

## **complaint**

Ms A and Mr H have complained about Ocaso SA, Compania de Seguros y Reaseguros's handling of their buildings insurance claim.

## **background**

Ms A and Mr H made a claim after fire damaged their flat. Ocaso appointed a loss adjuster to handle the claim on its behalf. After inspecting the damage the loss adjuster prepared a schedule of works ("SOW") which detailed the repairs that were needed. Ms A and Mr H weren't happy with the SOW as they felt it was deficient.

Ms A and Mr H wanted to appoint a surveyor to review matters and they wanted Ocaso to pay for that. The loss adjuster told Ms A and Mr H that no costs were authorised but she would seek Ocaso's instructions. She also said that in the interim Ms A and Mr H should get a surveyor to review the SOW. There was then a period of stalemate. Roughly a week later the loss adjuster sought instructions from Ocaso about the additional surveyor. She also chased Ms A and Mr H for confirmation on whether their surveyor had reviewed the SOW. She also said the alternative living arrangements that had been arranged for Ms A and Mr H (that were being paid for by Ocaso) was due to expire shortly and they wouldn't be extended because it was felt Ms A and Mr H were delaying the claim. Ms A and Mr H on the other hand told the loss adjuster there hadn't been any agreement for them to get a surveyor to review the SOW; and they wouldn't arrange this until Ocaso confirmed whether it would pay.

It was at this point Ms A and Mr H contacted Ocaso about how the claim was being handled. Shortly afterwards, and about a month after the loss adjuster had sought its instructions, Ocaso confirmed it wouldn't pay for another surveyor. It said these costs weren't covered by the policy. It felt it had fulfilled its obligations by appointing the loss adjuster.

Emails followed about the surveyor's costs and the extension of the alternative living arrangements. Agreement was eventually reached where the surveyor appointed by the loss adjuster would withdraw from the claim and effectively be replaced by Ms A and Mr H's surveyor. This meant Ocaso wouldn't be paying for two surveyors to do the same job.

Around this time Ms A and Mr H formally complained to Ocaso (through their representative) about the delays. The specific points Ocaso was asked to address were:

- the loss adjuster denying Ms A and Mr H their right to appoint a surveyor to review the SOW and the delay in obtaining Ocaso's confirmation whether or not it would pay for another surveyor
- the loss adjuster telling Ms A and Mr H that the alternative living arrangements wouldn't be extended as delays had been caused by them/their representative
- the relationship between Ms A/Mr H and the loss adjuster breaking down – with specific reference being made to the loss adjuster 'shouting' in emails by using capital letters.

Ocaso responded to the complaint through its loss adjuster. It said Ms A and Mr H still hadn't shown that the SOW was deficient, and that they'd known from the outset that Ocaso wouldn't pay for another surveyor. It also said Ms A and Mr H hadn't progressed matters. Ocaso confirmed the alternative living arrangements could be extended in principle, but it wouldn't pay for this indefinitely. Overall, it felt the claim had been handled appropriately.

The new surveyor prepared another SOW. A site meeting followed, and agreement was reached on the repairs needed. According to the loss adjuster's subsequent report, the original SOW was modified in that it now allowed for insulation in the floor to be inspected and for it to be replaced if it was contaminated by soot. I understand it was also agreed around this time that the alternative living arrangements could be extended.

The complaint has arisen because Ms A and Mr H feel Ocaso unnecessarily delayed the claim – which in turn increased the costs of rehousing them as their flat couldn't be lived in. The main issues centre on the deficiencies in the original SOW and Ocaso's initial refusal to pay for another surveyor. Ms A and Mr H are also unhappy with the delay in them being reimbursed costs they incurred at the start of the claim for things like bed and breakfast accommodation and essential items.

### **my provisional findings**

I've issued two provisional decisions which explained why I was minded to partially uphold the complaint. The main points from my first decision are outlined below.

