

## The complaint

Mr T has complained about Allianz Global Corporate & Specialty SE's (Allianz) decision to decline a claim he made on his Housing Warranty Insurance Policy.

## What happened

I issued a provisional decision on this complaint in April 2022, explaining that I was intending to uphold it. Here's what I said:

### ***"What happened***

*The subject of this complaint is a building comprised of several flats. In 2013, the building underwent significant renovation. This included the installation of an additional floor, comprised of three penthouse flats and a single ply membrane green roof system. As part of the renovation, the developer purchased a 10-year Housing Warranty Insurance Policy for the penthouse flats. The subsequent leasehold owners, of the penthouse flats, are insured under the policy for their rights and interest in the premises. The warranty is underwritten by Allianz.*

*Damage has occurred in each of the penthouse flats, and a communal hallway, as a result of water ingress through the roof. This means that, in addition to Mr T, the other leaseholders have also been affected. But this complaint has been brought solely by Mr T.*

*There have been several businesses and individuals involved in the complaint – acting as representatives or agents of either Mr T or Allianz. But for ease of reference, I'll only refer to Mr T and Allianz by name in this decision – even when referring to the actions or arguments of their representatives.*

*In 2016, Mr T suffered water ingress in his flat, which he says he reported to Allianz's appointed agent – who initially sold the policy and completed the relevant technical inspections during the renovation. Water ingress was occurring around numerous service penetrations in the roof, including vent pipes and boiler flues. Mr T says he was advised at this stage, by Allianz's appointed agent, that the damage he'd reported would not exceed the applicable policy excesses, so he wouldn't have a valid claim under the policy. Because of this, no claim was made at this stage and instead Mr T's property management company carried out localised repairs by sealing the various identified ingress points in the roof with mastic sealant.*

*In 2020, further water ingress was noted to each of the penthouse flats (including Mr T's) and a communal hallway. Mr T's property management company initially reported the claim to Allianz in March 2020, but Allianz was unable to carry out an inspection at that time due to the pandemic. In May 2020, Mr T's building management was taken over by a new property management company. This company, unaware that a claim had already been raised, issued another claim to Allianz in October 2020.*

*Allianz instructed an inspection of the roof in October 2020. Based on the report completed, it declined to cover the claim. Allianz has given several reasons why it feels Mr T's claim isn't covered under the terms of the warranty. It says:*

- Mr T was required under the policy terms to provide written notification of a claim to Allianz. But it has no record of any notification, made to it or its agent, in 2016 as Mr T alleges.*
- The policy covers damage caused by a defect in the design, workmanship or materials at the time of construction. But Allianz says the cause of damage in 2020 is the failed repairs carried out by the property management company in 2016. Based on this, it says the operative clause in the policy has not been triggered.*
- Even if it accepted that the circumstances here did trigger the operative clause, Allianz says the claim would then be subject to the terms and conditions of the policy, including any exclusions. Allianz says the policy excludes loss resulting from alterations or repairs, unless notified to and accepted by it in advance, which it says didn't happen here. The policy also excludes loss resulting from a lack of maintenance and/or resulting from shrinkage or wear and tear – all of which Allianz says apply to the failed mastic sealant.*

*Mr T says the claim meets the requirements of the operative clause as damage has been caused by a defect in the installation of the single ply waterproof membrane. Mr T says no written notification of claim was made in 2016 because he was advised his claim would not meet the policy excesses and therefore wouldn't be valid. So, in line with the terms and conditions of the policy, he (via the property management company) took action to prevent further loss by carrying out localised mastic repairs.*

*Mr T doesn't accept that the failure of these repairs is the proximate cause of damage. He says the fact that the waterproof layer is defective is the primary reason for water ingress. And as this was installed during the original construction, he feels Allianz should cover the claim. Mr T has also obtained his own structural engineer's report, to support his view.*

*One of our investigators considered Mr T's complaint, but she didn't think it should be upheld. She explained that for a claim to be successful under the terms and conditions of the warranty, there needed to be a defect (as defined in the terms of the warranty) which had been shown to be the cause of damage. She accepted that there was a defect – the inadequate sealing of the overlapping sheets of the waterproofing membrane – but she wasn't persuaded that this defect was the dominant cause of damage. She felt the damage had been caused because of the failed repairs in 2016, rather than because of the defect.*

*Mr T didn't accept our investigator's findings. So, because no agreement has been reached, the complaint has been passed to me to decide.*

