

The complaint

Mr C, on behalf of L – a limited company – is complaining about the way Allianz Insurance Plc has handled a claim L made on its commercial property insurance policy.

Both Mr C and Allianz have instructed agents to act on their behalf. For ease of reference, I'll refer to anything their agent have said or done to have done by Mr C or Allianz respectively.

What happened

In December 2021 Mr C contacted Allianz to say L's property had suffered significant damage from a storm and wanted to claim for the damage on L's commercial insurance policy. In June 2022 Mr C complained to Allianz about the way it had handled the claim, as he was unhappy no repairs had happened, even though it was six months after the damage occurred.

Allianz didn't uphold this complaint as it said the cause of the delays were primarily down to Mr C and his agent and it raised the following:

- L's declared reinstatement cost of the property was lower than the actual reinstatement cost, so it said L was underinsured. It said it needed to investigate this.
- It made it clear to L at the start that it needed to assess whether it was liable for the claim before it would agree any payments on the claim.
- It said in January 2022 it asked Mr C to provide estimates for repairing the damage, but he didn't provide this until 27 May 2022.

Mr C still thought Allianz was responsible for the delays and said the repair costs had increased as a result of this. So he referred his complaint to this Service.

Our investigator didn't uphold this complaint. He said he could only consider what's happened on the claim up to when Allianz issued final response letter in August 2022. He also said he hadn't seen anything to show that Allianz were responsible for avoidable delays. He acknowledged that Mr C had said it had been a stressful time for him and his mental health has suffered. But the investigator said Mr C wasn't the insured party – L was – so he couldn't take any impact the claim had on Mr C into account.

Mr C didn't accept the investigator's opinion and raised the following:

- He didn't think it was fair for the investigator to say we could only consider events up to August 2022 as he said the only reason the claim was still ongoing was because of Allianz's actions;
- He didn't think it was fair that the investigator said we couldn't look at the impact this claim has had on him. He said he was the only director of L, so he thinks it was inevitable the impact would be on him.
- He said Allianz had handled the underinsurance unfairly. He highlighted that there was a significant difference between Allianz's estimate (around £1,700,000) and his contractor's estimate (around £1,270,000). He highlighted that Allianz had unfairly included VAT in its assessment. He said the underinsurance settlement has been forced

upon him, but he doesn't think it's fair.

As Mr C didn't agree with the investigator's opinion the complaint's been passed to me to decide.

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 decided to not uphold this complaint and I'll now explain why.

I should first set out that I acknowledge I've summarised L's complaint in a lot less detail than he has presented it. Mr C has raised a number of reasons about why he's unhappy with the way Allianz has handled this matter. I've not commented on each and every point he's raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr C, however, that I have read and considered everything he's provided.

What this Service can look at

As the investigator set out, this Service isn't able to consider everything Mr C has raised. This service's role is to look at specific complaints and look to put things right where we feel something's gone wrong. But we don't have the power to look at every complaint that we receive.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP), written by the FCA in accordance with the powers it derives from FSMA. These form part of the FCA Handbook.

The FCA sets out that a business must have an opportunity to resolve any complaint that a consumer may raise before this Service can investigate it. The complaint Mr C asked this Service to investigate were the alleged delays in the claim that Allianz considered in its final response letter of August 2023. If Mr C is unhappy with the way Allianz has handled the claim after this, he'll need to raise a new complaint.

Further to this, I can see Mr C has also expressed concerns about the outcome of the underinsurance investigation – i.e. the settlement he says he was forced into accepting. However, I can't see that he's raised this with Allianz before. So I'm unable to consider these concerns in this decision.

So in this decision I shall be considering whether Allianz is responsible for any delays that may have occurred in the handling of the claim up to August 2023.

I also have to set out that this Service is only able to take into account any loss or damage that's suffered by an eligible complainant. DISP 2.7 sets out who can bring a complaint to this Service and says a complaint must be brought by "*an eligible complaint*". DISP 2.7.6 sets out that to be an eligible complainant, they must have a complaint which arises from activities relating to a specific set of relationships with the business the consumer has complained about. In respect to L's complaint DISP 2.7.6(5) says they are "*a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent*".

In this case, L is the sole insured party on the policy. So the policy was taken out for the benefit of L. I recognise Mr C is the sole director of L. But he isn't insured on the policy and is acting on behalf of L in the handling of the claim. So I'm unable to consider any loss or damage – including distress and inconvenience – that he's suffered in this decision.

Are Allianz responsible for the delays in the handling of the claim?

Having reviewed the claim's journey, there seem to be three issues that have delayed the repairs from starting, which are as follows:

- a) Allianz had some concerns at the start about the information it was provided regarding the risk it was asked to insure. So it said it needed to investigate these issues first before it could agree any payments.
- b) Allianz considered L to have underinsured the property in question and it said it needed to investigate this to understand its total liability in the claim.
- c) It said the primary delays in the claim were down to Mr C not providing repair estimates for over four months. And it said it had concerns over the repair cost that were provided when Mr C did submit them.

I shall consider each point separately.

Initial validation concerns

As part of its initial investigation, Allianz had concerns over the information that was presented to it at the start of the policy – namely that Mr C had previously been the director of two businesses that had become insolvent and that the roof was 100% flat.

I've reviewed the statement of facts which set out the information that was presented to Allianz at the start and it says the following:

“GENERAL DETAILS

Neither you or any partner/director in connection with your Business have:

- d) been the subject of any County Court Judgement (or Scottish Equivalent) or been declared bankrupt or insolvent?”*

The statement of fact also asks whether the roof was flat and there wasn't anything disclosed.