#### *Ocaso's refusal to pay for another surveyor*

- I didn't think Ocaso acted unfairly by telling Ms A and Mr H it wasn't going to pay for another surveyor. I concluded that Ocaso didn't unreasonably delay the claim by making this decision. In essence, I didn't think it was for Ocaso to incur further costs in order to prove Ms A and Mr H's claim for them.
- It was for Ms A and Mr H to show what costs they would incur in repairing the damage. Ocaso appointed a loss adjuster to do this in the first instance, but matters got delayed because of a disagreement over the amount of damage and whether Ocaso should pay for another surveyor. But ultimately it was for Ms A and Mr H to establish the extent of their claim. If they thought their claim was more than what Ocaso had allowed for it was up to them to show that – at their expense (any costs they incurred in this respect weren't covered by the policy as the policy didn't cover costs a claimant pays in preparing a claim).
- When the appointment of a second surveyor was first discussed, Ocaso said Ms A and Mr H were told that it wouldn't pay for this. Ms A and Mr H said this was incorrect. Apart from what the two parties said, the only other relevant evidence I'd seen was the loss adjuster's subsequent report to Ocaso. She said she'd suggested to Ms A and Mr H that they appoint a surveyor at their own cost for the moment, although she would ask for Ocaso's further instructions on whether it would pay. I thought it was most likely that the loss adjuster told Ms A and Mr H that Ocaso wouldn't pay for the surveyor, but she also said she would make further enquiries with Ocaso.

#### *alternative living arrangements*

- I wasn't persuaded that what the loss adjuster told Ms A and Mr H about Ocaso not continuing to pay for them to live elsewhere was unfair. At the time, Ocaso was satisfied that an accurate SOW had been prepared and Ms A and Mr H hadn't done anything to show that it was deficient. So Ocaso felt it was for Ms A and Mr H to decide what to do next, and it felt they weren't doing anything to move things along.

- I understood Ocaso's concern as it was continuing to pay for Ms A and Mr H to live elsewhere while they continued to dispute the original SOW without providing anything to support their argument. However, it looked to me like wires were crossed because it seemed Ms A and Mr H were waiting for an answer on the funding of the surveyor. In any event, I understood that Ms A and Mr H hadn't lost out financially as Ocaso did ultimately continue to pay for them to live elsewhere.

#### *the original SOW*

- While the dispute over the scope of the SOW was ongoing I felt Ocaso was entitled to rely on the original SOW and proceed towards settling the claim on that basis. This was because, at the time, nothing comparable had been provided with which to compare it to. And I hadn't seen anything which sufficiently persuaded me that the original SOW was so poor that the surveyor's actions bordered on incompetence and/or negligence.

Overall, I concluded that Ocaso hadn't mishandled the claim to the extent that it caused unnecessary delays. It took longer than it should have to get to the point the claim was at when Ms A and Mr H completed our complaint form, but I didn't think that was due to anything Ocaso did wrong in respect of the SOW or refusing to pay for another surveyor.

#### *other points*

- Recorded claim costs – insurers have to record what they actually spend in relation to a claim, even if that includes compensation or other payments to put things right. The overall amount recorded must reflect what the insurer pays out on a claim. So, even if I concluded that the claim costs had increased due to Ocaso mishandling parts of the claim, the amount Ocaso ultimately records against the claim would still be the same.
- Ocaso's response to the complaint (ie via the loss adjuster rather than directly) – I didn't think this unduly delayed matters.
- The loss adjuster's use of capital letters in an email – I didn't think it was good business practice to use capital letters as that was generally seen as being the written equivalent of shouting. But I didn't think it caused sufficient harm to Ms A and Mr H to warrant me making Ocaso do anything to put matters right.

The main points in my second decision (which was issued having considered the responses to my first decision) are outlined below.

#### *original SOW and the second surveyor*

- It remained my view that Ocaso didn't treat Ms A and Mr H unfairly and didn't unnecessarily delay the claim by initially refusing to pay for another surveyor to review the SOW – mainly for the reasons outlined in my first decision.
- The main argument against Ocaso was in respect of the deficiency in the original SOW and in Ocaso's initial refusal to pay for a second surveyor. I didn't think there was anything wrong or unfair about Ocaso appointing a loss adjuster to handle the claim on its behalf to assess the repairs required. Ms A and Mr H were entitled to have someone represent them, but they would have to pay for that. Ms A and Mr H were also entitled to dispute the initial SOW that had been prepared. But that didn't mean Ocaso had to pay for someone else to disprove something their representative had already provided.