### ***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.*

*Having done so, I'm intending to reach a different outcome to that reached by our investigator. I'll explain why below, starting with an explanation of the cover provided under the New Home Warranty Policy.*

What the warranty policy covers

Mr T's policy document details the terms, conditions, and definitions applicable to the cover it provides:

*"Operative clause*

*The Insurers agree to indemnify the Insured against Loss not excluded herein."*

*"Loss" is defined as:*

*"The cost of Reinstatement of any part or parts of the Works which due to one Defect suffer Damage."*

*"Defect" is defined as:*

*"Any defect in:*

*(a) the Structural Works;*

*(b) the Works in respect of Building Regulations: health & safety compliance ...discovered and notified to the Insurers during the Cover Period which is attributable to a defect in design or workmanship or materials which was undiscovered at the Date of Inception."*

*"Damage" is defined as:*

*"(a) Building Regulations: health and safety compliance; or*

*(b) Actual Damage; or*

*(c) Imminent Damage; or*

*(d) Ingress of Water."*

*Works are defined as:*

*"All works completed within the curtilage of the Premises and any part of the Premises retained and worked upon in the construction of the Premises comprising:.....:*

*(a) Structural Works"*

*Structural Works are defined as:*

*"(a) All internal and external load-bearing structures essential to the stability of the Premises;*

*(b) Drains, walls and windows, plaster, ceilings, staircases, floor decking and screeds, chimneys and flues;*

*(c) The Waterproofing Envelope."*

*Waterproofing Envelope is defined as:*

*"External walls, external doors, external windows and cladding (including any non load-bearing facings and their fixings), roofing and any other Works above or below ground which provide protection against Ingress of Water."*

*Reinstatement, with respect to an ingress of water, is defined as:*

*(i) where the Waterproofing Envelope is defective, the repair or replacement by similar Works in a condition equal to or substantially the same as but not better nor more extensive than its condition when new.....*

*...Reinstatement shall also include the costs of any work necessary to remedy the Defect in the Works giving rise to Damage.*

*The Policy also contains the following Claims Conditions, which Allianz says must be complied with to have a valid claim under the Policy:*

*“Insurer’s liability under this Policy is conditional upon compliance with any or all of (c), (d), and (f) below.*

*Upon discovery by the Insured of Loss to the Premises which may give rise to a claim under this Policy, the Insured will at their own expense:*

*(a) give notice to the Insurers as soon as possible...;*  
*(b) take all reasonable precautions to prevent any further Loss;*  
*(c) within 60 days of such discovery submit in writing such details of the Claim then available to the Insurers...*

*(f) obtain authorisation from Insurers prior to commencing Reinstatement. Any such Reinstatement must not be delayed unreasonably by the insured”*

*The Policy also contains some General Conditions, including:*

*“The Insured will:*

*(a) At their or the occupier’s own expense, take all reasonable precautions to prevent Loss to the Works...”*

*Finally, the Policy contains a number of Exclusions which Allianz says apply to this claim:*

*“(6) Indirect and/or Economic loss  
Any loss such as loss of enjoyment, use, income, business opportunity, inconvenience, distress or any other indirect or economic loss of any kind or description whatsoever other than as provided elsewhere in this Policy...*

*(8) Maintenance or use  
Inadequate maintenance or the use of the Premises for any purpose other than that for which it is intended as stated in the Schedule...*

*(12) Structural Changes  
Any alterations, repairs, modifications or additions of a structural nature to the Premises during the Period of Insurance unless the Insurers have been informed and if necessary the Policy endorsed, and any appropriate additional premium paid to the Insurers...*

- (14) Wear and tear or discolouration  
(i) wear and tear or other gradual deterioration;  
(ii) erosion or corrosion;  
(iii) any change in colour, texture, opacity or staining or superficial deterioration or marring of finishings or surface appearance or ageing processes;  
(iv) natural shrinkage or distortion or other gradually developing condition; unless caused by an otherwise indemnifiable Loss.”

#### Technical inspections

Mr T has complained that Allianz (or its agents) failed in their duty to ensure that his property was constructed appropriately. He says the issues with the roof should have been identified during one or more of the many technical inspections which were carried out during renovation.