Based on this, I'm satisfied that it was fair for Allianz to investigate these issues as it this could have had implications as to whether it was liable for the claim. I note Mr C asked Allianz to make an interim payment while these investigations were ongoing, but given its investigations may have resulted in it having no liability on the claim, I can't say it was unreasonable for Allianz to not have agreed to make an interim payment while its investigations were ongoing.

However, I can see it reviewed this matter swiftly and resolved its concerns within a week. So I can't see this unreasonably delayed the claim.

Underinsurance

As I said above, I'm unable to comment on the outcome of Allianz's investigations into its underinsurance concerns as L hasn't raised this before. But I can look at whether it was

entitled to have these concerns and also whether it caused any unreasonable delays while investigating this. I don't think it did.

Allianz were informed when the policy started that the estimated rebuild cost for the insured property was £831,480. It's accepted by all parties that this was significantly lower than the actual amount it would cost to rebuild the property. So Allianz was entitled to investigate this as it has an implication on the amount of the claim it's required to settle. I'll explain why this is the case.

When taking out a property insurance policy, a maximum policy limit – the "sum insured" – is set. This limit reflects the full cost of re-building the property as this is the most an insurer would be required to pay in the event of a buildings claim. Generally an insurer will charge a higher premium for a higher sum insured as it's likely to mean taking on more risk. But, where the sum insured is not enough to cover the cost of rebuilding the property the policyholder is considered to be "underinsured". Insurers may look to reduce the amount payable by paying a proportional settlement – as set out in the Insurance Act 2015 where it applies – or by applying an 'average clause'.

So, given L was underinsured, Allianz's liability was likely to be reduced because of this. So it was entitled to investigate the level of underinsurance to understand the extent of its liability on the claim and how much L would be required to cover. But it must carry out these investigations fairly and reasonably.

I can see that Allianz obtained a surveyor's report that calculated the rebuild cost at around £1,670,000. It sent this estimate to Mr C and asked him to provide his own estimate. Shortly afterwards, Mr C provided his own estimate which calculated the repair cost at around £1,270,000. Mr C also highlighted that Allianz's estimation included VAT, which it shouldn't have done.

I can see that Allianz considered what Mr C had said and provided and agreed it shouldn't have included VAT. And I understand an agreement was reached between Mr C and Allianz. I agree with Mr C that Allianz should've recognised that its estimation incorrectly included VAT. But I don't think L has lost out because of this as, regardless of the VAT issue, there would've been a discussion around the level of underinsurance. Ultimately, the root cause of this is the fact that L was underinsured. And Allianz isn't responsible for this.

I'm satisfied that Allianz has been reasonably pro-active in resolving this issue and I haven't seen anything to show that it's caused avoidable delays.

Delay in appointing a contractor.

I can see that Allianz wrote to Mr C on 11 January 2022 and said the following:

"Please arrange for a surveyor to be appointed or estimates to be obtained for the works required, these will be reviewed by our Major Loss Surveyor, please ensure the estimates are detailed with a minimum of three estimates for the works required."

In March 2022 Allianz became aware that Mr C was struggling to obtain a repair estimate to complete the work and it arranged to appoint a surveyor to inspect the property to arrange a scope of works. I understand the surveyor attended the property in April 2022, but was informed a scope of works had already been put together by a contractor Mr C appointed.

I can see that Mr C sent a repair estimate to Allianz in May 2022, but Allianz had concerns about the extent of the quoted repairs. It's explained that the report Mr C provided included works that were not damaged by the ingress of water and it thought some of the works were

going to put L's property into a better condition than it was before the event – something known as "betterment". It also said that some of the costs were considered excessive for many items that were considered to be related to the water ingress. I don't think it was unreasonable for Allianz to have these concerns and to discuss this with Mr C and his representatives. And I can't reasonably say that this has unreasonably delayed the claim.

I've taken into account the concerns Allianz had and I can't say they were unreasonable. Ultimately, it seems to me that the primary cause for the delay – up to August 2022 – in getting the repairs authorised is down to the fact it took Mr C four months to provide an estimate for the repairs.

I've also thought about whether it was fair for Allianz to ask Mr C to obtain repair estimates, rather than it obtain them itself. It's explained *"we asked the Insured to instruct their own surveyor to ensure they were confident that the surveyor / contractor was acting on their behalf with no conflict of interest. On losses of this nature and value we would always look for the Insured to arrange for their own surveyors to ensure they have confidence in any impartiality should any contentious issues arise. It was also known that there was underinsurance and therefore the Insured would be liable for a proportion of the surveyors fees incurred and reinstatement works required. Giving the Insured the choice of suppliers allowed the Insured the freedom to pick their preferred surveyors / contractors and the costs associated with their fee's, this also allowed them to act more robustly when undertaking any reinstatement works, than if we were to have used a surveyor and contractor of our selection from the approved panel given that the Insured would be liable for a proportion of the agreed upon costs due to the underinsurance present."*

I've thought about what Allianz has said and I think it's fair. I recognise Mr C ultimately struggled to find someone to do the work, but I don't think it was unreasonable for Allianz to have asked Mr C to source his own contractor for the reasons they've set out.

Ultimately, while I can understand Mr C's frustration for the length of time the claim took, I can't say Allianz had caused any avoidable delays in the handling of the claim up to August 2022.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 18 December 2023.

Guy Mitchell

Ombudsman