

complaint

Mr R doesn't think Ocaso SA, Compania de Seguros y Reaseguros (Ocaso) has made him a fair settlement offer for his claim under his buildings insurance policy. He has also complained about the poor handling of his claim.

background

Mr R made a claim to Ocaso after he noticed cracking in his garage wall in March 2014. Ocaso appointed a loss adjuster who went to inspect the property.

The loss adjuster noted that Mr R's property is built on a steeply sloping site. He said that after heavy rain ground water might have built up behind a retaining wall and that in turn might have caused the garage to move. It wasn't clear whether the claim should be classed as storm damage or subsidence. He said further investigations were needed to establish the cause and extent of the damage and also whether the sum insured was adequate.

The loss adjuster instructed a surveyor who thought the garage would have to be rebuilt on new foundations. He recommended a detailed site investigation of the foundations and ground conditions.

The property (including the garage) was insured for £186,000. The surveyor thought it should have been insured for £208,000 of which c £20,000 would be for the garage. Ocaso told the loss adjuster that since the sum insured was within a reasonable margin of what it should have been, it wouldn't exercise its right to reduce the amount it would pay out on the claim.

Although the detailed site investigation hadn't been arranged, the loss adjuster obtained two estimates for the repair works and in September 2014 he recommended that Ocaso accept one which was for just under £70,000.

Mr and Mrs R were chasing Ocaso for a decision when they hadn't heard anything by November 2014. They'd also obtained their own estimate for the repair works and sent it to Ocaso. In January 2015 Mr R complained to this service. He said that between October and December 2014 he'd contacted Ocaso at least 19 times for a decision on his claim.

In February 2015 Ocaso told Mr R that further investigations would be needed to establish the cause of the damage. It said that if the garage had suffered damage from subsidence and not as a result of failure of the retaining wall, the most it would pay out under the policy would be £21,905, less costs. It said any further investigations to confirm the exact cause would reduce the amount payable even more and it was prepared to offer Mr R the sum of £16,046.

Mr R didn't accept that offer. Our adjudicator had similar problems in contacting Ocaso. He recommended that Mr R's complaint be upheld because he thought Ocaso shouldn't have offered a settlement when the surveyor had recommended that the claim should be investigated further. He also thought that the way Ocaso had calculated the settlement was wrong. Our adjudicator recommended that Ocaso should arrange for an independent survey and the claim should be resolved in accordance with that surveyor's findings. He also thought Ocaso should pay Mr R £1,000.00 compensation.

As Ocaso didn't agree, the matter has been referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

fairness of the settlement offer

When Ocaso was asked to explain how it had calculated the settlement offer, it said that when the garage was built, the sum insured for the property had been increased by £20,000. That amount when index linked over the intervening years gave a figure of £21,905, which it thought was the limit of cover for the garage.

But the schedule to the policy states that the buildings are insured for £186,000. The definition of "buildings" includes the garage. There is no separate figure for the garage. In my opinion the limit of cover is therefore £186,000 and not £21,905. The estimated cost of the repairs for the damage to the "buildings" on Mr R's property is well within the sum insured for "buildings". On this basis, I can see no valid reason why the claim should not be settled in full.

Also Ocaso's deducted its surveyor's costs from its settlement amount and implied that it was entitled to do so under the terms and conditions of the policy. It said that if any more investigation was required, then the amount payable would reduce again. Ocaso should know that this is completely wrong and not in line with industry practice. There is nothing in its policy documents to say that the customer will be responsible for Ocaso's costs in investigating a claim. So I don't think it's reasonable for Ocaso to deduct any costs, other than the policy excess, from an offer of settlement.

Ocaso is free to make whatever offer it thinks appropriate when looking to settle a claim. I don't have any problem with that. What does concern me though is that the offer was calculated and then communicated to Mr R in a way that suggested that it was in line with the terms and conditions of his policy, when it clearly wasn't. In doing that I don't think Ocaso treated Mr R fairly or reasonably.

