avoided if Ocaso had dealt with the claim in line with its obligations to act promptly and fairly, to provide reasonable guidance to help make a claim, and provide appropriate information on its progress.

It's not entirely clear when all of the work was done. Some was carried out in January 2022 but more work was done after a further incident in February. The survey E commissioned refers to widespread issues with rising damp. It's possible some of it may not be covered, if it

relates to rising damp rather than flooding or accidental damage. Some of the work relates to the kitchen, which wasn't reported to Ocaso as being damaged at the time (the damage being in two bedrooms). And Ocaso says some of the work amounts to betterment - improving the property rather than simply repairing damage - which again wouldn't be covered.

The investigator asked Ocaso to reconsider the claim. If the claim is covered, and the issue is the extent and nature of the works, I agree it would be fair to reconsider. But I don't think that requires a reconsideration of the policy terms. If the work had been considered properly before being carried out, Ocaso would have assessed what work was needed and authorised that. So what's needed is a review of the work itself rather than a review of whether the claim is covered in principle.

I think the fair way to resolve this is to appoint a loss adjuster. Ocaso may say it has been prejudiced by E's actions. and I know a loss adjuster would not be able inspect the damage itself. But they would be able to consider the photos, the survey E commissioned, the details of work done and the invoices for that work. They would then be able to give an opinion on how much of the work was necessary and related to repairing damage caused by the flooding.

Ocaso's explanation for rejecting the claim was that E had work done without authorisation and it had nothing to validate the works – it felt the need to have an adjuster validate the claim. That does seem a reasonable way to resolve the matter. As I've explained, although there are limitations on the information available, there is evidence a loss adjuster could use to validate the claim.

Once the loss adjuster has done this Ocaso should then settle the claim in line with the loss adjuster's recommendations.

Finally, I agree there was some delay that could have been avoided. And this would have caused some inconvenience for E, being diverted away from normal business matters to deal with this. I agree £300 is a reasonable amount to acknowledge the inconvenience E was caused.

Replies to the provisional decision

E replied to say it had no further comments to add.

Ocaso provided some further comments, including:

- the majority of the delay was due to E's actions and it had no contact from E for six months;
- if it appointed a loss adjuster, it would be very difficult for them to confirm the original cause of the problem due to the time that has passed since it happened;
- it hasn't had confirmation that the cause has been fixed, or how long things were left before E carried out the work, so can't say if E took reasonable steps to mitigate the loss; and
- E went ahead with work at a high cost and some of the work amounts to betterment.

After considering the further comments I explained to both E and Ocaso that I was still minded to uphold the complaint but intended to change my recommendations, as follows:

- It remained my view that a loss adjuster can assess the work that has been carried out by reviewing all the information that is available.
- The loss adjuster can give their opinion on how much of the work was related to the flooding incident and covered by the policy, and on what would be a reasonable amount to pay for that work.

- They will be able to say if they consider any of the work is not covered by the policy and it would not be reasonable for Ocaso to pay for it, or if any of the amounts claimed for the cost of the work are unreasonable or not supported by the evidence.
- Rather than directing Ocaso to obtain the loss adjuster's opinion and then pay the claim, I now propose to direct that it reconsider the claim by appointing a loss adjuster to assess the work carried out and validate the claim. In this way, if there's any disagreement about the amount to be paid after considering the loss adjuster's opinion, that can be considered further, potentially as a new complaint if no agreement can be reached.

E says it accepts this proposal. Ocaso says it is happy to appoint a loss adjuster to validate the works carried out, though this may lead to another complaint as it's unlikely it will cover all of the work E wants to claim for.

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.

It remains my view that the complaint should be upheld and as both parties accept the proposal put forward there is an agreed way to resolve the complaint.

The loss adjuster can review all the available information – including the policy wording, photos of the damage, the report E obtained, details of the work that was done and the invoices showing what was charged. Based on their review of the evidence they can give their expert opinion on the work carried out – how much of it was to correct the damage caused by the flooding incident, and would be reasonable for Ocaso to cover.

It's for the insured to prove their claim and so E will need to provide documents showing what was done and what the cost was.

If the loss adjuster considers any of the work is not covered by the policy and it would not be reasonable for Ocaso to pay for it, they will be able to explain this. Likewise, if they consider any of the amounts claimed for the cost of the work are unreasonable or not supported by the evidence, they can say that too.

I appreciate this might lead to a further dispute about how much should be paid. But as there hasn't to date been an assessment of the work, it's reasonable to do that and then allow E to comment. Hopefully an agreement can be reached about the amount to be paid but if things can't be resolved at that point it would be open to E to make a further complaint.

It also remains my view that £300 is a fair amount to pay to recognise the inconvenience E was put to.

My final decision

I uphold the complaint and direct Ocaso SA, Compania de Seguros y Reaseguros to:

- reconsider the claim by appointing a loss adjuster to assess the work carried out by E and validate the claim; and
- pay compensation of £300 for the inconvenience caused to E.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 10 November 2023.

Peter Whiteley
Ombudsman