

The complaint

Dr C and Ms F complain about how Allianz Insurance Plc has handled and attempted to settle their claim for subsidence on their home insurance policy.

What happened

Dr C and Ms F bought their home in 1995. At this time they took out home insurance with an insurer that is now known as Allianz. When they took the insurance out Allianz noted a council-owned plane tree that had been highlighted in the property survey. It said this would need to be maintained and regularly pollarded by the council, which the council agreed to.

In 2014 Dr C and Ms F made a claim on their insurance after they noticed worsening cracking at the front and back of their property as well as a sinking floor in their lounge. Allianz accepted the claim and after monitoring the property and some investigations, determined the cause to be roots from some ivy growing on the property and a leaking drain. They resolved these issues.

However by December that year Dr C and Ms F reported that the problem had worsened. They said the movement of their property was causing the floor in their lounge to sink more than it had initially, and this meant there were some internal doors that were unable to open or close. They also highlighted that the neighbouring property was experiencing similar problems.

In 2015 Allianz said it would investigate and put together a scope of works. However very little happened with the claim over the year that followed. And in March 2016 Allianz said that some of the damage was due to an historic issue and wouldn't be covered under the policy.

Following this, Dr C and Ms F made a complaint that they subsequently brought to this service. An investigator reviewed the matter and recommended it be upheld. Subsequently, Allianz agreed to include all the work needed in its scope of works. It started the work in May 2017 and agreed a cash settlement for all outstanding repairs in September that year.

Dr C and Ms F had the final repairs completed, however shortly after, the cracks started opening up again. They contacted Allianz but initially received no response.

In September 2018 Allianz arranged for a loss adjuster to attend the property to inspect the new damage. And in November that year it re-opened the subsidence claim. Allianz proceeded to carry out further investigations to determine the cause of the subsidence. It eventually concluded that the most likely cause was the council-owned plane tree on the pavement by the property.

In 2019 Allianz agreed to work with the insurers of the neighbouring property and they jointly put together a potential programme of works to underpin the two properties which was put out to tender. However following the tendering exercise, the loss adjuster advised that a better solution would be to pursue the council to remove the tree, rather than underpinning. Allianz also said that it considered Dr C and Ms F's property to be significantly underinsured,

so if it did seek to underpin the property, then this wouldn't be fully covered under the policy and they would need to contribute a large amount of the money towards it. So it didn't think underpinning would be the best resolution.

In February 2022 Allianz served the local council with a notice for tree removal and gave them 28 days to remove the tree. It said if it didn't remove the tree, then it would underpin the property in order to protect Dr C and Ms F's asset.

In March 2022 the council agreed to remove the tree. However they faced opposition from local and environmental campaign groups. Subsequently protestors positioned themselves in the tree to prevent the removal. This led to an ongoing dispute in the courts between Allianz, the council and the environmental group.

In June 2022 Dr C and Ms F made a complaint. They said the claim had been ongoing for a long time and they were no closer to the subsidence problem being resolved. They thought Allianz should abandon its pursuit of the local council for the removal of the tree and move to underpin the property instead. They said they had been unaware that Allianz had abandoned its planned to underpin the property until it commenced the legal proceedings against the council. They also said the claim had now caused them considerable distress and inconvenience and they still had no timescales for work to begin.

Allianz responded in August 2022 and upheld the complaint. It offered £1,000 compensation to apologise for the distress caused by delays to the claim. However it maintained that removal of the tree was the best solution to resolve the subsidence issue.

Unhappy with this, Dr C and Ms F brought their complaint to this service.

Our investigator considered all the issues and in September 2023 he issued an outcome recommending the complaint be upheld. He concluded:

- It was unfair for Allianz to say Dr C and Ms F's property was underinsured, as its loss adjuster said it was adequately insured at the time the claim was first raised. And this was only now inadequate because of the length of time the claim has gone on for.
- It was unreasonable for Allianz to continue to pursue the removal of the tree considering the amount of time that had elapsed. Instead he said it should resolve the claim by underpinning the property.
- Allianz should pay Dr C and Ms F an additional £7,500 compensation to make up for the distress and inconvenience it had caused by delaying the resolution of the claim.
- And it should consider further financial losses, such as loss of rent from a lodger and the shortfall from the previous cash settlement, on receipt of evidence from Dr C and Ms F.

Dr C and Ms F accepted our investigator's outcome. However Allianz didn't. In summary it said:

- It agreed it shouldn't apply a reduction for underinsurance to the settlement, it would pay the compensation and consider evidence of additional losses. However it didn't agree with our investigator's proposed outcome for settling the claim.
- It said the tree was the root cause of the problem so removing it would provide the most complete and long-lasting solution.

