

The complaint

Ms C and Mr D have complained about Allianz Global Corporate & Specialty SE's (Allianz) decision to decline a claim they made on their Housing Warranty Insurance Policy.

What happened

There have been several businesses and individuals involved in the complaint – acting as representatives or agents of either Ms C and Mr D or Allianz. But for ease of reference, I'll only refer to Ms C and Mr D and Allianz by name in this decision – even when referring to the actions or arguments of their representatives.

Ms C and Mr D's property is covered by a Housing Warranty Insurance Policy, underwritten by Allianz. Ms C and Mr D have made a claim to Allianz, for damage caused by defects with the construction of a water feature/aquarium wall which separates the orangery from the swimming pool.

Ms C and Mr D say the issues should be covered under the main operative clause of their policy, or failing that, under the components failure extension to cover.

Allianz says the issues causing the water damage are inadequate waterproofing of the marble panelling and missing sealant around an electrical outlet. It says these items don't meet the policy definition of 'structural works' and as such aren't covered under the main operative clause.

Allianz has explained that the components failure extension only provides cover for replacing the failed component and not any resultant damage. It also says the extension only covers specific components listed on a document called the component life schedule.

Ms C and Mr D weren't issued with a component life schedule when they should have been. Allianz has since issued one, but it doesn't include the grouting/waterproofing between the marble panels or sealant. Ms C and Mr D feel it is disingenuous of Allianz to issue the amended schedule excluding the items they want to be covered, but Allianz says they would never have been able to be included on the schedule. However, Allianz has offered to refund the full premium paid by Ms C and Mr D for the component failure extension as a resolution to this complaint.

Our investigator considered the complaint but didn't think it should be upheld. She agreed with Allianz that the defective parts didn't meet the definition of structural works, and so the issues wouldn't be covered under the operative clause. She also didn't think the issues should be covered under the component failure extension or that Ms C and Mr D's position had been prejudiced by the fact the component life schedule wasn't issued when it ought to have been.

Ms C and Mr D didn't accept our investigator's findings. So, because no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

"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, in that I think the issues should be covered under the main operative clause of the policy.

I'll explain why below, starting with an explanation of the cover provided under the Housing Warranty Insurance Policy.

What the warranty policy covers

Ms C and Mr D's policy document details the terms, conditions, and definitions applicable to the cover it provides. I've focussed on the key points relevant below:

"Operative clause

The Insurers agree to indemnify the Insured against Loss to the Premises caused by a Defect discovered and notified to Insurers during the Cover Period and not excluded herein."

Loss is defined as:

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

Defect is defined as:

"Any defect in:

(a) the Structural Works; or

(b) the Premises in respect of Building Regulations: health & safety compliance ...discovered and notified to the Insurers during the Period of Insurance 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."

Premises is defined as:

"All Works within the curtilage of the Premises stated in the Schedule comprising:

- a) *Structural works*
 - *All internal and external load-bearing structures essential to its stability or strength;*
 - *Drains, walls and windows, plaster, ceilings, staircases, floor decking and screeds, chimneys and flues;*
 - *The waterproof envelope.*
- b) *External works*
 -
- c) *All other works except those described in (9)(a) and (9)(b) above."*

Why I think the claim succeeds under the operative clause

What the above means in practice is the policy covers damage (as defined), caused by a defect (as defined) in the structural works (as defined).

It isn't in dispute that damage has been caused as a result of defective waterproofing and sealing within the aquarium wall, nor that non-loadbearing walls are covered within the definition of structural works. But Allianz's position is that the waterproofing and sealant don't amount to structural works and so do not trigger cover in the circumstances.

Allianz explained its position when writing to Ms C and Mr D to set out its final response to their claim and complaint:

"Whilst the structural elements of the Aquarium Wall itself would fall within the definition of Structural Works, (redacted) found the cause of the damage to be insufficient sealing and waterproofing of joints between the marble panels. The marble cladding and any associated grouting would not fall within the definition of Structural Works – these items are not internal or external load-bearing structures that are essential to the stability or strength of the Premises, nor do they form part of the Waterproofing Envelope defined above."