Allianz says that neither it nor its agents are responsible for ensuring the property is entirely free from defects. It says the purpose and scope of the technical inspections are explained in the policy document. I've removed the name of Allianz's agent from the below:

“During the construction period, [redacted] technical consultant will have carried out various checks of your property to ensure that it is essentially complete and to confirm acceptability for insurance by us (as the Insurers). However, this is not the same thing as a final “snagging” inspection that guarantees that the final quality of the home will meet your expectations; you are the only party who can do that. You should also be aware that the checks carried out by [redacted] cannot confirm that your Premises are entirely free of defects.”

Based on the above, I don't think Allianz, or its agents, can be held responsible for the fact that there is a defect at the property – based solely on the fact that it completed technical inspections during construction.

However, that in itself doesn't mean Allianz wouldn't be responsible for remedying the damage caused by the defect, as that is what the policy is there for. So, I'll go on to consider whether I think Allianz can fairly be held responsible for remedying the issues, under the terms and conditions of the cover it provides, in the particular circumstances of this claim and complaint.

#### The claim decision

Allianz has declined Mr T's claim on the basis that the initial potential claim wasn't notified to it in 2016, and on the basis that the repairs carried out in 2016 caused the issues leading to the 2020 claim.

I've first considered whether I think Allianz can fairly refuse Mr T's claim on the basis that it says it wasn't notified of the potential claim or subsequent repairs in 2016.

*Mr T says he notified Allianz of the water ingress issues in 2016, and so satisfied the term of the warranty that requires the policyholder to notify Allianz about circumstances which may give rise to a claim. He says he was advised the cost of repairs would fall short of the policy excess, at that time. Allianz says it has searched its (and its agents') systems and can find no record of this notification. However, Mr T has provided the full name of the member of staff he spoke with, and Allianz hasn't subsequently advised that this person wasn't an employee of it, or its agent, at the time. So, based on the information I currently have and on the balance of probabilities, I consider it more likely than not that Mr T did contact Allianz, or its agent, in 2016 to report the water ingress. So, I don't think it was fair for Allianz to decline the 2020 claim on that basis.*

*I've also considered Allianz's argument, in support of their decision to decline the 2020 claim, that Mr T, or the property management company, didn't obtain its approval before carrying out the mastic repairs in 2016. Having done so, I don't agree that this offers a fair basis for declining the 2020 claim either. As a record of the call Mr T likely made in 2016 can't be located, aside from Mr T's testimony, there's no record of what was said on that call, regarding who would undertake the repairs. But, in any event, the policy requires that the insured take action to mitigate the risk of further damage. So, regardless of who carried out the works, I consider it was reasonable for this work to be carried out. I also note that the exclusion for alterations or repairs requires that these be of a structural nature – which they weren't in this case.*

*I also don't think that by carrying out repairs in 2016, that Mr T has prejudiced Allianz's position. Rather they mitigated the risk of further damage occurring, for a period of time. Whether or not Mr T submitted a written claim, he needed to complete the repairs to mitigate the damage as required by the policy. And there hasn't been any prejudice to Allianz, as it didn't need to carry out repairs or incur any costs at that time, regardless of the sequence of events. So, based on everything I've said above, I don't think that Allianz can fairly refuse to honour Mr T's claim, based on the fact that it can't locate a record of the claim notification, or because it didn't provide approval for the mastic repairs in 2016.*

*I've next considered Allianz's decision to decline the claim on the basis that the cause of damage is not a defect in the original construction, but rather the repairs carried out in 2016, which have failed. Allianz has pointed to the report it had completed in October 2020, which stated:*

*"3.2 The roof has multiple penetrations for vent pipes, boiler flues and mansafe posts. The majority of the services penetrating the roof have evidence of a historic repair.... The building manager confirmed during the inspection that the repairs were historic having been undertaken by an unknown contractor on the instruction of the previous managing agent, to rectify the ingress.*

*3.3 The repairs have debonded from the single ply membrane and are allowing ingress. It is likely the repairs have been undertaken using a product that is not compatible with the membrane and have failed over time.*

3.4 There is evidence of historic local repairs being undertaken to the joints between copings. There is damage to the perimeter, mainly the corridor, which a parapet leak could be contributing. If there is a defect to the waterproofing below the copings this measure is unlikely to rectify it.

3.5 The separating layer on the brown roof is a foam material and polythene sheeting. This is not suitable for use on a single ply roof. There is a risk that during the lifetime of the roof damage has occurred to the membrane and may be allowing ingress....

