

## **The complaint**

J complains that Allianz Insurance Plc has unfairly maintained its position to decline its claim on its property insurance policy.

Mr P has brought this complaint on behalf of J.

## **What happened**

Mr P is a director of J. J owns a property that is covered by an insurance policy with Allianz.

In December 2015 Mr P made a claim on J's behalf after discovering cracks at the property. Allianz accepted the claim and two trees very close to the wall of the structure were identified as causing the issue. These were felled and the property was monitored to ensure it had stabilised.

However in the years since this, Mr P has continued to report problems with cracking at the property. Allianz has sent experts to investigate the damage but they've concluded that only a small part is caused by subsidence and the rest is caused by issues not covered by the policy such as settlement and maintenance issues. Allianz has therefore offered a cash settlement for the damage it considers is related to subsidence.

In July 2020 Allianz appointed an independent surveyor to do a report to try and conclude matters. The surveyor said that most of the damage was caused due to settlement over a long period of time. And he thought only a small proportion had been caused by subsidence.

Mr P didn't agree and instructed his own surveyor to carry out a report which disagreed with Allianz's findings. It said the damage was largely due to subsidence caused by the trees that were felled. It also said that settlement usually happens within ten years of the construction of a building and this one had been in place for at least 50 years so they didn't think it likely this was the cause of the damage. It concluded large parts of the structure would need to be rebuilt and that it should be covered under the subsidence peril in the policy.

Allianz gave the report to its surveyor for comment and they didn't agree with the findings. Allianz's expert said that due to the type of ground the structure was built on and the fact it wasn't a heavy building then settlement would occur over a much longer period. So it didn't agree that subsidence was the main cause.

Mr P disagreed and made a complaint, but Allianz maintained its position. So Mr P brought his complaint to this service.

Our investigator recommended the complaint be upheld. He said he was more persuaded by Mr P's report, as the structure was built between 50 and 80 years ago, so ongoing settlement seemed unlikely. He recommended Allianz reconsider the claim under the subsidence cover, accepting the findings of Mr P's report that the downward movement is caused by subsidence. He also recommended Allianz reimburse Mr P for the cost of his report.

Mr P accepted our investigator's outcome. However Allianz didn't. It said it didn't agree there was enough evidence to show that the damage had been largely caused by subsidence and maintained that due to the size of the building and ground type that settlement would take place over a much longer period. It asked for the complaint to be reviewed by an ombudsman.

### **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.

This complaint comes down to the difference of opinion of two experts – Mr P's surveyor and Allianz's. At this service, we aren't experts in structural repairs to buildings. So we rely on the opinions of those who are. I've therefore considered the information provided from both reports, and the subsequent comments, to decide which I am most persuaded by.

The difference of opinion is about the proximate cause of the downward movement of the building. While Allianz's expert accepts there has been some movement caused by subsidence, they think it was largely due to settlement. Whereas Mr P's expert thinks the main cause is subsidence caused by the two trees that were felled.

I've considered Allianz's point that the damage has been caused by settlement. While subsidence is downward movement of the ground a building sits on, settlement is the movement of the structure itself due to compression of the ground below caused by its weight. The structure in question has been standing for a long time. And while it is unclear of the exact build date, both sides are in agreement that it is at least 50 years old, possibly up to 80. And while I can see it is built on made ground which would make it more susceptible to settlement, it seems improbable that this would still be ongoing after so many years.

This service would usually expect to see settlement in around the first ten years after a building is constructed. Allianz has pointed out that the structure in question is particularly light, so it would take longer for the consolidation of the ground underneath to take place. But even taking this into account, I wouldn't expect this type of movement to still be taking place after 50 years.

Mr P's report concludes that due to the age, subsoil type and proximity of the original trees to the structure that subsidence is most likely the proximate cause of the damage. And from looking at the photos and considering the pattern and location of the damage, I am more persuaded by this finding. The trees that caused the original problem are very close to the wall of the structure, so I'd expect the damage they caused to be substantial. And most of the damage is around the areas of where the trees stood. So it seems most likely that this is the main cause and the damage is largely caused by subsidence. I am therefore more persuaded by Mr P's report.

I therefore agree with our investigator that Allianz should consider the claim again, based on the findings in Mr P's report. And, as the report has changed the outcome of the claim, it should reimburse Mr P for the report.

### **My final decision**

For the reasons I've given, I uphold J's complaint. I direct Allianz Insurance Plc to:

- Settle J's claim based on the findings in the report provided by Mr P, in line with the remaining policy terms and conditions.

- Reimburse J for the cost of the report.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 10 November 2022.

Sophie Goodyear  
**Ombudsman**