

complaint

Ms G is unhappy with the way Ocaso SA, Compania de Seguros y Reaseguros (Ocaso) dealt with a flood damage claim.

background

I wrote a provisional decision in October 2015. I've attached a copy which forms part of my final decision.

Ms G responded to my provisional decision and said:

- the loss adjuster didn't suggest she move out until her MP became involved in her case
- she didn't ask for the heaters to be removed
- she accepts my provisional decision

Ocaso has said:

- the buildings sum insured when the policy started was £81,298. It questions how I calculated that it had gone up to £87,912 in four months.
- Ms G told it – Ocaso says – that she insured her contents on the basis of second hand values which is what it says she says she paid for them. Because she was only claiming for second hand goods it was on that basis that it made a cash settlement. It's said that if it were to apply replacement value to the items claimed for, it would need to think about underinsurance for the contents part of the claim.
- Ocaso has accepted my approach to the disturbance allowance

my findings

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

I've looked at my calculations for the buildings sum insured again. Ocaso has still not said what it thinks the correct sum insured should be, despite being given the opportunity to do so.

But in any event – having looked at the figures again – I made a mistake.

The policy says that the sum insured is index linked on a monthly basis. I looked at The Royal Institute of Chartered Surveyors (RICS) figures which set out an index for rebuilding costs. So the index says – for the months in question:

August (2013) 1.6%
September (2013) 1.9%
October (2013) 2.2%
November (2013) 2.2%

My error was to increase the sum insured each month by the stated percentage figure. It should have been increased by the percentage figure for the year – i.e. August 2013 – August 2014 = 1.6%.

I've recalculated the figures based on 1.6% for the year 2013 – 2014. I then divided that by four (the number of months between the policy starting and the claim being made) which makes an increase of 0.4%.

This makes the sum insured increase at the point of claim by just over £325. So the sum insured should have been £81,623. This figure is – rounded up - 81% of what the sum insured should have been as set out in my provisional decision (£101,333). So Ms G was underinsured by 19%.

Because Ocaso hasn't questioned the base figure – that is, what the sum insured should have been if set up properly – it needs to settle the buildings element of the claim in line with the calculations above. That is, the property was insured at 81% of what it should have been.

I'm aware that these figures may not be entirely precise. But because Ocaso still hasn't given a clear rationale for its approach I think they're reasonable in the circumstances.

I've thought about Ocaso's response to the contents element of the claim – that an underinsurance approach should apply. I don't agree. Ocaso should have dealt with this claim properly from the beginning. It should have explained clearly that Ms G's contents were also underinsured. This wasn't explained to her.

It seems to me that Ocaso and its agents made a decision on how it would deal with the contents claim without properly engaging with Ms G. Ms G has told her she was simply told to replace her goods with second hand ones.

Ocaso and its agents failed to be upfront with Ms G about how it was dealing with the contents claim. This led, I think, to Ms G making decisions that I don't know she would otherwise have made. I don't think this is fair. This sums up how a lot of this claim was dealt with by Ocaso. It hasn't been at all clear about what it was doing.

So my approach to this part of Ms G's complaint remains as I set out in my provisional decision.

With regard to Ms G's concerns, I can't be sure when Ms G was told she should move out. But the file does suggest that Ocaso told Ms G she could be put in alternative accommodation. And I still can't be sure whose idea it was to remove the drying equipment so I don't think it's fair to hold Ocaso responsible for this.

I do though think that the service she received was poor. The award I recommended for Ms G's distress and inconvenience takes account of this.

Finally, I understand that the seller of the insurance has compensated Ms G for setting up the policy incorrectly with regard to the correct buildings sum insured. I've not looked into this because it's a separate complaint.

my final decision

For the reasons I've explained I uphold this complaint. Ocaso SA, Compania de Seguros y Reaseguros must:

- pay Ms G the difference between what it paid her under the buildings claim and what it should have paid her, in line with the figures I outlined above
- pay Ms G the difference between what it paid for her contents claim and what it should have paid her based on new for old market rates
- pay Ms G £150 for her disturbance whilst she waited for her contents to be replaced
- compensate Ms G £350 for the unnecessary distress and inconvenience she was put to by the mistakes it made
- add 8% interest per annum simple on any money owed to her (not including the compensation and disturbance allowance) from the date of claim until the date of payment

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 18 January 2016.

Michael McMahon
ombudsman

copy

complaint

Ms G is unhappy with the way Ocaso SA, Compania de Seguros y Reaseguros (Ocaso) dealt with a flood damage claim.

background

Ms G's home was flooded on 5 December 2013. A loss adjuster was asked to inspect the damage and deal with the claim. A number of issues have arisen:

- Ocaso says Ms G's property was underinsured so the settlement of the buildings section of the claim was reduced
- Ms G says that she was forced to replace her contents with second hand goods – and some items were not replaced at all or provided by a local organisation. Ms G says that this was because the settlement offer was too low.
- There is dispute about drying equipment – Ocaso says that Ms G asked it to remove the equipment. Ms G doesn't agree.