I've thought carefully about this position, but I don't agree with the interpretation set out above. I say this because the definition of structural works breaks it down into three separate elements. The first, requires that the internal or external load bearing structures which are covered are essential to the stability or strength of the premises. But Allianz appears to be seeking to apply this requirement to the second, separate part of the definition which covers (non-load bearing) walls. I don't consider this is in line with the wording of the definition or that it is fair and reasonable.

I accept that a common definition of the phrase structural works would be unlikely to include sealant and grout. But I don't think it's fair for Allianz to simultaneously apply a common definition of 'structural works' alongside the specific policy definition.

The only definition Allianz can fairly apply is the one set out in the policy. And in my view, I don't think the policy definition of structural works makes a distinction between the "structural" elements of the wall or the components of the marble panelling attached to it. As far as I can see, the definition incorporates walls, and those panels, the grout and sealant all make up that wall. So, I think Ms C and Mr D's property has suffered damage as a result of a defect with the structural works (the non-load bearing wall). Therefore, I consider that Ms C and Mr D's claim for damage caused as a result of those defects is covered under the operative clause of the policy.

This means my provisional decision is that Allianz should accept and settle Ms C and Mr D's claim in line with the remaining terms of the warranty. If Ms C and Mr D have already paid to repair the damage caused by the defects, then Allianz should reimburse their costs and add 8% simple interest from the point they were out of pocket to the date they are reimbursed, to compensate them for being deprived of the use of their money for other purposes.

Whilst the complaint has been with our service, issues have also been highlighted with some of the pipework to the aquarium wall. Allianz position again was that the pipework wouldn't meet the definition of structural works. And in addition, it highlighted the following policy exclusion, with my added emphasis on the key part:

"(5) Excluded Perils

- (i) Fire, lightning, explosion, earthquake, storm, tempest, flood, frost, bursting or overflowing of water tanks, pipes or other apparatus, water discharged or leaking from an automatic sprinkler installation, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, the impact of aircraft or other aerial devices or articles dropped or falling therefrom or the impact of any other vehicle whether licensed or not;"*

Based on this, I agree that damage caused as a result of burst or overflowing pipes would be excluded from cover. So, if Allianz is able to clearly differentiate between the damage caused by the sealant and grout issue and that caused by the pipes, it can fairly decline to cover the latter. However, in practice I think it's unlikely to be able to do so.

Issues with the component failure extension

A large part of Ms C and Mr D's complaint has centred on whether the issues ought to be covered under the extension to cover, if not by the main operative clause. As I'm currently minded to decide their claim should be covered under the operative clause, I don't intend to go into significant detail about this point. But for completeness, I'll briefly set out my thoughts to the arguments provided and the offers put forward by Allianz.

Since the complaint has been with us, Ms C and Mr D have also highlighted potential issues with the aquarium pipework and with a number of taps attached to their home water system. The latter issue is separate to the damage caused to the aquarium wall. Ms C and Mr D feel these issues, alongside the grout and sealant issues, should be considered under the component failure extension which they say should incorporate any components not covered under the operative clause.

The definitions applicable to the component life extension are set out in the policy booklet:

“(a) Component Failure

The imminent or actual failure of a Component during the Period of Component Insurance due to a Defect which requires the Component to be replaced prior to the expiry of its service life as set out in the Component Life Schedule.

(b) Component(s)

Works described in Definition (9)(c).

(c) Component Life Schedule

The schedule attached to and forming part of this Policy detailing the Component(s) and the service life of the Components forming part of the Premises.

(d) Loss

The cost of Reinstatement of any Component(s) which due to one Defect suffers Component Failure.

And reinstatement under this section is defined as:

“(a)

In respect of actual Component Failure:

the replacement or reinstatement by a similar Component in a condition equal to or substantially the same as but not better nor more extensive than its condition when new.”

In my view, this means Allianz is correct to say that even if the extension did apply to the grout, sealant, pipes or taps, only reinstatement of those elements would be covered and not any damage caused as a result of their failure.