- It had been argued that Ocaso denied Ms A and Mr H the right to appoint another surveyor. I didn't think that's what happened. I hadn't seen anything which suggested that Ocaso told Ms A and Mr H they couldn't appoint another surveyor. Ocaso was quite happy for Ms A and Mr H's surveyor to review the SOW and to highlight where there were any disagreements. What Ocaso 'denied' was to pay for that surveyor.
- Regarding the original SOW, Ms A and Mr H's representative made the point that the loss adjuster was obstructive and wasn't willing to accept another point of view. I wasn't persuaded by that – I thought the fact she was prepared to listen to what another surveyor had to say was evidence of that. I accepted that as things stood she may have come across as being not willing to change her mind. But given where the claim was at that point in time, I didn't think that was unreasonable – a SOW had been produced, which Ms A and Mr H felt was deficient, but nothing had been provided to support that. I felt Ocaso and the loss adjuster were entitled to rely on the original SOW.
- I didn't think the fact agreement was later reached over another surveyor reviewing the SOW changed things. Ocaso was still within its right to refuse to pay for another surveyor. In my view, things weren't moving on as neither side was prepared to budge – which led to Ocaso offering a compromise solution in an effort to get the claim moving.

#### *alternative living arrangements*

- I didn't have much to add on this point. The claim not moving forward led to the loss adjuster telling Ms A and Mr H that Ocaso couldn't continue paying for them to live elsewhere. But Ocaso felt it was for Ms A and Mr H to move the claim forward by either agreeing to the proposed repair or by showing that the SOW was deficient. Whilst I understood why they might not want to incur additional costs in appointing a surveyor, it was for them to determine the extent of the damage if they didn't agree with the original SOW.

Overall, whilst it took longer than it should have to get to the point the claim was at when Ms A and Mr H completed our complaint form, it remained my conclusion that this wasn't caused by Ocaso unfairly refusing to pay for another surveyor. So although Ms A and Mr H had encountered problems due to the delay in the claim moving forward after the initial SOW was prepared, there were no grounds for me to ask Ocaso to compensate them for any inconvenience they suffered or costs they incurred.

#### *other points discussed in my original decision*

- I didn't have anything to add about the claims costs that would be recorded. All I added about the loss adjuster using capital letters was that the only email I'd seen where capital letters were used was one that was sent to Ms A and Mr H's representative rather than to Ms A and Mr H directly, which I thought added weight to what I'd said about it not causing sufficient harm to Ms A and Mr H. It remained my view that the loss adjuster responding to the complaint rather than Ocaso didn't unduly delay matters. The response was eight days after the complaint was made, and I didn't think Ocaso would have responded significantly earlier had it responded itself. The loss adjuster had sent a draft of the response to Ocaso for approval before it was sent to Ms A and Mr H, so the loss adjuster hadn't considered the complaint about itself without involving Ocaso.

*'new' other points*

- It wasn't entirely clear whether Ms A and Mr H had now been reimbursed for all the additional costs they claimed for at the start of the claim or whether they were still waiting reimbursement for some items. Nevertheless, it was clear from what Ms A and Mr H had said that there were delays in them being reimbursed. I hadn't seen anything which showed it was fair to delay that reimbursement. I thought Ocaso needed to put this right by reimbursing Ms A and Mr H for any costs they had claimed that still hadn't been reimbursed; and to pay interest on top of any amounts it had already reimbursed and any amounts it still needed to reimburse them for. I also felt Ms A and Mr H had been put to unnecessary distress and inconvenience by having to repeatedly send their claim to the loss adjuster/Ocaso and by being without the money that they'd spent. I considered this in deciding what overall compensation was fair.
- Ms A and Mr H mentioned various things that happened which they felt showed the loss adjuster handled the claim poorly. Two of the main things were the lack of assistance they were given in finding somewhere else to live and a lack of information given about how the claim would proceed. Reference was made to problems Ms A and Mr H encountered with the loss adjuster leading to them spending a lot of time finding somewhere else to stay and having to move from accommodation to accommodation.
- Ocaso's liability was only to *pay* for the cost of Ms A and Mr H to live elsewhere – there wasn't any requirement for it to actually *find* them somewhere else to live. But I felt that if Ocaso chose to not help a policyholder find somewhere else to live, then it's unfair if they then declined to accept or started to quibble over the accommodation the policyholder finds (unless it's obviously far superior to the insured property or far too expensive). Some of the problems Ms A described related to the loss adjuster declining some accommodation because it was too expensive or because of the number of bedrooms. But based on what Ms A had said about the accommodation she had found (eg it having equivalent space to their own property), I thought the loss adjuster treated Ms A and Mr H unfairly. And I thought that added unnecessarily to the stress and inconvenience they were already suffering because of the fire. Again, I considered this in deciding what overall compensation was fair.
- Regarding the lack of information, I'd seen an email sent to Ms A and Mr H following a site visit shortly after the fire. I didn't think the information provided in the email was particularly poor or unreasonable – it was only two days after the claim was made and it set out, in basic terms, who the loss adjuster was appointing and why. The SOW was prepared a few days later and Ocaso gave the loss adjuster the authority to proceed with the claim about a week after that. The problem arose in the weeks following. In order to have treated Ms A and Mr H fairly Ocaso, or its loss adjuster, needed to have kept them regularly informed of developments. I couldn't see that this happened. My understanding was that the above email was the only one that was sent. I felt this lack of information again added unnecessarily to the stress and inconvenience Ms A and Mr H were already suffering because of the fire. Again, I considered this in deciding what overall compensation was fair.
- Ms A and Mr H mentioned various health problems they'd suffered and earnings they'd lost. I wasn't minded to make Ocaso pay compensation for that because it hadn't been shown the health problems or lost earnings were specifically caused by the failings in Ocaso's claim handling that I'd identified (as opposed, for example, to the effects the claim itself would have had in any event and the delays I didn't think Ocaso were

