

## **The complaint**

Miss A has complained about her let property insurer Ocaso SA, Compañía de Seguros y Reaseguros regarding a delay to repairing her let flat when a second leak was found.

## **What happened**

There was a leak found at Miss A's flat in late 2021. Once the leak was fixed Ocaso began drying the flat, with works booked in to reinstate it in late August/September 2022. As Miss A's tenants had moved out for the repairs, Ocaso said it would pay Miss A loss of rent (LOR) and council tax until it had finished reinstating the property, which it said was likely to be 23 September 2022.

On 16 September 2022, Ocaso's decorator found signs of a further water leak. Ocaso said work would have to stop – but it confirmed and paid LOR until 23 September 2022, the date it would otherwise have completed the work. The policy with Ocaso had ceased earlier in the year, so any new leak was covered by the new insurer.

Miss A began trying to get the new leak fixed. She believed Ocaso had made this harder by plastering in the pipe – she said there had been an access panel there before. Ocaso said there hadn't been an access panel and provided photos. When Miss A confirmed the leak had been fixed Ocaso went back out and completed its reinstatement works, finishing on 20 November 2023. Miss A asked Ocaso to cover her lost rent and council tax bills for the whole period. When Ocaso wasn't prepared to do so, Miss A complained to the Financial Ombudsman Service.

Our Investigator noted Ocaso had said there was no access panel before, and she felt it was reasonable to conclude it had reinstated the property on a like for like basis. And she didn't feel Ocaso was liable for any further costs because it had not been responsible for fixing the second leak. She also noted that Ocaso's contractor said it had only taken a week to reinstate the property once the second leak was fixed. Our Investigator felt that was reasonable. So she didn't think the complaint should be upheld.

Miss A wasn't happy – she maintained that there'd been an access panel before and that the delay in repair had occurred because the area had been plastered over, with Ocaso likely not having fixed the leak correctly in the first place.

Our Investigator reverted to Ocaso. It provided some clarification from its loss adjuster – referencing photos of the area before the works began and one taken on 24 October 2022 when the adjuster confirmed the second leak had been repaired.

Our Investigator wasn't minded to change her view. The complaint was referred to me for an Ombudsman's decision. I was minded to uphold the complaint. I felt Ocaso should pay some further costs for Miss A, but not for the whole period as she'd asked for. So I set out my views and what I felt was required in a provisional decision. In my provisional findings I said:

*“Reinstatement and loss of rent/council tax*

Ocaso was reinstating Miss A's property. It said its work would be done by 23 September 2023. From its file I can see that it meant its work would be fully completed by then – not that this was the date by which the flat would be liveable. It agreed that, under the claim, it would cover Miss A's loss of rent and council tax costs until its work was completed on 23 September 2023, and it did pay those costs until that date.

Work stopped though on 16 September when the second leak was found. And didn't resume again until after the second leak was fixed.

#### Second leak

I see that Miss A recently said Ocaso can't have fixed the initial leak properly – that the second leak was really the same issue. Ocaso wasn't responsible for fixing the leak at all, only for resolving damage resulting from it. In any event, I'm not persuaded that the initial leak wasn't fixed – such that Ocaso shouldn't have progressed repairs. I'm satisfied the initial leak must have been fixed otherwise there'd have been signs of that during 2022 – such as the area not drying out. I don't think Ocaso did anything wrong to have caused its own repairs to fail and/or the second leak to have occurred.

#### Access panel

I've carefully considered photos of the area in question taken before the room was stripped out. I can see from Ocaso's file that these were shared with Miss A too. She's said this shows there was access because of a hole. But what I see is boarding of some kind that had been damaged to get access behind it. That is distinctly different to there being an 'access panel' as has since been installed – a panel that is screwed in place and can easily be removed, without damage being caused to the area, to allow inspection of the area behind. I'm satisfied that Ocaso completed repair of the area reasonably like it was before – ie a fixed area of material, not designed to have access behind it.

#### Repairs on hold

Considering the above details, I think it was reasonable that Ocaso put its repairs on hold whilst the second leak was resolved. As the second leak was a new insured event not covered by Ocaso, I think it's reasonable that it didn't pay Miss A for loss of rent or council tax during the period she was resolving that issue.

#### Unfinished works

But, once that second leak was resolved, Ocaso still had works to complete. Works which it was liable for and against which it had agreed to pay for LOR and council tax until completion. Ocaso's file shows that it independently verified that the second leak was fixed on 24 October 2022. It's contractors then started work on 8 November 2022 and completed the reinstatement on 20 November 2022.