I don't accept Ms C and Mr D's argument that the component failure extension covers everything not covered under the operative clause. Rather, I think the extension only covers components which are specifically listed in the component life schedule (along with their service life). I appreciate that Ms C and Mr D weren't issued with a component life schedule when they ought to have been, and so it's impossible to say whether the failed components would have been listed on the schedule at the time. But Allianz has made two separate offers to Ms C and Mr D in order to put right this error, and I'm minded to say that this is sufficient to put things right in the circumstances of this complaint.

Allianz has offered to either:

- 1) Fully refund the premium Ms C and Mr D were charged for the extension and treat it as though it never existed, or*
- 2) Allow Ms C and Mr D to provide a list of amendments to the component life schedule (CLS) which Allianz has since produced. It will then produce a new CLS which will be binding on all the parties. Allianz says it can't guarantee that all of the amendments Ms C and Mr D suggest will be included on the amended CLS. But as a gesture of goodwill, it offers to include the aquarium pipework and taps.*

Taking everything into account, I think Allianz has made two reasonable offers here. So, I'll leave it to Ms C and Mr D to decide which option best suits their needs and notify Allianz of their choice, which it should then honour. I don't intend to make any other finding or direction on this point.

Distress and inconvenience

Ms C and Mr D's claim has been ongoing since October 2021. And they have had to go through the distress and inconvenience of raising a complaint and later referring it to our service when Allianz failed to resolve it to their satisfaction. Because I'm of the opinion that Allianz's claim decision is unfair, I'm also of the opinion that this was entirely avoidable. So, it follows that I think a large part of the distress and inconvenience they have suffered was caused unnecessarily by Allianz.

To put things right, I'm minded to direct Allianz to pay them £300, in addition to the awards stated in the above sections, to compensate them for the impact of its unfair claim decision."

I asked the parties to provide any additional comments or evidence they wanted me to consider, before I reached my final decision.

Ms C and Mr D responded to say they accepted my provisional conclusion around the issue with the aquarium wall being covered under the operative clause. But they maintained their view that the component failure extension should cover all other works not covered under the operative clause. They disagreed with my view that Allianz had made two reasonable offers in relation to the dispute around the extension to cover, including the issue with the pipes and taps. And, in addition, Ms C and Mr D asked that I consider awarding reimbursement of the costs they've incurred in bringing the claim about the aquarium wall.

Allianz responded to say that it accepted my provisional conclusion about the extension to cover. But it maintained its view that the aquarium wall issue should not be covered under the operative clause because the panels and sealant do not amount to 'structural works'. Allianz said that, by my reasoning, it could be argued that curtain rails or paint, once applied to a wall, would fall under cover despite clearly not being what the warranty is intended to cover.

As both sides have provided their responses, I'm moving forward with my 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.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain the same as outlined in my provisional decision. I'll explain why, addressing each response and issue separately.

Ms C and Mr D's response

The component failure extension

Ms C and Mr D maintain that the component failure extension should cover "all other works" in line with the definition of the word "component" in the policy booklet – which I quoted in my provisional decision.

The definition of “component” within the component failure extension section is defined as “works described in definition 9c”. This refers to part “C” of the definition of “premises”, which is also quoted in my provisional decision. However, the very next bullet point, within the component failure extension section, specifically explains that the component life schedule (CLS) forms part of the policy and lists the components forming part of the premises. So, I remain of the view that only components listed on the CLS are covered by the component failure extension.

Ms C and Mr D say Allianz’s offer to refund the premium for the component failure extension and to treat it as though it never existed isn’t fair, as they have already suffered a loss which should be covered under the extension. And likewise, they don’t feel the alternative offer is fair either, because Allianz has said it won’t guarantee accepting all of their proposed amendments to the CLS.

