

The complaint

Mrs J and Mr J complain about the way Ocaso SA, Compania de Seguros y Reaseguros (Ocaso) handled an escape of water claim under a buildings insurance policy.

What happened

The details of this complaint are known to all parties, so I won't repeat them in detail again here. Instead, I'll summarise my understanding and focus on giving the reasons for my decision.

Mrs J and Mr J are leaseholders of a flat they rent to tenants. In 2020, the property suffered an escape of water which was the result of tiling and grout issues in the flat above. Tenants left the property in December 2020 as a result. Mrs J and Mr J raised a claim to Ocaso, and Davies Group (DG) were appointed to handle it.

The local council repaired the leak after delays occurred, in November 2021. Ocaso covered the loss of rent between this period which totalled roughly £21,000. Ocaso say the property was habitable once the council completed repairs. DG also visited the flat to assess the damage, found it to be minimal, and isolated in the bathroom and cloakroom. Repairs were estimated to be in the region of £1,300.

Mrs J and Mr J appointed a loss assessor to handle the claim on their behalf. They presented DG with a scope of works totalling approximately £37,000 which DG had concerns with. This was passed to Ocaso for consideration, and the loss assessor also requested further loss of rent payments to be made.

DG responded to say the loss assessor hadn't substantiated the scope of works which included a replacement kitchen, and rewiring the electrics, amongst other things. They considered the scope was for a full refurbishment rather than to repair and reinstate claim-related damage said to have been minimal. So, a surveyor was appointed to attend to assess the damage and whether the property was habitable.

The surveyor attended around May 2022. They concluded, broadly, that the loss assessor's scope of works was unreasonable, the electrics were working (with the exception of one fitting), and a full re-wire wasn't necessary. They deemed the property to be habitable. The surveyor's findings were communicated to Mrs J and Mr J's loss assessor in July 2022.

Ocaso therefore offered to settle the claim by appointing contractors, or cash settle the claim by paying Mrs J and Mr J approximately £3,900. This included a partial loss of rent payment while works were undertaken. This was communicated to Mrs J and Mr J in November 2022.

Mrs J and Mr J complained about the delays and Ocaso's decision not to cover the loss of rent while the property was empty, and, in their opinion, uninhabitable. This was due to concerns over the safety of the electrics as water had affected them. Ocaso accept they caused delays and paid Mrs J and Mr J £350 compensation following two final response letters in May and August 2022. Mrs J and Mr J told Ocaso they remained unhappy and decided to approach our Service for an impartial review.

I issued a provisional decision on 20 November 2023 which set out the following:

'What I've provisionally 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've used sub-headings for ease of reading to set out my decision.

Delays

Ocaso appointed DG to handle the claim. The claim was reported in March 2021 and wasn't concluded until November 2022. I'm satisfied Ocaso, and DG – their agents, were responsible for causing several avoidable delays during this time. I also think DG failed to act on the instruction of Ocaso to take necessary measures so that the property had electricity. Had DG done that, it's my view the claim would have gone much more smoothly for all parties involved. I'll return to this aspect later in my decision.

There were a number of months at the front end of the claim that would have frustrated Mrs J and Mr J. This was the time taken by Ocaso to accept liability for the claim. In November 2021, DG told Mrs J they were still awaiting Ocaso's authorisation to proceed with the claim – several months after it being reported. Liability was then accepted in December 2021.

The claim notes also show other delays I'm satisfied Ocaso and DG were responsible for. Communication ought to have been much better given I've seen examples where weeks would pass before DG would respond to Mrs J and Mr J – via their loss assessor. During this time Mrs J had informed DG she was having sleepless nights and the claim was causing her much distress.

Estimates were requested by DG given Mrs J and Mr J's loss assessor didn't agree with the initial buildings settlement offered. Once received, further delays were experienced. Although to give some balance to this dispute, this was due to the loss assessor's scope of works which totalled roughly £37,000, so that needed to be referred back to Ocaso for consideration given the significant difference in what DG said the repair costs were, in comparison to the loss assessor.