- It said underpinning would be more disruptive for Dr C and Ms F as they'd have to move out of their property for a long period and it would likely take longer to resolve than removing the tree.
- The council had agreed to remove the tree and it was only because of opposition from environmental groups that it hadn't yet been removed. It said it shouldn't be held responsible for this as it was outside of Allianz's control.
- It said that there were still ongoing court proceedings relating to the tree removal and this service shouldn't decide on this case until these had completed as we were in danger of prejudicing the proceedings.
- It also said that the court proceedings were likely to result in a positive outcome which could mean the tree would be removed by the end of the year, so it could present a quicker resolution to the subsidence issue.

As agreement wasn't reached, the complaint came to me to decide.

My provisional decision

On 9 November 2023 I issued a provisional decision, in which I said:

'Underinsurance

Allianz has previously said that it considers Dr C and Ms F to have an insufficient sum insured for the rebuild cost of their property. It's said that any settlement would therefore be reduced due to the underinsurance, meaning underpinning would cause significant extra costs to them. However I don't consider this to be a fair approach in the circumstances.

In the report produced by Allianz's loss adjuster on their first visit in 2014, it stated that the sum insured for the property was adequate. And Allianz has said that the reason the property is now underinsured is because of factors that were outside of Dr C and Ms F's control – such as inflation and increased buildings costs.

When assessing underinsurance, and whether a business has acted fairly by applying any remedies to reduce a claim settlement because of this, we'd first consider whether the customer had provided a reasonable estimate for the sum insured at inception and renewal.

Here, Allianz has confirmed that Dr C and Ms F provided a reasonable estimate when they took the policy out. Since this date Allianz has withdrawn from the home insurance market and no longer offers policies. However it has continued to insure Dr C and Ms F's property for subsidence while their claim is ongoing, as is best practice in the insurance industry.

Allianz has said it has index linked the sum insured each year. However the rebuild cost of the property still now far exceeds what is covered under the policy. It's likely this is because of the larger than average increases in building costs and labour over the last few years. But if the sum insured is insufficient, this isn't the fault of its customers.

Further, Allianz has been unable to evidence that Dr C and Ms F could reasonably have known, or done anything differently to ensure the property was properly insured. Therefore it would be unfair if they were penalised for something that was out of their control.

Due to this, I don't think it's fair for Allianz to reduce the claim settlement based on the fact they are now underinsured.

Settlement of the claim

There is no dispute at this stage that the subsidence has been caused by the council-owned tree. What's left in dispute is how best to solve the issue, stabilise Dr C and Ms F's property and get it back as close to the condition it was in before the claim as possible.

At this service, it isn't our role to decide which type of repairs would be the most effective to solve a problem of subsidence, as we don't have expertise in the structural repairs of buildings. Instead it's for us to look at the evidence provided by those that are experts, in order to determine whether the business has taken suitable steps and acted fairly, based on the evidence.

Here, as Allianz has identified that the tree was causing the subsidence, it's not unreasonable that it took steps to arrange its removal. This is what we'd expect it to do in the circumstances.

However, the removal of a tree owned by a third party relies on a number of factors outside of the control of the insurer. And can sometimes take longer because of this. In these situations, we'd expect an insurer to allow a reasonable amount of time for the third party to take action, before considering other options to ensure a timely and long lasting repair for its customer.

Here, Allianz first requested the local council remove the tree in February 2022. At this time, it said that it would allow 28 days for action to be taken before it moved to underpin the property in order to 'protect the claimants' asset'.

I appreciate after this time, the matter attracted local and environmental interest that put barriers in the way of the tree removal and eventually led to the council withdrawing its consent. And while I appreciate that Allianz wasn't responsible for these issues, nor could it have reasonably foreseen them, I have to consider what's fair and reasonable when it comes to settling Dr C and Ms F's claim.

At the time Allianz responded to their complaint in August 2022, it had already been six months since its initial request for the tree to be removed. And at the time of writing this decision, it has now been 20 months and it still hasn't been removed. During this time Dr C and Ms F's claim has essentially been paused, with no progress, while Allianz pursued the tree removal.

I understand why Allianz consider it preferable to remove the tree rather than carry out substructure repairs. Underpinning is an expensive and disruptive undertaking. And this service would only usually expect a business to underpin a property as a last resort, where other attempts at mitigation had been exhausted. However the amount of time that has now passed waiting for the tree to be removed has become unreasonable. And I therefore consider that it's reasonable to say that alternative attempts at mitigation have been exhausted. Therefore at this stage, I think the only fair and reasonable solution is for Allianz to move to underpin the property.

I've considered what Allianz has said about this service going against our own processes by not waiting for the court proceedings to conclude before issuing our decision on the matter. However I don't agree this is the case.

The rules under which the Financial Ombudsman Service operate are set by the regulator, the Financial Conduct Authority (FCA). They are known as the DISP rules. And they set out what this service can and can't consider, and also set out rules which allow us to refuse to consider the merits of a complaint (to dismiss it) despite having the power to do so. DISP

3.3.4 A states we should dismiss a complaint where:

'the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits...'