responsible for). It also hadn't been shown what the precise loss of earnings was. Also, and no supporting documentary evidence had been provided.

### **summary of my provisional findings**

For the reasons outlined above, I concluded that Ocaso:

- didn't unreasonably delay the claim by unfairly refusing to pay for another surveyor
- did unreasonably delay reimbursing Ms A and Mr H for costs they had incurred
- did treat Ms A and Mr H unfairly by not accepting the accommodation they had found
- didn't keep Ms A and Mr H sufficiently updated.

I was minded to require Ocaso to settle Ms A and Mr H's claim for the additional costs they incurred and to pay them £750 compensation for the distress and inconvenience it caused.

### **responses to my provisional findings**

I haven't received anything further from Ocaso.

Ms A and Mr H made further comments on what Ocaso and the loss adjuster did during the claim compared to what they should have done. They also provided some evidence in respect of the costs/losses they'd incurred and their health problems.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Nothing has been provided which persuades me to change my view about Ocaso's handling of the matter in respect of its initial reliance on the SOW prepared by its loss adjuster, its refusal to pay for a second surveyor and its comments about the alternative living arrangements. In summary, for the reasons already stated, I conclude that Ocaso didn't unreasonably delay the claim by unfairly relying initially on the original SOW and by unfairly refusing to pay for another surveyor.

Ms A and Mr H commented that the loss adjuster gave them no advice about their rights and responsibilities or any information about how to object or complain, and about them only discovering their rights later when they appointed their own representative. They say it wasn't therefore them that delayed; they weren't given any advice on what they could do.

It needs to be remembered that the loss adjuster was acting on Ocaso's behalf; so they weren't acting for Ms A and Mr H per se – although that doesn't negate any responsibility Ocaso (or the loss adjuster) had to treat Ms A and Mr H fairly. And I've said already that I don't think Ocaso did enough to keep them sufficiently informed as to what was happening. I accept that some of delays might have occurred due to Ms A and Mr H not knowing what they could do and because of the immediate impact of the fire (eg possessions being destroyed, the need to find somewhere else to live). But some of the delays caused by the arguments about the second surveyor being appointed and about the loss adjuster responding to the complaint rather than Ocaso continued after Ms A and Mr H had appointed their representative. So I'm not persuaded that any lack of advice/information from the loss adjuster had a significant impact on things – to the extent the compensation should be increased).

I nevertheless need to address one specific point Ms A and Mr H have alluded to – that because the policyholder was actually the local authority Ocaso and the loss adjuster were deliberately obstructive and effectively treated Ms A and Mr H however they pleased. I can't change how Ms A and Mr H feel about how they were treated. But I haven't seen anything which suggests to me that Ocaso or the loss adjuster acted in this way. They may not have treated Ms A and Mr H fairly at times, but I'm not persuaded that was deliberate or malicious in any way.