While I think it was reasonable for DG to refer the loss assessor's scope of works to Ocaso, avoidable delays occurred, mainly around communication. This was around May 2022 when there were delays to DG responding to the loss assessor. The difference between the repair estimates resulted in Ocaso appointing a surveyor to assess the damage and, importantly, whether the property was habitable or not. This visit took place in May 2022, but the surveyor's findings weren't communicated to Mrs J and Mr J's loss assessor until July 2022. DG then concluded the claim on behalf of Ocaso in November 2022.

So, while I think it's fair to say some delays were the result of the costings provided by the loss assessor which DG considered overstated, Ocaso and DG ought to have handled things much better here, and with a higher level of customer service. The loss assessor appointed to handle the claim on Mrs J and Mr J's behalf would have mitigated some of the impact as they were involved for much of the claim. But the claim ran for many months with delays I've mentioned above I think could have been avoided. Therefore, I find £500 compensation in total to be fair, reasonable, and proportionate here in the circumstances. So, I currently intend to require Ocaso to pay Mrs J and Mr J a further £150.

Loss of rent

The policy covers loss of rent in the event the property is deemed uninhabitable by an insured event – for up to 12 months.

That's what happened here and Ocaso settled loss of rent for the period between December 2020 when the tenant moved out, to November 2021 when they considered the council repairs made the property habitable.

Returning to my earlier point, the property remained empty due to Mrs J and Mr J's concerns over electrical safety. DG say Mrs J and Mr J ought to have mitigated their losses by employing an electrician to inspect the property to alleviate their concerns. I think that's reasonable – there is an onus on a policyholder to take reasonable steps to mitigate their losses.

That said, DG sent Ocaso their preliminary report in July 2021. Ocaso responded in August 2021 instructing DG to take the necessary measures so that the premises had electricity. It's fair to say this instruction extended to ensuring the electrics were safe. It's reasonable to conclude Ocaso more likely than not instructed DG to do this to mitigate the loss of rent costs as part of the claim. I say this because the electrics were broadly the reason why the property remained empty and untenanted.

DG failed to act on this instruction. Had they done so, it's my view much of the distress, inconvenience, and loss experienced by Mrs J and Mr J would have been mitigated.

I acknowledge the policy says loss of rent is covered for a period of up to 12 months. But I find Mrs J and Mr J have suffered consequential loss here as the result of DG not acting on Ocaso's instruction. So, I currently find it's fair and reasonable to require Ocaso to cover Mrs J and Mr J's consequential loss of rent.

The last payment for loss of rent was for November 2021. It wasn't until July 2022 it was communicated to Mrs J and Mr J's loss assessor the electrics were safe. Therefore, I currently think Ocaso should compensate Mrs J and Mr J the consequential loss of the lost rent between this period (December 2021 – July 2022).

Mrs J and Mr J requested interest to be paid on this settlement which I've given thought to. And having done so, I think that's reasonable in these circumstances. I say this because this payment recognises the loss they otherwise wouldn't have suffered, on balance, had DG acted on the instructions of Ocaso. The property could have been rented out during the period the claim settlement discussions ran for.

Therefore, I currently intend to require Ocaso to cover the consequential loss Mrs J and Mr J suffered in lost rent between the period between December 2021 to July 2022 and include 8% simple interest. Ocaso provided Mrs J and Mr J with a lump sum payment for the initial loss of rent payment under the policy. So, interest should be calculated from one month after the date the electrics were deemed safe, in July 2022, to the date of settlement.

Council tax

Mrs J and Mr J were paying the council tax costs while the property was unoccupied. They've requested Ocaso reimburses this cost to them as part of the claim. I don't think that's fair. I say this because I cannot see a provision for these costs to be covered by the policy. Further, I also think by Ocaso covering their consequential loss for lost rent during the period the property was unoccupied due to their concerns over safety is a fair and reasonable outcome here.

Summary

I currently intend to find that Ocaso need to increase the compensation they need to pay Mrs J and Mr J from £350 to £500.

The property wasn't rented for a period due to safety concerns over electrics. DG on behalf of Ocaso were responsible for taking necessary measures to ensure the property had electricity. It's my view this extended to ensuring it was safe. Had they acted on this promptly, the property could have been rented and Mrs J and Mr J would unlikely have suffered a consequential loss of lost rent. The damage caused by the escape of water Ocaso say was minimal, and therefore ongoing discussions over how to settle the damage would not have prevented the property from being rented.

