

The complaint

Mrs S complains about Ocaso SA, Compania de Seguros y Reaseguros' ("Ocaso") handling of her claim under her home insurance policy.

Mrs S' complaint has been brought by a representative who I'll refer to as company K.

What happened

The background to this complaint is well known to the parties, so I won't go into too much detail but will summarise the key points. Following an escape of water incident, which involved water leaking from the flat above, Mrs S made a claim to Ocaso and appointed company K as a loss assessor to act on her behalf. Ocaso appointed a loss adjuster – who I'll refer to as company D – to manage the claim. Following the incident and during the claim, Mrs S was living in alternative accommodation ("AA"), which she'd found. It was agreed between the parties that Ocaso would settle the claim by way of cash settlement for the drying and reinstatement works, as well as the AA. Ocaso paid a total of £53,798.58 which was broken down as £13,998.58 for the building works and £39,800 for AA costs. Company K raised two complaints during the claim, the first complaint was about the delay in progressing the claim and lack of updates provided. The second complaint was about Ocaso not paying the additional AA costs incurred by Mrs S due to their delay in paying her the cash settlement.

Company D responded on behalf of Ocaso and accepted there had been delays and a lack of communication and offered £250 compensation. In relation to the complaint about the AA costs, they said they'd given approval for Mrs S to commence the works, but she'd chosen not to arrange this. Company D said, given Mrs S' contractor had suggested they could complete the work by end of September 2022, this is the date Ocaso were prepared to cover up to in relation to the AA costs. They accepted they'd made an error in not requesting a Final Offer of Acceptance ("FOA") form sooner and offered £100 compensation.

Our investigator looked into things for Mrs S. He agreed the £350 compensation offered was reasonable, but he recommended Ocaso pay the additional AA costs incurred by Mrs S. Ocaso disagreed so the matter has come to me for a 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've decided to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. There's no dispute between the parties about there being delay in progressing the claim and the lack of contact with company K. There's doesn't appear to be any dispute about the compensation being offered for this part of the complaint. Having

looked through the information and taking into account the impact on Mrs S and the period over which this impacted her, I think the £350 compensation offered is fair and reasonable in the circumstances.

The dispute here relates to the period that's being covered by Ocaso in relation to the AA costs. Ocaso have paid £39,800 towards the AA costs, and this covers the period between the date of the incident on 16 March 2022 to 30 September 2022. I can see Ocaso believe 30 September 2022 should be a cut off point for their responsibility towards AA costs as the work should've been completed by this point.

The information shows company K instructed a contractor to prepare a schedule of works for reinstatement and they estimated it would take between six to eight weeks to complete. Company D felt the quote was too high, so they instructed their own surveyor in June 2022 to prepare a schedule of works for reinstatement. At the end of July, company K emailed company D and confirmed Mrs S would prefer to instruct her own contractors to carry out the work – and they confirmed Mrs S' contractor had given an estimated completion date of 30 September. At this point, company K asked for an interim payment to cover the costs for AA and for the drying and reinstatement work. Company D responded and gave their approval for Mrs S to proceed with the building works. Later the same day, company K emailed company D again asking for an interim payment for the works. The surveyor instructed by company D then provided their report and cost estimate at the start of August.

A few days later, company K then chased company D for an update on the interim payment and about a week later company K sent company D an invoice for the AA costs up to 9 August. Just over a week later, company D prepared an interim payment report making a recommendation for a payment in the sum of £13,988.58 for the drying and reinstatement works which they said had been agreed with Mrs S and company K. This report was sent internally for review. A week later company K chased for an update on the interim payment and company D responded around three weeks later and explained they'll get the AA payment processed. Company K then emailed company D the same day and said, *"Please also send the cost for drying plus reinstatement so the insured can proceed with the works."*

Then on 21 September, company D sent their interim report to Ocaso recommending a payment of £13,988.58. This was followed by a final report two days later recommending a payment of £29,400 for the AA costs up to 9 August. Company K chased company D on 30 September and again on 7 October for an update on the payment. Company D chased Ocaso on 20 October and they responded the following day requesting additional information, which included a signed FOA. Company D then started sending some of the information on 2 November and Ocaso contacted company D again on 3 November asking for the signed FOA. Company D then sent the FOA to company K on 11 November asking for it to be signed. Company K then raised a query about the settlement as they said Mrs S is still incurring AA costs which haven't been factored into the settlement.

