

The complaint

Mr P has complained about his property insurer Ocaso SA, Compania de Seguros y Reaseguros regarding a subsidence claim he made in 2018. The claim was declined in around 2020, then reinvestigated, then fell into abeyance in 2021-2023, then it was declined again on different terms and, in 2024, Ocaso having appointed solicitors, accused Mr P of misrepresentation at inception of the policy. It said Mr P's misrepresentation had caused it to offer subsidence cover where it otherwise would not have done.

What happened

In 2018 Mr P noticed some cracks at his home, he made a claim to Ocaso in around October that year. Ocaso's loss adjuster visited the property in November 2018. In a report of January 2019 the loss adjuster noticed large trees near the property and a view from the house of the Grand Union Canal (GUC). The loss adjuster noted significant damage to and movement of the property, with him recommending site investigations to "clearly demonstrate that the movement evident is associated with the insured peril of subsidence".

Investigations were undertaken at the property, including crack monitoring until February 2020. Monitoring readings resumed in September 2020 and continued through to March 2021.

The loss adjuster, in the interim, shared with Ocaso the results of soil analysis. Having considered those results, Ocaso believed the soil at the property had settled, causing distortions, rather than subsidence having occurred. In January 2020, Ocaso directed the loss adjuster to decline the claim because the damage was not covered by the policy.

In August 2021, the monitoring having concluded, the loss adjuster issued a further report to Ocaso. The loss adjuster shared the monitoring results and asked what Ocaso wished to do given that the cause of the damage might be settlement (rather than subsidence). Ocaso did not respond to the loss adjuster.

Mr P, in 2023, got in touch and asked for an update on his claim. He said he'd obtained a report of his own on the property and it was said to be unstable and in need of demolishing.

In a letter dated 1 September 2023 the loss adjuster acknowledged there had been a lack of communication. £300 compensation was paid. Regarding the report Mr P had provided, the loss adjuster said a visit to the property would take place with its engineer to view the damage. That visit took place on 4 October 2023, with the loss adjuster providing a report on 5 November 2023.

Ocaso did not respond to the report straightaway. Mr P had cause to chase it for an update in November 2023 and December 2023. He said he'd been expecting to hear about a settlement for the claim. He chased again on 23 January 2024. He was then told on 31 January 2024 that Ocaso had referred the matter to its solicitor. Mr P appointed a loss assessor to act on his behalf on 9 February 2024.

By late April 2024 Mr P had still had no substantive response from Ocaso, whether from its loss adjuster or solicitor, on his claim. Even despite his 2023 report and the loss adjuster's October 2023 visit to his home, which both identified major structural issues at the property. He made a complain to the Financial Ombudsman Service.

Whilst our Investigator was reviewing matters, Ocaso's solicitor (K) wrote to Mr P. In letters dated June and September 2024, K said Ocaso would not be dealing with the subsidence claim. It set out reasons of misrepresentation and a breach of policy terms.

Regarding misrepresentation, K said Mr P had failed to disclose to Ocaso, when arranging the policy before the claim, that there had been signs of subsidence and that he lived close to the GUC. It said that if Mr P had told it about the proximity of the GUC, it would have asked questions about trees, meaning Mr P would have told it about the large trees near his property. K said that if Ocaso had known about signs of subsidence and/or the trees, it would still have offered the policy to Mr P, but it would have removed the cover for subsidence.

In respect of the policy itself, K maintained the damage was caused by movement but not subsidence. It said if this was to be considered as subsidence, there was an exclusion under subsidence cover for damage which occurs whilst the building is being repaired or altered. It noted Mr P, in 2023, was having extensive work done at the property. In that respect it also noted the policy required Mr P to tell it about building work and, as he hadn't, he was in breach of the condition. K said that was a "condition precedent to cover", with Mr P's breach of it meaning the policy "will not engage in respect of the claim".

Our Investigator thought the available evidence suggested the damage had been caused by subsidence. He didn't think the claim was reasonably excluded under the policy or failed due to a breach of condition. In terms of misrepresentation, he didn't think Ocaso had established that Mr P had given an incorrect answer regarding signs of subsidence, and he thought it hadn't asked a clear question about the property's proximity to water. So he wasn't persuaded Ocaso could fairly say Mr P had misrepresented to it when the policy was arranged. He felt it should be accepting the claim under the policy as one of subsidence.

In respect of how the claim had progressed, he thought we couldn't look at what had happened prior to September 2023. For delays which had occurred after that point, and the upset caused to Mr P, particularly given the state of his home by that time, our Investigator thought Ocaso should pay £1,500 compensation.

