

## **The complaint**

Mrs B complains about how Ocaso SA, Compañia de Seguros y Reaseguros ('Ocaso') responded to a claim she made on a commercial property insurance policy.

Much of Mrs B's dissatisfaction has arisen because of the actions of Ocaso's appointed agents (contractors). As Ocaso have accepted they are responsible for the actions of their agents, in my decision any reference to Ocaso should be interpreted as also covering the actions of their appointed agents.

## **What happened**

The background to this complaint is well known to Mrs B and Ocaso. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mrs B made a claim under this insurance policy in October 2019, following an escape of water. The claim was accepted by Ocaso and repair works arranged. Mrs B says she didn't consider all works had been completed and didn't provide a 'pin' to the contractors to authorise the completed works. Due to COVID-19 restrictions, Mrs B didn't visit the property again until April 2021, and around this time she identified concerns that the agreed works hadn't been completed. Specifically – ceiling/wall cracks and issues with bedroom flooring.

Mrs B made a complaint to Ocaso's agents. They provided a response but only offered referral rights to Ocaso – not to our Service. The complaint was later referred to Ocaso. As Mrs B remained unhappy that the dispute was unresolved, she referred the complaint to our Service for an independent review.

Our Investigator considered the complaint and recommended that it be partially upheld. Neither party accepted our Investigator's recommendations, so the complaint has been referred to me for a final decision.

## **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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

### *The scope of my decision*

It's clear that this dispute is a long running one - going back to 2019, and the impact of the COVID-19 pandemic caused a lag between the works being carried out and Mrs B seemingly becoming aware of issues with those works. I make this point as the further we move away from a problem with the property first occurring, the more difficult it often can be for insurers and policy holders to determine the proximate cause of that problem. Given the time that's elapsed, in my decision I will be making 'on balance' findings. That is - what's

more likely than not to have happened given the evidence available.

I also need to be clear that it's not the role of our Service to determine the proximate cause of any claim event. Our role here is to decide if Ocaso have fairly considered and responded to this claim event, in line with the policy terms. Mrs B has referred to loss of rent and other costs incurred as a result of how Ocaso responded to this claim. Whilst I'm sorry to hear of the overall impact on Mrs B, I will only consider those losses if I decide, on balance, Ocaso have done anything wrong.

The insurer of Mrs B's property changed after this claim had been made. I'm not considering the second insurers' actions here, but I may refer to them in my decision where it's appropriate to do so.

### *My key findings*

It's clear that Mrs B felt the agreed works were incomplete or not completed to a sufficient standard by her action of not wanting to provide a pin to Ocaso's agents. This pin would be treated as an acceptance of the works being completed and enable the agents to request payment from Ocaso. I'll return to this point later in my decision.

It was fair that when Mrs B later raised issue with the property following her visit in April 2021, Ocaso (their agents) engaged with her and agreed to finish off some works.

A large part of Mrs B's argument (that Ocaso didn't properly carry out repairs) revolves around the 2019 escape of water event. But, as the evidence supports that the property was dry in December 2019 and no associated issues reported by Mrs B at that time, I find the position taken by Ocaso that the further damage is not linked to the earlier escape of water claim to be reasonable. Ultimately, no persuasive evidence has been provided that undermines the position taken by Ocaso.

Mrs B raised a specific issue with Ocaso in May 2022. By this point Ocaso weren't the insurers of the property, the guarantee for the works previously carried out had expired and they referred her to her new insurers (insurer 2). As outlined, I'm not considering the actions of insurer 2 here, but they carried out a report that I've relied on as part of the evidence in this case. The report refers to damp in the property as *possibly* being caused by poor workmanship or a further leak.

I've considered this alongside the following: the property was considered 'dry' in 2019, the time that passed before these further issues (now in dispute) were raised; the possibility of a further leak after the initial repairs; and Ocaso didn't carry out works in all the areas where damage was noted in 2022. I find that, on balance, there's insufficient evidence to allow me to conclude that Ocaso have been unreasonable in arguing that they aren't responsible for the damage Mrs B wants put right or that it arose out of their response to the claim in 2019.

I therefore don't need to make any findings on the earlier works guarantee - as I've not concluded that Ocaso's position (that they aren't responsible for the concerns Mrs B has raised) is unreasonable.

Our Investigator recommended that Ocaso pay Mrs B £400 for avoidable distress and inconvenience that their actions caused. I find £400 to be broadly within the range of fair, reasonable and proportionate compensation. I find that Ocaso could have done more from 2020 - 2022. I say this because:

- Mrs B withholding the pin from Ocaso's agents was a strong indication that she wasn't satisfied with the works completed. Whilst some responsibility lay with Mrs B -

as a commercial insurance customer, to follow up with Ocaso, there was an opportunity to address Mrs B's concerns at that point in time. Due to the worldwide impact of COVID-19 and the associated restrictions, it's unfortunate that it wasn't until April 2021 Mrs B visited her property again.

- Mrs B had the majority of her communication directly with Ocaso's agents during and after the works. Whilst this wouldn't be unusual, it wouldn't be unreasonable to have expected Ocaso to step in directly- much sooner than they did, when it became apparent that Mrs B was unhappy with the works.
- When Mrs B raised issue with the repairs in 2022, there was another opportunity for Ocaso to step in and review her concerns – regardless of whether they were still the insurers of the property or not. I say this because, in the specific circumstances of this claim/complaint, much of Mrs B's concerns directly related to the works carried out by Ocaso.

I note Ocaso's comments (following our Investigator's assessment) about the report from insurer 2 and when it was shared with them:

*“From reviewing our file, I can't see that the [redacted by Ombudsman] report was referred to us in Sept 22 as suggested above and I attach correspondence between [Ocaso's agents] and the customer and also an email from [redacted by Ombudsman] from Jan 23 attaching a copy of their report.”*

But this doesn't materially change the outcome that I've reached about the service provided. I also note that Mrs B engaged in communication with Ocaso's agents after September 2022 and in an email dated 9 December 2022 she stated:

*“Please let me know if you have been able to obtain the survey report from the current insurance company for the report carried out on 29 July 2022”*

It appears that it was after this that Ocaso took steps themselves to obtain the report – a delay of almost three months and Mrs B needed to clarify on a number of occasions that the relevant authority wouldn't release the report to her, as a leaseholder. An email from Ocaso's agents dated 9 January 2023 – months after it was first raised, confirmed they had received it.

- I acknowledge that whilst the complaint was with our Service, Ocaso took proactive action to try and arrange a site visit. But there were multiple opportunities for them prior to our Service's involvement to take this action.

## Summary

I find, on balance, that Ocaso's response to the claim event was fair. Therefore, I've not considered the other financial losses Mrs B has described. But the service Ocaso provided in responding to the claim doesn't stand up to scrutiny and Ocaso have let Mrs B down over a period of time. Their actions have caused avoidable uncertainty. I've kept in mind that this wasn't Mrs B's main property and with any claim there will a certain level of inconvenience. But Ocaso's actions here caused an additional, avoidable impact that went above and beyond what might be reasonably expected during the course of a claim.

## Putting things right

Ocaso SA, Compania de Seguros y Reaseguros now need to pay Mrs B £400 compensation

in recognition of their service failings that have caused her avoidable trouble and upset.

**My final decision**

My final decision is that I partially uphold this complaint. Ocaso SA, Compania de Seguros y Reaseguros now need to follow my direction as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 17 December 2024.

Daniel O'Shea  
**Ombudsman**