An internal email was sent by company D which said Ocaso aren't authorising payments until the FOA is signed and sent to them. Company K then emailed company D with a second invoice for AA. Company K said they'll need about six weeks to complete the work, so they expect there to be further AA costs. Company D emailed company K and said they're surprised the works aren't yet completed and that is down to Mrs S' choice. They said they gave approval for company K to proceed with the works at the end of July. They referred to company K's email saying their contractor had given a completion date of 30 September. They said, allowing for drying, they feel 30 September is a realistic cut off point had company D's contractor completed the work. Company D said they have no offer to make beyond this point. They said they've requested a payment up to 9 August and will calculate the cost for the remaining 22 days in August and 30 days in September. Company K emailed company D and said it wasn't Mrs S' choice as

she still hasn't received the funds. Company K said the contractor required the deposit before proceeding and Mrs S was waiting for the funds. Company K asked when the funds will be transferred. A week later, company K chased company D for a response.

No progressive action was then taken for around four weeks, until 16 January 2023 when company D submitted a supplementary report to Ocaso. They explained that Mrs S remains in AA and the payment previously recommended was up to and including 9 August 2022 which they said clearly wasn't adequate enough to allow for both the drying and reinstatement. Company D said they received an email from company K to say the works would be completed by 30 September which company D didn't feel was unrealistic. Company D said they therefore calculate that a further 52 days in AA at a total of £10,400 is justified. Company D enclosed an invoice relating to this period although they said the AA extends beyond this date, up to the end of November 2022. Company D said it's their understanding that these works have still not been completed. They said, in their opinion, there's no reason why the works couldn't have been completed by 30 September so no payment beyond this point should be considered.

There were then internal emails at company D saying they've arranged to send another FOA to company K but don't believe this will be signed as Mrs S is claiming for further AA costs – and Ocaso won't release the funds without this, which means Mrs S can't start the works. In the email from an internal department at company D, they recognised the costs of AA are accruing and note, "*The funds really need to be released asap mandate or not.*" Company D then raised the issue about accruing AA costs with Ocaso and the outstanding payments and asked them how they wished to proceed. Ocaso then emailed on 24 January confirming the payments of £13,998.58, £29,400 and £10,400 to Mrs S are authorised. Ocaso said, in addition, they need the invoices and FOA.

There were then internal emails between departments at company D where they acknowledged Ocaso's authorisation, but they recognised Ocaso may not be aware the FOA hasn't been signed so they've held back on the payment being raised until they have confirmation that they can raise the payment irrespective of a signed FOA. Company D then emailed Ocaso and said the FOA hasn't been signed yet and won't be signed by Mrs S due to a disagreement in the settlement and limit of liability and asked if they're still happy for company D to raise the payment following Ocaso's authorisation. Company D said, as the funds haven't been released yet, Mrs S is accumulating additional AA costs. Ocaso responded on 26 January and confirmed the funds have been authorised to be released to avoid any more AA costs. They said that, in addition to the release of the payments, they will need to have the FOA from Mrs S as soon as company D are able to obtain it. A payment of £53,798.58 is then made on 9 February – and at this point this was without receipt of a signed FOA.

Taking this all into account, I don't think it's fair in the circumstances for Ocaso to limit their responsibility for the AA costs up to 30 September 2022. I say this because, by covering Mrs S' AA costs up to 30 September, it's clear Ocaso accept Mrs S' property was uninhabitable. So, that being the case, and given that no works had been carried out by 30 September, I think it's fair to say Mrs S' property remained uninhabitable. I acknowledge that, towards the end of July 2022, company D gave company K approval for the works to commence with Mrs S using her own contractor. But the information shows the cash settlement – which included an amount for the reinstatement works – wasn't paid until 9 February 2023.

The information also shows that company K explained Mrs S' contractor required a deposit before starting the work. So, I don't think it was unreasonable for Mrs S not to have instructed her contractor to start the work until she'd received the cash settlement payment towards these works. The information also shows that, following company D giving their

approval towards the end of July 2022, company K request an interim payment on a number of occasions. For example, they ask on 29 July 2022, 4 August, 26 August, and again on 15 September when they say, *"Please also send the cost for drying plus reinstatement so the insured can proceed with the works."* I think this email makes it clear the works hadn't started, and won't start, until Mrs S receives the cash settlement towards this.

The cash settlement isn't paid until 9 February 2023 and the information I've seen shows there were two reasons for this. Firstly, there's been delay by Ocaso and company D. For example, I can see company D's surveyor submits their report and estimated costs to company D on 1 August 2022, and company D then prepare their interim payment report and sent this internally for review on 19 August. It's not clear from the information why this took over two weeks to prepare. Then the interim payment report isn't submitted to Ocaso until 21 September requesting a payment of £13,988.58 for the building works. This is over four weeks after company D prepared the report, and the information doesn't show this was down to any unavoidable delay. Following this, Ocaso don't respond until 21 October – causing a further four-week delay. At this point, Ocaso ask for a signed FOA but the information shows this wasn't sent to company K until 11 November – which is three weeks later.