Ocaso disputed the outcome. The complaint was referred to me for an Ombudsman's decision. I thought we could look at Ocaso's claim handling overall, even prior to September 2023. So I issued decisions explaining this and the complaint returned to me for consideration of its merits.

Having looked at everything, I was of the view that Ocaso had failed Mr P here, over the course of several years. In a provisional decision I set out my views on what I thought went wrong and explained what I believe is needed to set that right. I also explained that, in line with the informal nature of our service, I hadn't included an analysis of every argument raised, nor had I referred to every piece of evidence or each comment submitted. My focus, I said, was on what's central to my findings on the complaint. My findings were:

"Misrepresentation"

There's been a lot of detail provided about this by K in the last few months. And that is really the issue for me with this aspect of Ocaso's decline of Mr P's claim – it was only in summer 2024, after Mr P had complained to this Service, that Ocaso raised an issue about policy

liability. Of crucial note for me here is that the issues of misrepresentation raised in 2024 were things which were known to Ocaso in 2018, within a month of the claim being made. Now I don't actually agree with the arguments K has raised about misrepresentation, I don't think either of the questions it is seeking to rely on are clear – but I'm not even going to get into that here. That's because, as I explain below, I think Ocaso affirmed the contract by carrying out activity on the claim over a number of years.

At this Service we expect insurers, if they are acting fairly, to make arguments in good time, without delay. And certainly not without leading a policyholder on over a number of years whilst their property significantly deteriorates, whilst acting, to all intents and purposes, as though there is no issue for overall policy liability.

Ocaso's loss adjuster visited the property in November 2018. That was within one month of the claim being made. Taking the loss adjuster at his word, he reported Mr P had noted cracks earlier in the year, that there were trees nearby and that the GUC could be viewed from the house. If Ocaso had wanted to argue misrepresentation on those grounds – that was the time to do it. Instead Ocaso moved ahead with site investigations. Those investigations and delays by Ocaso then continued for three years (into 2021), and when it resumed the claim two years later, in 2023, it was then another year before the misrepresentation issue was fully set out by K. That's not fair or reasonable. In my view Ocaso by 2024, by acting to progress the claim following the site visit in 2018, has waived its right to dismiss the claim on the grounds of a misrepresentation at inception of the policy having occurred.

So it's my intention to conclude that Ocaso cannot fairly and reasonably decline Mr P's claim on the grounds that he misrepresented to it when the policy was arranged. I've then reviewed Ocaso's reasons for declining the claim based on the policy terms.

Subsidence

Mr P believe his property has suffered subsidence. That event is covered by the policy.

Ocaso believes though that subsidence has not occurred. It has said that the investigations completed at the property suggested there has been settlement caused by material beneath the property compacting. It's referred to this as "settlement" which is not covered by the policy. So it thinks Mr P's claim fails.

I've seen the expert reports Ocaso completed in 2018 and 2019, along with the monitoring results returned through into 2021. I've also taken into account the report Ocaso's loss adjuster completed in 2023. Mr P's expert report from 2023 identified substantial damage and makes recommendations for resolving the same, but doesn't consider the cause of the damage.

The loss adjuster in 2018 thought the damage present then was subsidence. In October 2019, the soil and ground conditions at the property had been assessed. It was reported that the conditions varied across the site, but some soil was peaty clay, susceptible to changes in the water table. It was noted that the summer of 2018 had been very dry and that the water table had likely been lower than "it has been historically".

I note that the loss adjuster, in 2021 said the crack monitoring showed no 'ongoing' movement. However, I also note that was concluded based on comments made in March 2021 that the readings taken over that preceding winter had shown no signs of movement. It negated the fact that in September 2020 all monitoring points had opened up

since the last time they were checked in February 2020. Which tells me the property is prone to downwards movement in the summer which is not always recovered in the winter months.

Then of note to me is the loss adjuster's report from 2023. The loss adjuster attended the property along with an engineer. The report is full of references to subsidence related movement and damage, which has got progressively and significantly worse since 2018. There seems to now be no dispute from the experts that subsidence has occurred and is occurring – the only point of possible debate seems to be whether or not Mr P's expert has reasonably recommended demolition. There's a suggestion in the report that Ocaso's engineer, attending with the loss adjuster, has a different view on what is needed to resolve the subsidence to reinstate the property.