The loss adjuster pointed out to Ocaso at an early stage that the property might be underinsured (that is, not insured for the full rebuilding cost). Because the sum insured was inadequate, under the policy Ocaso was entitled not to pay the claim in full. Although I can see from the business file that Ocaso considered this, it didn't make Mr R aware of this possibility and there's no mention of it in its final decision letter to Mr R.

However Ocaso did mention to our adjudicator that it was reconsidering the underinsurance issue now that it had become aware how much the repairs might cost. I don't think that would be fair. If Ocaso had wanted to reduce its liability because Mr R had underinsured, then I think it should have made this clear to him from the outset. It is unfair and unreasonable for Ocaso to try to "add" new reasons to reduce its liability at this late stage of proceedings.

claim handling

I can well understand how frustrating it has been for Mr R in dealing with Ocaso. Almost a year after he'd first made a claim, Ocaso still hadn't established the root cause of the damage, possibly because it was reluctant to spend further money on the investigation.

He's spent a lot of time fruitlessly chasing his claim. He was continually promised that Ocaso would get back to him but it didn't. No-one should have to make so many calls just to move their claim along. In the end he had to ask his broker for help but they didn't have any success either. Ocaso hasn't given any justification for that. In fact it has been just the same when we at this service have contacted it.

In the meantime Mr R has been left with a potentially dangerous structure on his property. He's asked Ocaso several times to allow him to arrange for the garage to be taken down but it's refused.

As mentioned above, it also made a very misleading settlement offer to Mr R. Since Mr R had obtained an estimate for the cost of rebuilding the garage himself, he was well aware that the amount offered by Ocaso was nowhere near the rebuilding cost and so he could potentially end up seriously out of pocket. That would have caused him a lot of concern.

Our adjudicator said that because of the way Ocaso had caused unnecessary delays after Mr R brought his complaint to our service, it had made an already bad situation worse for Mr R and so he thought that Ocaso should now pay Mr R £1,000.00 in recognition of the substantial distress and inconvenience caused by its poor handling of his claim.

I should explain that awards of this nature aren't intended to fine or punish a business – that's the job of the regulator. But when something's gone wrong, we consider the impact on the customer. It's exceptional for us to award compensation of £1,000 or more. But in this case I think it's right to make an exceptional award, having taken into consideration the service issues including the failure to investigate the claim properly, the lack of communication and the misleading offer made to Mr R after he'd complained to this service.

next steps

At the present time Ocaso still hasn't carried out a proper investigation into the cause of the damage. Although I don't feel that it is fair that Mr R and his family should have to put up with further inconvenience, I accept that this has to be done. Understandably it's important to Mr R that there should be no more opportunities for delay on Ocaso's part.

For that reason, I think that Ocaso should arrange for an independent survey of Mr R's garage to be carried out. In line with our established approach to selecting independent experts Ocaso should provide a list of three suitably qualified surveyors for Mr R to choose from. If Ocaso doesn't do this within 21 days from the date of this decision, then Mr R may appoint his own choice of surveyor to carry out the further inspection. In either event, Ocaso will be required to meet the cost of this survey. The surveyor should be asked to provide a schedule of repair/ reinstatement works with costings which both parties will be bound by.

my final decision

For the reasons set out above, I uphold this complaint. I require Ocaso SA, Compania de Seguros y Reaseguros to:

- within 21 days from the date of this decision provide Mr R with a list of three independent surveyors for him to choose one, failing which Mr R has the right to nominate a surveyor of his choice;

- at its own expense instruct the surveyor nominated by Mr R to carry out an investigation and provide a schedule of repair/reinstatement works with costings. I expect both parties to abide by the surveyor's findings;
- make a cash settlement to Mr R based on those costings. Interest should be added to this at the rate of 8% simple a year (less tax if properly deductible) from the date of loss to the date of settlement; and
- pay Mr R £1,000 for the trouble and inconvenience its handling of the claim has caused him.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 19 November 2015.

Elizabeth Grant
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