5.1 The roof has been subject to defects for a number of years and the previous managing agent has attempted to rectify. These repairs are now failing and allowing ingress”

Allianz says the findings of this report confirm that the cause of water ingress in 2020 is the failed repairs from 2016, rather than a defect present since construction. It says the repairs carried out in 2016 clearly resolved the issues as no further water ingress was reported for four years. It says the mastic applied in 2016 wasn't suitable and has degraded over time due to a lack of maintenance.

Mr T doesn't accept this. He's argued that the repairs undertaken in 2016 were to the upper layers of the roofing system and not to the actual waterproofing membrane layer – which he says has been defective since construction. Mr T has provided a further expert report which states:

“5.1 An electronic test of the single ply waterproofing indicated 33No. breaches. This consisted of 29No. open laps between sheets and 4No. areas of multiple cuts which appeared to be due to mechanical damage. A further 20No. partially open laps were also located from a manual lap probe test...

6.4 Numerous failures were detected at the overlap of sheets of the membrane. These appeared to be due to insufficient heat applied to the membrane during installation to achieve an adequate weld. These were predominantly to one side of the roof further indicating an issue during installation. Due to the large number of problems located, it is possible that further issues could occur in the future and at locations of the roof not inspected during this visit. It is, therefore, recommended that all laps are over strapped with a compatible membrane to ensure the roof is watertight.”

Based on the available expert evidence, I agree with Mr T's assertion that the proximate cause of damage in this case is a defect in the installation of the roof. I say this because Allianz's own report concluded that the separating layer used wasn't suitable for the type of roof, and because Mr T's report identified a high number of areas where overlapping sheets of the membrane weren't appropriately sealed during installation.

Mr T's report identified that mastic had been applied at all but one of the penetrations on the roof. And below the only penetration which hadn't been sealed, it identified the same installation defect located in numerous other areas of the roof – i.e. the inadequate sealing of the overlapping sheets (laps). Based on this, I consider it more likely than not that the installation defect was the proximate cause of the original ingress of water – in addition to being the proximate cause of ingress in 2020.

*Mr T's report also included a moisture test which showed that, in addition to areas in close proximity to the previously repaired roof penetrations, there were high levels of moisture present in other areas of the roof. And Allianz's report confirmed that not all of the interior damage was in the vicinity of the previously repaired service penetrations. Both findings suggest that some of the water ingress was likely due to issues not directly beneath a service penetration (previous repair).*

*In my view, the repairs Mr T had carried out in 2016 weren't to resolve the original underlying defect (which is still present). Instead they stopped the underlying defect from being an ongoing visible problem – and that, effectively temporary, repair has then failed in the medium term, exposing the underlying defect which was always present and never resolved. Therefore, I don't agree with Allianz when it says it's the failed repairs which are defective, and causing ingress, as they likely only ever masked the underlying installation defect, rather than rectifying it. Instead, I consider the installation defect, and not subsequent failed repairs, is the proximate cause of damage in this case.*

*Mr T's policy covers damage (as defined) which has been caused by a defect (as defined). As explained above, I think the damage in this case has been shown to have been caused by a defect. So, I don't think Allianz's decision to decline the claim, on the basis that the cause of damage was the 2016 repairs was fair, as I don't agree that this is the case.*

*I've also thought about the various other exclusions which Allianz has said apply to the claim. But I think these exclusions would only apply in the event that the proximate cause of damage was the mastic sealant, as opposed to an inherent, construction related defect. As I've stated above, I think the proximate cause of damage was the installation defect. So, I don't think Allianz can fairly refuse the claim based on exclusions for alterations and repairs, shrinkage or wear and tear either.*

*Based on everything I've seen, I'm currently intending to direct Allianz to accept and settle Mr T's claim in line with its requirements under the policy terms.*

*I'm also intending to direct Allianz to reimburse Mr T for any costs, he can evidence he personally incurred, in obtaining his expert report. This is because the findings of his report have been material to my provisional conclusions, so I consider it fair and reasonable for Allianz to cover this cost. To this amount, Allianz should add interest from the date Mr T can show he was out of pocket to the date he is reimbursed, to compensate him for being deprived of the use of that money for other purposes."*

I asked all parties to provide any further comments or evidence they wanted me to consider before I reached a final decision.

Mr T responded highlighting how stressful he has found the circumstances of his claim and complaint, and his belief that Allianz's sole objective has been to decline his claim from the outset. But he also said he agreed with my provisional decision and said he looked forward to a final decision on the same basis.