Taking all of that into account, I'm satisfied that it's most likely that the property has suffered from subsidence. I'm also satisfied that Ocaso knew this was likely the case in 2019. I think that was unreasonably overlooked. And that a further error was made in 2021 when it was concluded that there was no 'ongoing' movement. I believe the matter was then compounded by a breakdown in communications between the loss adjuster and Ocaso, which meant Mr P's claim was not progressed any further until 2023. I think the state of the property now is directly linked to these failures by Ocaso.

Subsidence exclusion and policy condition

Both are related to work being undertaken at the property. Mr P was not undertaking work in 2018 when the claim was made or when the loss adjuster visited that year. So K raising these in 2024, stating Mr P had been doing work when the loss adjuster visited in 2023, as bars to cover makes no real sense. I'm satisfied that these arguments do not present a reasonable defence to the claim.

No 'real' loss

I'm mindful that Ocaso has recently also said that it believes it has always been Mr P's intention to demolish the property and rebuild it. It thinks this means he's suffered no real loss. I think that argument ignores the fact that Mr P has a policy which covers him for loss or damage caused by subsidence and his property has been damaged by the same. Furthermore, I haven't seen any planning permission which predates the claim. I don't see this as a reasonable bar to Mr P's claim succeeding.

Delay

I've said above that I think Ocaso should reasonably have accepted subsidence had occurred in 2019. But I also accept that Ocaso would have needed to establish if movement was ongoing. It had started taking readings at the property in January 2019. It wouldn't be unreasonable for that to continue over the year. Ocaso was sent monitoring results in February 2020. These showed the property was moving – some monitoring points had closed and some had opened further. This was the point I think Ocaso should reasonably have accepted the claim.

Of course, Ocaso did not accept the claim. It did very little over the next three years in fact, as I've already described elsewhere in this decision. It was four and a half years after Ocaso should have accepted the claim when K sought to decline it – and unfairly decline it. I accept that was all very frustrating for Mr P, that he was caused a lot of worry.

I'm mindful that, for two years, Mr P did not chase Ocaso. But I don't think it's fair to assume that his patiently waiting to hear from Ocaso meant he was not worried throughout that period. Mr P was aware that Ocaso was investigating and he trusted it to handle things fairly – I don't think he reasonably expected that it was just doing nothing at all.

I don't know exactly when the property started to deteriorate during that four and a half years in which the claim was delayed. But as of summer 2023 photos of the property show it is in a poor state. I can see trip hazards with cracked and raised tile floors, the kitchen worktops are uneven and misplaced, with damp in certain places. They are just a few examples. I think Mr P's daily life was likely affected by the state of the property, certainly for at least the last year of the four and a half year period of delay. I think Mr P, in the rest of that period, was likely facing inconvenience on a regular basis because of the gradually deteriorating state of the property.

In the circumstances here I think a total of £3,000 compensation is fairly and reasonably due to Mr P. Ocaso has paid £300 previously. I think it now should pay a further £2,700.

Loss Assessor

Mr P has not said much at this stage about the involvement of his loss assessor. Often this service won't award costs incurred for the involvement of a professional like this. However, I'm mindful here of not only the significant delay caused by Ocaso's failure to manage the claim, but also that, out of the blue, just when Mr P was finally expecting the claim to be moving forwards, Ocaso told him it had appointed a solicitor to act for it. I accept that would have been worrying for Mr P – even more so given he wasn't given any details at that time about why or on what basis the solicitor was being involved. I see that within a week of being told Ocaso had instructed solicitors, Mr P had appointed a loss assessor. In the situation here I can understand his decision to do that and, should he be able to show that he has incurred costs for that loss assessor's involvement, I'm going to say Ocaso should reimburse them, plus interest.

Now, often, a loss assessor will take their fee as part of any claim settlement which may result, so Mr P may not have paid anything to the loss assessor yet. I'm directing Ocaso to accept the claim and settle it in line with the policy terms. That will not preclude it from taking on the work to reinstate the property – whatever that may involve. If that happens here then Mr P won't receive a cash settlement.

Also I'm not minded to say that Mr P reasonably gets to keep the loss assessor involved moving forwards at Ocaso's cost. I don't think it would be fair to say it has to pay for the loss assessor's future involvement, ie a fee based on any resulting claim settlement. Rather, Ocaso only fairly has to make up for any costs caused by its failure to this point. So, if Mr P wants to keep the loss assessor involved, he should be aware that might affect his claim moving forwards, and if he requires Ocaso to settle that claim in cash, then it will likely only pay what it would have cost it to do the work – not what Mr P may have to pay. It may well be though that if Mr P wants to end matters with the loss assessor now, or at least within 14 days of the date he accepts my final decision (if it remains the same and he does), it will allow cancellation for a price – I would expect Ocaso to cover that charge.