Our adjudicator upheld the complaint. Because Ocaso disagreed with him, the case has been passed to me.

my provisional findings

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

I've dealt with each issue in turn.

underinsurance

The policy says that if the property is of a greater value than what it was insured for when a claim is made, a proportionate settlement will apply. The sum insured is determined by the Royal Institute of Chartered Surveyors (RICS) figures.

Ocaso says that the correct sum insured should have been £115,000. The property (that is, the buildings) was insured for £81,298. When our adjudicator pressed Ocaso for evidence that the RICS guidelines had been followed, what it provided adds further confusion.

The figures Ocaso gave us (which look to be based on RICS guidelines) seem to show that the correct sum insured – based on the size of the property – is £101,333. Added to that figure is £20,000 for "*fixed prelims and limited access*" though what that actually is hasn't been explained. The total sum insured comes to £123,000 – including other unexplained adjustments - or £8,000 more than Ocaso originally said.

Because Ocaso, despite being pressed, hasn't explained these figures, I think it's fair to say that the correct sum insured should have been £101,333.

Our adjudicator also pointed out to Ocaso that the policy index links the sum insured on a *monthly* basis. For reasons that are not at all clear, Ocaso seems to dispute this. The policy says:

"Index Linking Buildings

The sum insured stated in the Schedule will be adjusted monthly in line with the House Rebuilding Cost Index produced by the Royal Institute of Chartered Surveyors"

I think the policy is clear. Based on the RICS figures – a copy of which I have seen – the sum insured when the policy started would have increased to £87,912 when the claim was made. So the property was underinsured by 13% - much less than Ocaso calculated. Ocaso should pay Ms G the difference.

I understand that a separate complaint has been made against the seller of the insurance which will look at whether that company explained what an appropriate sum insured should have been when the policy started.

contents

The policy says that items that are damaged beyond repair will be replaced on a new for old basis. So Ocaso's approach to replacing the items doesn't seem quite right. It looks like Ms G was sending Ocaso invoices for the replacement goods and it was settling them. But it seems that Ms G was, in part at least, sourcing second hand items. So it looks like she was being paid for inferior goods.

At best Ocaso's approach lacked care; at worst it could be seen as an attempt to devalue the claim.

Ocaso needs to look very carefully at the contents claimed for. It must pay Ms G the market rate for those items. If there is a shortfall between what Ms G paid and what the market rate was, Ocaso needs to pay the difference.

I would normally say that where an insurer pays cash rather than replacing an item, the insurer can deduct any discount it would get from its suppliers. But in this case I am very concerned that Ocaso has treated Ms G unfairly. And given that she has had to live with inferior quality goods for a long time, I think it's right that she is paid what it would have cost her to replace the items as new.

drying equipment

The file is quite confused about what happened with regards to drying equipment installed in Ms G's home following the flood. Ms G says that Ocaso removed the unit(s). But there is quite a lot of evidence on file that suggests Ms G asked Ocaso to remove the units –because a local organisation provided her with an alternative unit(s).

But because I have seen letters to Ms G and her M.P that sets out that it was at Ms G's request that the unit(s) were removed, I don't think I can hold Ocaso responsible for any failings in this regards.

disturbance allowance

Ms G returned to her property the day after it flooded – against the advice of Ocaso's loss adjuster. But in any event, there was an extended period when Ms G was in her property without basic equipment to allow her to live comfortably.

Our approach to these situations is that an insurer should pay £10 per day, per adult to take account of their disturbance. This should be paid in this case.

It looks from the file that most of the invoices for the damaged goods were replaced by around 20 December. The flood happened on 5 December so Ocaso should pay £10 per day for 15 days.

I also think that the service provided to Ms G was not very good. Ocaso didn't handle the contents claim very well at all. And its approach to underinsurance was confused. I think that this caused Ms G unnecessary delay, distress and inconvenience. So she should be compensated for this. I think £350 is reasonable given the mistakes Ocaso made.

my provisional decision

For the reasons I've explained I intend upholding this complaint. I propose Ocaso SA, Compania de Seguros y Reaseguros should:

- pay Ms G the difference between what it paid her under the buildings claim and what it should have paid her, in line with the figures I outlined above
- pay Ms G the difference between what it paid for her contents claim and what it should have paid her based on new for old market rates
- pay Ms G £150 for her disturbance whilst she waited for her contents to be replaced
- compensate Ms G £350 for the unnecessary distress and inconvenience she was put to by mistakes it made
- add 8% interest per annum simple on any money owed to her (not including the compensation and disturbance allowance) from the date of claim until the date of payment

Ms G and Ocaso SA, Compania de Seguros y Reaseguros should write to me by 30 November 2015 with anything further they would like me to consider, after which I will send my final decision.

Michael McMahon
ombudsman