There were nevertheless some failures in the way Ocaso handled the claim, which Ocaso has not sought to dispute. I looked at three areas where Ocaso might need to put things right – compensation for distress and inconvenience caused, compensation for lost earnings, and reimbursement of the expenses Ms A and Mr H initially incurred. Nothing Ms A and Mr H have provided in response to my provisional decisions persuades me to increase the amount I was minded to require Ocaso to pay.

For the distress and inconvenience, Ms A and Mr H have again outlined some of the health problems they've suffered. Ms A has also provided a letter which outlines an appointment at an acupuncture clinic. The problem I have though in respect of deciding this complaint is that it needs to be shown the health problems were specifically caused by the failings in Ocaso's claim handling that I've identified. Whilst I don't dispute the health problems Ms A and Mr H have had, I haven't seen anything which links them to Ocaso's poor claims handling. And that's particularly important here because I don't think it's beyond the realms of reasonable possibility that the claim itself had some sort of effect on the health problems suffered.

It's been mentioned that Mr H hasn't been able to get a report from his doctor and I've been asked to either postpone my decision or issue a decision in principle and reserve the amount to be paid until the information is to hand. I'm not able to do either. There comes a point where I simply have to issue a decision based on the information to hand having given both parties a reasonable opportunity to provide me with everything they want me to consider. I think we've reached that point now. And once an ombudsman issues a final decision there is no process to review, amend or appeal that at a later stage.

For Ms A's lost earnings, I've now seen some accounts showing things like income, expenses and tax liabilities. Ms A has also explained that her accountant feels she suffered a 20% fall in income as a result of the time it took to reinstate the flat (although Ms A feels this is too low). Nevertheless, she said that Ocaso's initial delays and 'ongoing prevarication' over the claim equates to roughly £12,000 in lost profit. The problem I have here is similar to above in that it needs to be shown that the lost earnings were specifically caused by the failings in Ocaso's claim handling that I've identified. I don't dispute what Ms A has reported about what her accountant has said, but I haven't seen anything which links specific lost earnings to Ocaso's poor claims handling. Again, that's important because Ms A attributes some of the loss to Ocaso's initial delays, but I've concluded above that Ocaso didn't unreasonably delay the claim by unfairly relying initially on the original SOW or by unfairly refusing to pay for another surveyor. And similar to the health problems, I don't think it's unreasonable to assume that the claim itself had some sort of effect on Ms A's earnings.

So it remains my view that there aren't any grounds for me to require Ocaso to compensate Ms A and Mr H for the effect their health problems had on them or for any lost earnings.

I do remain of the view however that Ocaso needs to promptly, and without quibble, reimburse Ms A and Mr H for any costs they had claimed and provided receipts for that still

haven't been reimbursed. Because the delay in reimbursing them has led to Ms A and Mr H being without money that was rightfully theirs, I also remain of the view that interest needs to be paid on top of any amounts Ocaso has already reimbursed and on top of any amounts that still need to be reimbursed.

Ms A and Mr H have calculated that the amount outstanding should be £25,786.07. They asked if I could directly award this sum as it would end any further disputes, but I'm not going to do that. As I've said above, once a final decision is issued there's no scope for it to be reviewed. So it's fraught with potential problems if I make a specific award only to find out that one or more of the costs have already been paid (I note for example that the flooring was due to be paid imminently by Ocaso). I also note that 'disturbance allowance' – which is essentially an amount insurers pay a consumer in recognition of extra costs they incur (eg increased food costs because their kitchen is damaged to the extent that they can't use cooking facilities) because they stay in their home rather than moving elsewhere – is claimed for 69 days at £225 a day. I don't recall seeing any agreement by Ocaso to pay this amount, which is above that normal amount of £10 per day per adult.

So I'm afraid the two parties will have to liaise with each other over the extent of the amount that's outstanding.

### **my final decision**

I require Ocaso SA, Compania de Seguros y Reaseguros to:

- pay Ms A and Mr H 's claim for additional costs they incurred that haven't already been reimbursed, plus interest at a rate of 8% simple per annum (calculated from the date Ms A and Mr H paid the relevant cost)
- pay Ms A and Mr H interest at a rate of 8% simple per annum on top of any amounts it has reimbursed them for already (calculated from the date Ms A and Mr H paid the relevant cost)
- pay Ms A and Mr H £750 compensation for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Mr H to accept or reject my decision before 31 January 2019.

Paul Daniel  
**ombudsman**