Expert report

Mr P has also not said much about the expert report he obtained about the state of the property. Ocaso did not ask Mr P to obtain this, and he obtained it around the time he got back in touch with Ocaso in 2023, when he hadn't heard anything from it for at least two

years. Of course, at that time, Mr P had been seeing his home deteriorate with Ocaso not acting or contacting him with a view to resolving it. I think that if Ocaso had accepted the claim in 2020, as I've said it should have done, Mr P would not have been seeking an expert report on the condition of the property in 2023. If Mr P was charged for this report, he should evidence that and Ocaso will have to reimburse that cost, plus interest."

When Ocaso replied, it said it would like the complaint to be placed on hold at this time. It said it felt that was necessary, given the discrepancies in the available evidence, so an independent expert could be appointed to determine if subsidence had occurred.

I considered Ocaso's request. However, I told it that I did not feel it was necessary for an independent expert to comment on whether subsidence had likely occurred. I said my provisional decision had explained that, regardless of what Ocaso might think of as discrepancies in the available evidence, I was satisfied that the balance of that evidence showed subsidence had most likely occurred. Ocaso responded confirming it had nothing further to add.

Mr P replied stating he welcomed the decision. However, he asked that the suggested redress was revised. He said he'd had to go ahead with rebuilding the property – so my decision should take that into account and direct Ocaso to settle for the rebuild costs. He said he is appointing a quantity surveyor to assist with a breakdown of costs.

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 note Ocaso has added no substantive reply to or objection in respect of my provisional findings. I see Mr P would like my redress to reflect his costs for rebuilding, which he says is now complete.

As neither party has objected to the findings I made about subsidence having likely occurred and Ocaso needing to accept and deal with the claim in that light, I've no need to revisit those findings. Similarly, no comment has been made about Ocaso's claim handling, and the findings I issued around that. So, again, I won't revisit what I said in those respects.

The only request for review from either party comes from Mr P regarding my suggested redress. Whilst I understand he'd like me, in this decision, to order Ocaso to pay his rebuild costs, that would not be a fair or reasonable outcome.

I accept Ocaso had delayed the claim and it may well be that those delays have caused the property to need to be rebuilt. And I understand that is certainly Mr P's view. But I've not taken any view, in this decision, about whether or not the property needed rebuilding. That's because the complaint came to this Service because Ocaso was refusing to accept subsidence had occurred – as such, no consideration had been given by it, at that time, to what was needed to reinstate the property. So, my role, was to determine that complaint – whether Ocaso's decline of liability for subsidence was fair and reasonable. And that is what I've done. The next step now then – now liability for subsidence damage has been established – is for Ocaso to consider that loss, including the extent of its liability for it. And, as I said provisionally, whilst Mr P thinks rebuilding was the only option, it seemed, in 2023 at least, that Ocaso's engineer may have had a different view.

Now, whether that view will be followed by Ocaso as it now considers the loss and, if it does, whether that is fair and reasonable, is not something I can 'jump the gun' on and comment on here. To be clear, I have not considered within this decision, or made any decision about,

what is/was reasonably needed to reinstate the property. If, once Ocaso offers to settle the claim, Mr P is unhappy with its offer, he'd need to make a further complaint. That would be to Ocaso in the first instance and then this Service if he remains unhappy.

Having reviewed matters, my views on the complaint, as set out provisionally, have not changed. As such, my provisional findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Ocaso to:

- Accept that the policy exists with subsidence cover in place (as opposed to subsidence cover having been removed due to the alleged misrepresentation).
- Accept the subsidence claim under the policy and move forward with resolving it in line with the remaining policy terms.
- Pay Mr P £2,700 compensation (where my total award is £3,000 with £300 of that already having been paid).
- Reimburse any costs Mr P has incurred for his loss assessor's involvement to date, subject to proof of outlay, plus interest* applied on any sum Mr P has paid from the date of payment until settlement is made.
- Pay/reimburse any cancellation fee the loss assessor charges Mr P, should Mr P choose to end their arrangement. Payment/reimbursement should be made within 14 days of Mr P evidencing his outlay in this respect, if payment is not made interest* will have to be applied from 14 days after the proof was received and until settlement is made.
- Reimburse any cost Mr P incurred for his 2023 expert report, subject to proof of outlay being provided, plus interest* applied from the date Mr P paid for the report until settlement is made.

*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 Mr P 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 Mr P to accept or reject my decision before 22 May 2025.

Fiona Robinson

Ombudsman