The second reason for the cash settlement not being paid until 9 February 2023 is down to the dispute regarding the FOA. I'll start by saying I don't think it's unreasonable for Ocaso to request a signed FOA given that the claim was being concluded by way of a cash settlement. But, I don't think it was fair in the circumstances for this to have held up payment. I say this for a number of reasons. Firstly, as I've already mentioned above, it was clear from communication from company K that Mrs S hadn't instructed her contractor to start the work. The dispute around the FOA related to the AA, so I don't think this should've prevented Ocaso from at least paying the proportion of the cash settlement agreed towards the building works to enable Mrs S to get this work started.

Secondly, the information shows, at the point the cash settlement was paid, Mrs S still hadn't signed the FOA and it was agreed the payment could be made while still expecting Mrs S to provide this later. So, that being the case, I see no reason why the same position couldn't have been taken much sooner and at the point the payment was being withheld due to Mrs S not signing the FOA. I think it's also fair to say Ocaso are the experts here and they also had company D acting on their behalf - so I think there were ways, as I've mentioned here, for them to have progressed the claim by paying the cash settlement to Mrs S to enable her to get the works started. By not taking such steps, it prevented Mrs S from getting the work done, and left her in a position where her property was still uninhabitable and her requiring AA. So, I think it's fair and reasonable in the circumstances, for Ocaso to be responsible for the AA costs beyond 30 September.

I acknowledge Ocaso maintain they should only be responsible for AA costs up to 30 September 2022. I agree that, in an email dated 29 July 2022, company K confirm Mrs S' contractor has provided an estimated completion date of 30 September. But it's clear this was on the understanding that the work would start around the time of the email. The reason the work couldn't start is down to Ocaso not paying the cash settlement to Mrs S, so I don't think it's fair to hold Mrs S to the date of 30 September. I also acknowledge Ocaso say, if Mrs S had agreed for company D's contractors to carry out the works, then it would've been completed by late September. I don't think it's fair to apply this measure to the circumstances here because Mrs S chose to instruct her own contractor, this was then accepted by Ocaso and it was agreed by all parties that the claim would be concluded with a cash settlement. And it's the delay in the cash settlement being paid which prevented Mrs S from getting the work done.

I've decided that Ocaso should be responsible for AA costs beyond 30 September 2022. So, the next point I've considered is what further period should be covered by them. I've already concluded that it's not reasonable in the circumstances to expect Mr S to have arranged for any work to start until she'd received at least the part of the cash settlement towards the drying and reinstatement works. Given the cash settlement wasn't paid to Mrs S until 9 February 2023, the AA costs incurred up to this point should be covered by Ocaso.

I've seen evidence from Mrs S' contractor which shows they started work on 13 February 2023 – so I'm satisfied there was no delay by Mrs S in arranging the work once she'd received payment. The evidence also shows the work was completed on 24 March 2023 – which is around six weeks after the work started. So, I've considered whether the AA costs should be covered by Ocaso for the period up to 24 March 2023 – and I think they should. The information shows company K instructed a contractor to prepare a schedule of works for reinstatement and they estimated it would take between six to eight weeks to complete – and the work has been completed within this timescale.

I think it's also important to mention, in their supplementary report to Ocaso, in which company D proposed the payment of the additional AA costs from 9 August 2022 to 30 September 2022 to enable the drying and reinstatement work to be carried out, they said, *"...we do not believe that this was unrealistic as far as timescale are concerned."* I believe this demonstrates two things. Firstly, given that company D propose, and Ocaso agree, to cover the AA costs over this period, it demonstrates they accept Mrs S' home will be uninhabitable during the period the drying out and reinstatement work is completed. Secondly, this was a period of 52 days – which company D believe is realistic. Given that the work actually completed in a shorter timescale – in this case 40 days – I don't think it's unreasonable for Ocaso to therefore cover the AA costs up to 24 March 2023.

Putting things right

I've taken the view that Ocaso have made errors in their claims handling so they should pay Mrs S £350 compensation, if they haven't done so already. I've also taken the view that it's down to errors caused by Ocaso that Mrs S' AA continued until 24 March 2023 – so, on receipt of any evidence showing these AA costs have been incurred, Ocaso should cover the AA costs up to 24 March 2023.

My final decision

My final decision is that I uphold the complaint. Ocaso SA, Compania de Seguros y Reaseguros must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 15 April 2024.

Paviter Dhaddy
Ombudsman