Allianz said it was disappointing that I had provisionally decided against its position, but it didn't intend to rehash the arguments around liability. It maintained its view that Mr T didn't notify it about the 2016 claim in line with the requirements of the warranty. It also pointed out that it hadn't been provided with Mr T's expert report until it was shared by our service in April 2022. Had it received this earlier, Allianz says it may have reached a different decision, or potentially instructed its own subsequent survey to test whether the defect with the laps was the cause of the ingress.



Should I maintain my provisional conclusions, Allianz set out how it would intend to calculate a settlement taking into account that Mr T is not the owner of the roof.

### **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.

I've also carefully considered the additional comments provided in response to my provisional decision. Having done so, I've reached the same conclusions I reached in my provisional decision. I'll explain why.

Allianz has pointed out that Mr T's alleged claim notification, in 2016, didn't meet the requirements set out in the terms of the warranty. It says the person Mr T says he spoke with didn't work for its appointed agent (who claims should have been notified to) but rather for Allianz directly.

I've thought carefully about this point, but it hasn't changed my conclusions. While I appreciate the warranty document sets out the method for reporting a claim, on balance, I maintain that it's more likely than not that Mr T did contact Allianz and speak with the person he has named. Based on the advice he says he received, I think it was reasonable for him to conclude that he couldn't make a successful claim at that point, which explains why no claim was notified to Allianz's appointed agent. I also don't think Allianz has been prejudiced as a result of this, for the reasons I've explained in my provisional decision.

Allianz has also suggested that I should take into consideration the fact it didn't receive Mr T's expert report, until recently, when deciding whether to direct it to cover the costs of that report. But regardless of whether it received the report earlier or not, the report has been material to my decision that Allianz should accept and settle the claim. And it would've been material to Allianz's decision if Mr T had provided it directly earlier too. So, Mr T would've always already incurred the cost of the report, regardless of when it was, or who it was, presented to. So, I think it's fair and reasonable that Allianz should cover the cost of this report, plus interest.

However, I accept that the claim may have been able to be resolved sooner if this report had been shared with Allianz sooner. So, I'm not intending to award any additional compensation for distress and inconvenience. I think accepting and settling the claim and covering the cost of the report, plus interest, is enough to deliver a fair and reasonable outcome to this complaint.

Allianz has set out how it intends to deal with settling the claim. It says Mr T would need to provide signed confirmation, from the freeholder of the building, that he is authorised to arrange for a contractor to complete the works. This is because the roof is not demised to Mr T and is owned by the freeholder.

Following receipt of this confirmation, Allianz proposes to instruct its loss adjuster and surveyor to draw up a schedule of works which can then be put out for competitive tender. Once the work has been fairly priced, based on the tender, Allianz says it will be able to pay a cash settlement for the cost of the works to the freeholder, or whoever it has authorised to arrange for the works to be completed on its behalf.

It's not for me to decide the process by which Allianz should go about settling the claim, as part of this complaint. This is a separate issue to that which was brought to us – whether the claim should be covered or not – which I've decided it should be. So, I'll leave it to the parties to engage around precisely how the claim should be settled.

Allianz has also pointed out that Mr T's expert report highlighted several large slits in the membrane which appeared to have been caused by mechanical damage more recently. Allianz says such damage would not be covered under the terms of the warranty – but it accepts this may be academic should the entire membrane need replacing.

I agree that this particular damage, in isolation, wouldn't be covered. This is because mechanical damage doesn't amount to a defect, as defined by the warranty. So, if settlement of the claim will not involve the wholesale replacement of the membrane, Allianz do not need to cover the cost of repairing this particular area of damage.

Other leaseholder's in Mr T's building have been affected by the same issues. So, it would be in Allianz's interests to settle the other leaseholders' claims/costs, to avoid similar complaints. However, those leaseholders aren't party to this complaint, so I'm unable to make a direction for their interests in this decision.

### **My final decision**

For the reasons set out above, I uphold Mr T's complaint.

Allianz Global Corporate & Specialty SE must:

- Accept and settle Mr T's claim,
- Reimburse Mr T for any costs he incurred for his expert report, plus 8% simple interest\* on this amount from the date Mr T was out of pocket to the date he is reimbursed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 June 2022.

*\*If Allianz Global Corporate & Specialty SE considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding  
**Ombudsman**