Therefore, I currently intend to require Ocaso to compensate Mrs J and Mr J for their consequential loss of lost rent between December 2021 to July 2022 when the electrics ere communicated as safe. Interest should be included on this payment, calculated in the way I've set out above.

My provisional decision

My provisional decision is I uphold the complaint. I currently intend to require Ocaso SA, Compania de Seguros y Reaseguros to:

- *Pay Mrs J and Mr J a further £150 compensation for the distress and inconvenience caused.*
- *Compensate them for their consequential loss of lost rent between December 2021 to July 2022, and include 8% simple interest, from one month after the date the electrics were communicated as safe, to the date of settlement.'*

Responses to my provisional decision

Mrs J and Mr J responded to say, broadly, they accepted my decision. They requested I considered further repair invoices for repairs to the bathroom, a partial re-wire, and painting that was required following their property being left empty for an extended time. Mrs J also requested I reconsidered the award for compensation. She says the way the claim was handled caused them much financial and emotional distress.

DG – on behalf of Ocaso – responded to my 20 November 2023 provisional decision on 12 December 2023 to request an extension to respond. On 3 January 2024, they provided a further response to say they needed more time.

In the interests of fairness to all parties, I'm satisfied it's reasonable to conclude that both parties have had the opportunity to provide any further submissions for me to consider at this point, following my 20 November 2023 decision. I've also kept in mind this claim has been running since it was reported by Mrs J and Mr J to Ocaso in 2021, with delays being one of the main reasons why Mrs J and Mr J had cause to complain.

Therefore, it follows, I'll go on to set out my final decision on the matter based on the information I have available to me.

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.

Having done so, I don't think I should deviate from the outcome I provisionally reached in

November 2023. I say this because I think DG failed to act on the instruction from Ocaso to take necessary measures during the claim to ensure the property had electricity. That extended to ensuring it was safe (deeming it habitable). It wasn't communicated to Mrs J and Mr J's loss assessor until July 2022 that it was. Mrs J and Mr J hadn't rented the property during this time due to safety concerns which I think was reasonable. Therefore, Mrs J and Mr J suffered a consequential loss of lost rent between this period. So, for the reasons I've mentioned above, I think it's fair and reasonable in the specific circumstances of this complaint to require Ocaso to compensate them in this respect and include interest.

I've thought about Mrs J's comments regarding my provisional compensation award. It's important I say I do acknowledge this was a difficult period for them given the way things were handled overall. But with that said, I'm satisfied £500 compensation in total is fair and reasonable in the circumstances.

I say this because Mrs J and Mr J appointed a loss assessor to represent them. This would have meant, amongst other things, that they had someone else representing them and dealing with things on their behalf. And it's my view this would have somewhat mitigated the impact the poor claim handling had on them. I've also kept in mind I'm requiring Ocaso to compensate them for their consequential loss of lost rent which I think further mitigates the overall impact on them.

Mrs J and Mr J provided further repair invoices for consideration that they think Ocaso should cover as part of the claim. They will need to raise this with Ocaso in the first instance so they can be validated in line with the policy terms.

Putting things right

Ocaso must pay Mrs J and Mr J a further £150 compensation for the distress and inconvenience caused.

The property wasn't rented because Mrs J and Mr J had concerns over the safety of the electrics. DG – on behalf of Ocaso – didn't confirm it was safe until July 2022. Mrs J and Mr J suffered a consequential loss of lost rent between the period of December 2021 to July 2022 as a result. And so, I find it's fair and reasonable in the specific circumstances of this complaint to require Ocaso to compensate them for this period and include 8% simple interest. This should be calculated from one month from the date the electrics were communicated as safe, to the date of settlement.

My final decision

For the reasons I've given above, my final decision is I uphold the complaint. I now require Ocaso SA, Compania de Seguros y Reaseguros to settle Mrs J and Mr J's complaint in line with my instructions above.

*If Ocaso SA, Compania de Seguros y Reaseguros considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs J and Mr J how much they've taken off. They should also give Mrs J and Mr J a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 1 February 2024.

Liam Hickey
Ombudsman