

The complaint

Mr C complains about the way Ocaso SA, Compania de Seguros y Reaseguros (“Ocaso”) handled a claim under a buildings insurance policy.

Mr C is being represented in this case. For ease of reading, in this decision I’ll refer to both Mr C and his representative as “Mr C” throughout. Reference to Ocaso include its agents.

What happened

Mr C owns the leasehold of a flat in an apartment block. Ocaso provided an insurance policy for the block – including Mr C’s three-bedroom flat which was occupied by three tenants. There was one tenancy agreement in place for the three tenants.

In May 2021, Mr C notified Ocaso of an escape of water which damaged one bedroom. He says the tenants left the property due to the damage because they couldn’t live in it. And no new tenant would rent it out without access to all areas of the property. So, he raised a loss of rent claim to Ocaso, and says it led him to believe this would be paid.

Mr C says Ocaso took far too long to settle the claim. And this meant he lost out on rent for several months. He says the property couldn’t be lived in due to the damage. And Ocaso didn’t complete repairs until roughly eight months after he reported the claim.

Ocaso declined the loss of rent claim referring to the policy terms. It didn’t consider the property to be unliveable as only one room was damaged. It also said much of the delays Mr C faced were due to the time taken by the freeholder of the building to fix the source of the leak in a neighbouring flat and confirming the same.

Mr C remained unhappy with Ocaso’s handling of matters, so he asked our Service for an impartial review. The complaint was passed to me, and I issued a provisional decision on 1 May 2024. I said:

“What I’ve provisionally 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.

The contract of insurance required Ocaso to cover the cost of putting right the resultant damage. It also required it to cover any loss of rent if the buildings cannot be lived in as a result of the insured event. For clarity, these terms say:

“WHAT IS COVERED

14. Short-term accommodation costs, rent or maintenance charges.

*If the **buildings** cannot be lived in because of damage by any of the causes 1 to 15, or if the **buildings** cannot be lived in because of damage caused to nearby property by any of the causes 1 to 15, we will pay one or a combination of the following.*

- a) *The reasonable costs of similar short-term accommodation for the **Leaseholder**. Provided that **Our** liability is limited to the period the **Buildings** are uninhabitable.*
- b) *...*
- c) *The rent or maintenance charges **you** would have received but have lost including ground rent."*

I'm satisfied these terms are clear. In essence, this means if the property cannot be lived in due to an insured event, the policy will cover any rent that otherwise would have been received – but for the damage.

That's what happened here – Ocaso accepted the circumstances Mr C reported to it in 2021 as a valid claim. And the resultant damage meant the tenants decided they couldn't live there anymore, so they moved out.

The evidence supports the tenants occupying the property at the time were a three-person household. I say this because there was only one tenancy agreement in place – not three separate agreements with each party renting an individual bedroom.

The tenants signed the one agreement together and contributed to paying the total amount for rent for a separate bedroom each, and a share of the communal areas. They decided not to renew the agreement that had reverted to a two-month rolling contract, because they couldn't live in the property as a household as a result of the damage.

And while they had access to kitchen, bathing, and washing facilities, one person in the household had no sleeping facilities due to the damage. So, I think it's fair to conclude that means the property became unliveable for this household of tenants as each of them required separate rooms.

As such, I currently don't find Ocaso applied the policy terms fairly given the specific circumstances of this claim. Therefore, I currently intend to require it to settle Mr C's loss of rent claim and include interest.

I've also thought about the period in which Ocaso should cover Mr C's loss of rent for.

Between May and August 2021, Ocaso say it was waiting for the freeholder of the building to fix the leak and confirm the same. That's because reinstatement works couldn't start until that happened.

It accepts it caused further delays to the claim when it was required to authorise the scope of works once some variations were made. Repairs didn't start until November 2021 and were completed by December 2021. Mr C says he then re-let the property to a new tenant in January 2022.

Mr C lost out on rent once the previous tenants moved out because of the damage. And I think it's unfair to say Mr C more likely than not could have rented the property during the period in which repairs were waiting to start, or ongoing.

The policy required Ocaso to indemnify Mr C for the period the property couldn't be lived in. And, in the absence of any compelling evidence to the contrary, I'm satisfied this was the period between the previous tenants moving out, to repairs being completed.

So, based on the information currently available to me, I find it's fair and reasonable to require Ocaso to cover Mr C's loss of rent over this period. I also think it should include 8% simple interest on this payment, from four weeks from the date the tenants moved out, to the date of settlement.

Mr C also says he felt misled by Ocaso to believing the loss of rent claim would be paid.

Ocaso told Mr C it could consider a loss of rent claim, in July 2021. Mr C provided it with the information it requested. But it then declined the claim in January 2022 based on information it ought reasonably to have been aware of at the early stages of the claim – that damage was isolated to one bedroom.

So, I do think Ocaso ought to have handled matters much better here overall – and with a more appropriate level of customer service. But I find requiring it to settle Mr C's loss of rent claim and include interest is a fair and reasonable way to put things right here.

My provisional decision

I intend to uphold this complaint and require Ocaso SA, Compania de Seguros y Reaseguros to:

- *Settle Mr C's loss of rent claim from the date the tenants moved out, to the date the claim-repairs were completed; and*
- *Include 8% simple interest on this payment, from four weeks from the date the tenants moved out, to the date of settlement."*

Responses to my provisional decision

Both parties responded to my provisional decision. Ocaso accepted it, and Mr C provided further comments which I've summarised below:

- The loss of rent period should be extended to January 2022 when new tenants moved in following the completion of repairs, in December 2021. That's because it was only possible to advertise for new tenants once the works had been completed – leaving a void period.
- Loss of rent should be calculated based on the amount the new tenants are paying, rather than what the previous tenants (that left due to the damage) were paying.

I've carefully considered Mr C's further points, and I'll now go on to set out my final decision on the matter.

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 haven't been persuaded to deviate from the outcome I set out within my provisional decision.

It's my view the policy is intended to cover any lost rent that would have been received by a policyholder had damage not occurred – that caused the buildings to be unliveable.

Therefore, the indemnity period is during the period the property couldn't be lived in.

The property couldn't be lived in until the repairs were completed. So, I'm satisfied it's fair and reasonable to require Ocaso to cover Mr C's loss of rent between the period the tenants moved out, to repairs being completed, and include interest.

The loss of rent should be calculated based on the amount Mr C would have received from the previous tenants had the damage (which forced them to move out) not occurred. That's because had the insured event not occurred, this is the amount Mr C would have otherwise received.

Putting things right

Ocaso must now settle Mr C's loss of rent claim from the date the previous tenants moved out, to the date the repairs were completed (based on the rate the previous tenants were paying).

It should also include 8% simple interest* a year on this payment, from four weeks from the date the tenants moved out, to the date of settlement.

My final decision

I've decided to uphold this complaint. I now require Ocaso SA, Compania de Seguros y Reaseguros to settle this complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 June 2024.

*If Ocaso SA, Compania de Seguros y Reaseguros considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Liam Hickey
Ombudsman