I’ve thought carefully about Ms C and Mr D’s concerns here. But, overall, I remain of the view that Allianz’s offers are fair and reasonable. I say this because I don’t think Ms C and Mr D would ever have had the unilateral power to decide what is and isn’t included on the CLS. So, I don’t think it’s unfair for Allianz to say it can’t guarantee it will accept all of their proposed changes. And, crucially, Allianz has said it will include the taps and pipes as a gesture of goodwill – which means the losses Ms C and Mr D have incurred would be covered.

If they remain unhappy with this option, Ms C and Mr D can choose to cancel the extension to cover and receive a full refund. So, in the circumstances, I’m satisfied that Allianz has done enough to put right the error it made in not issuing the CLS when it ought to have done.

Ms C and Mr D should let Allianz know which option they would like to take.

Costs incurred in making the claim

Ms C and Mrs D say they’ve incurred significant costs in bringing their claim to Allianz, which they’d like to be reimbursed.

Ms C and Mr D’s policy does cover the reimbursement of professional costs in certain circumstances. However, costs incurred in preparation of a claim are specifically excluded:

*“Professional Fees
legal, professional or consultants’ fees necessarily and reasonably incurred by the Insured in the Reinstatement of the Premises (but not for preparing any claim).”*

I’ve considered whether it would be fair or reasonable to award these costs, despite the exclusion, given my decision that Allianz was wrong to decline the aquarium wall claim under the operative clause. But although I accept that Ms C and Mr D may have felt they needed to obtain legal support to help progress their claim, I don’t agree that this was necessary or essential in getting to this point.

I say this because Ms C and Mr D could have approached our service free of charge, as they subsequently did, and reached the same place on the complaint without incurring those fees. So, taking everything into account, I don’t think it would be fair or reasonable for me to direct Allianz to cover costs which Ms C and Mr D would have understood to be specifically excluded under the policy terms.

Allianz's response

Aquarium wall claim

Allianz says my decision that the defect with the aquarium wall should be covered under the operative clause is unfair. It says it's not consistent to interpret "walls" as including any item attached to them. It says the word "wall" would naturally be read to incorporate the structure of the wall only, and not items such as marble panelling attached to it.

Allianz likened the marble panelling and grouting to a curtain rail or paint and argued that the latter would clearly not be intended to be covered under the warranty policy.

I've thought carefully about Allianz's response and arguments. I agree that a hypothetical curtain rail attached to a wall, or paint applied to a wall, would most likely not become "structural works", as defined by the policy, purely because they were attached to the wall. I say this because in most cases items such as these would be purely decorative, rather than performing a key function of the wall.

But in the particular circumstances of this complaint, which is all I'm considering or answering in this decision, I remain of the view that the policy definitions do not clearly separate the structure of the wall from the marble panelling and waterproofing attached to it. And given the particular nature of the wall in question required it to house an active water feature, I consider that the marble panelling and waterproofing (sealant/grouting) are an essential part of the function of the wall.

Taking the above into account, in the circumstances of Ms C and Mr D's complaint, I consider that the marble panelling and waterproofing should reasonably be considered "structural works" and so the defects and resultant damage should be covered under the operative clause.

Distress and Inconvenience

Neither side provided any additional comments or evidence in respect of the compensation I said I was intending to award. So, in the absence of new evidence, I've reached the same conclusion on this point that I reached in my provisional decision – and for the same reasons.

My final decision

For the reasons set out above, I uphold Ms C and Mr D's complaint.

Allianz Global Corporate & Specialty SE must:

- Accept and settle Ms C and Mr D's claim for damage caused as a result of the defective waterproofing and sealant, including adding 8% simple interest to any amounts Ms C and Mr D have already spent in fixing the damage covered under the claim, from the date(s) they were out of pocket to the date they are reimbursed.
- Based on Ms C and Mr D's choice, (on the basis that they do choose one of the options) either refund the premiums Ms C and Mr D paid for the component failure extension or create a new CLS, with input from Ms C and Mr D, which includes the pipework and taps – in line with the offer it has already made.
- Pay Ms C and Mr D £300 compensation for the distress and inconvenience its unfair claim decision has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr D to accept or reject my decision before 30 June 2023.

Adam Golding
Ombudsman