It's not clear why there was a two-week delay between verification and work starting. Nor why one week of outstanding work (as was reportedly the case in September 2022) took two to complete in November 2022. I think things could and should have been managed better at this stage to minimise delay in completing this overdue work. I don't think Miss A should be left with costs as a result – and particularly not when Ocaso had agreed with her previously in the claim to cover her LOR and council tax until reinstatement was completed.

To resolve LOR and council tax costs

*I think Ocaso should now be covering Miss A's LOR, and council tax costs incurred, between 24 October 2022 and 20 November 2022, all plus interest\* applied from the date Miss A paid any costs until settlement is made. But against that total I will allow Ocaso to off-set the cost it has already paid for 16 – 23 September 2022 – the first week of repairs reasonably being placed on hold due to discovery of the second leak. The amount remaining should be paid to Miss A.*

Compensation

*Ocaso has maintained that it settled the LOR and council tax fairly. But the details I've set out above show that is not the case, and that it also likely caused delays after the second leak was fixed. I think that was all frustrating for Miss A. I think Ocaso should pay £150 compensation."*

Ocaso said it accepted my decision. Miss A said she was pleased with what I'd said. But she remained concerned about the panel.

Miss A said that Ocaso had breached building regulations when it had failed to fit an access panel – as such is required for flats. At my request our Investigator asked Miss A to explain specifically which building regulations she was referring to. Miss A said that, in referring to building regulations, she had perhaps used incorrect words. What she meant was that the area should have been left with a panel in place so access could have been gained, that the council had initially been unable to do work because the pipes could not be accessed, which caused delays. She asked that, as a result, Ocaso be required to cover her lost rent through to January 2023. Miss A asked that we refer back to Ocaso to make it explain why the area was plastered and not left open as it was before.

**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 appreciate that Miss A is still concerned about the boxing around the pipes. I can assure Miss A that I did consider her points in this respect in my provisional decision and I understand that she believes a failure by Ocaso in this respect delayed the council doing work. As I noted, I don't agree that is the case. But as this matter is still troubling Miss A, I'd like to take this opportunity to aide her understanding of my position.

I know that Miss A thinks that Ocaso should not have applied a plaster finish to the area. Whilst I understand that the area doesn't seem to have been plastered before, I don't agree that it was 'open' as Miss A has contended. Rather the pipes were previously concealed by fixed wooden boxing. At the time of the leak there was no easily removable panel in place – this is clear because, the wooden boxing which was there, was damaged in order to gain access to the space behind.

When Ocaso did work to reinstate the property, it had a duty to do so on a reasonably like-for-like basis. Unless, of course, building regulations applied, which might have meant it would have had to do something differently. It doesn't seem that was the case here. Having considered what was in place before – fixed boxing concealing an area of pipes – I think Ocaso's reinstatement was reasonably like-for-like. When it left, the finish to the wall was slightly different – but that didn't materially change the nature of what was there: fixed boxing, concealing a space behind which contained unsightly pipes.

I was aware provisionally that, when the council came to fix the second leak, that couldn't be done because of the boxing. But I haven't seen anything which makes me think that was specifically because of the plaster finish to the boxing. The council, in attending to a property matter like this, would be mindful of not doing anything which might cause damage to the finish of the property. If Ocaso had not plastered the boxing, that wouldn't have changed that the boxing would still have been fixed in place – likely with nails, glue and sealant. The boxing would never have been easily removable because that is not what was in place before. The council, I think, in that scenario, would still have refused to be involved unless or until access to the pipes behind the boxing was provided. So, even were I persuaded that Ocaso should not have plastered the area, I'm satisfied that it having plastered it did not materially change the position Miss A found herself in.

Having considered the available evidence, I remain satisfied that my views provisionally stated are fair and that I've reached a reasonable outcome on this complaint. My provisional findings, along with my comments here, are now the findings of this, my final decision.

### **Putting things right**

I require Ocaso to:

- Reimburse Miss A for lost rent and for council tax costs, lost and incurred respectively between 24 October 2023 and 20 November 2023 inclusive. Plus interest\* applied from the date Miss A should have received rent or the date she did pay council tax and until settlement is made – in making the settlement, the cost paid previously for the week 16 – 23 September 2023 can be off-set.
- Pay £150 compensation.

\*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 may require Ocaso to take off tax from this interest. If asked, it must give Miss A a certificate showing how much tax it's taken off.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 27 September 2024.

Fiona Robinson  
**Ombudsman**