And here, I don't agree the subject matter of this complaint has been subject to court proceeding. The case I am deciding here is against the insurer, while the court case is against the local council. And I am deciding if Allianz acted fairly in how its resolved Dr C and Ms F's complaint, not whether the council should remove the tree. Therefore while it is of relevance, the court case doesn't directly deal with the merits of this complaint. I therefore don't agree it would be one we should dismiss, or that it goes against our rules by considering the matter.

I don't disagree with Allianz's point that the dispute between the third parties may soon be resolved, and this could lead to the tree removal being able to take place in the coming months. And I note that since our investigator issued his view on the case, the local council has written to both sides to confirm its intention to move forward with tree removal. But at this stage, I don't consider this to be enough to say Allianz should continue to wait for this action to be taken. As the amount of time that has already passed without any progress is already unreasonable.

As I've said, we'd expect Allianz to allow a reasonable amount of time for the tree removal to take place before considering other options. Allianz initially outlined to the council that it considered a reasonable amount of time to be 28 days. I'd consider a reasonable time to be dependent on the circumstances, but in general around three to six months before exploring other options. But certainly, far shorter than 20 months. As it has already far exceeded a reasonable timeframe, I think the only fair and reasonable step is to now pursue full underpinning, regardless of any progress that is made with tree removal at this stage.

I appreciate what Allianz has said that removing the root cause – the tree – is the best solution for its customers, as it means the tree can no longer cause damage to the property. However underpinning is widely accepted as an effective and long-lasting solution to a subsidence problem. And is often used where tree removal isn't possible. So I consider it a fair and reasonable solution to Dr C and Ms F's claim.

Allianz has also highlighted that underpinning takes a long time itself and will mean Dr C and Ms F will need to be moved out of their home for a significant period of time while it is carried out. And it is right to take this into account. However underpinning would provide Dr C and Ms F with a clear timeframe for their property to be restored, rather than having to wait without certainty as they have had to do for some time. Further Dr C and Ms F are aware of the nature of underpinning and it remains their preferred resolution. And after the amount of time this claim has gone on for, this should be a key consideration.

Based on this, I agree with our investigator that Allianz should now move to underpin Dr C and Ms F's property and abandon the removal of the tree to resolve the claim.

Impact

As well as the settlement of the claim, I also need to consider the impact Allianz's handling of it has had on Dr C and Ms F. It has been ongoing for nine years and Dr C and Ms F appear no closer to having their house stabilised and repaired. This in itself will have been very distressing. I've considered whether Allianz' actions have added to the distress caused by the claim.

They first raised this claim in 2014. And a report carried out by an arborist instructed by

Allianz in 2015 identified the plane tree as the dominant cause of the subsidence. However the removal of the tree wasn't pursued with the council until 2022, seven years later.

While I appreciate the cause of subsidence can be difficult to identify, and there are often a number of factors that need to be explored and ruled out as part of this process, there were several reports produced during this time that indicated the tree was the problem. As well as Dr C and Ms F explaining to Allianz that this was what their neighbours were pursuing as the cause of their issues.

So while Allianz may not have pursued the tree removal straight away, I do think it could have done so considerably earlier. And because it didn't, it has delayed the resolution of the claim significantly.

Further, during this time, it has caused additional significant avoidable delays. There have been multiple failed repairs, where each time the cracks have come back. So it should have been clear to Allianz that it hadn't correctly identified the cause. And there have been periods of time when Dr C and Ms F have demonstrated that the latest repair has failed, and that the cracks are worsening, but Allianz has failed to take any action for months – and in some instances a whole year. This meant that Dr C and Ms F were left without any clear direction while their house was in a worsening condition. And this added to the distress and inconvenience felt as part of an already stressful claim. During this time Dr C and Ms F have described the worsening condition of the property.

They've said that the floor in their living room had sunk to the extent that they had to prop up furniture with piles of books, a number of internal doors were stuck either open or closed and there were draughts from the cracks that made it unbearably cold. Living in these conditions while little progress is being made to resolve the issues would have been very distressing, especially considering how long the claim has gone on for.

In addition, more recently, Dr C and Ms F have had to live with the impact of the ongoing dispute in relation to the tree removal. This has been a high profile issue in the local area, and has attracted media attention. Dr C and Ms F have explained this has caused them embarrassment amongst their neighbours and local community. And it has culminated in environmental protestors positioning themselves in the tree outside their home 24 hours a day. Which has caused further distress.

While I appreciate the reaction to the tree removal couldn't have been foreseen by Allianz, and it isn't responsible for the actions of those involved, it is a direct consequence of its decision to continue to pursue the tree removal. Particularly its decision to continue to pursue this course of action despite the difficulties this was causing.

Dr C and Ms F have also shared copies of correspondence from Allianz's contractors who were not paid for a long time after they carried out work as part of the claim. This led to them pursuing Dr C and Ms F for a substantial sum of money, and meant they had to chase Allianz to resolve the issue. This would have caused further distress on top of an already distressing claim.

Based on this, I think Allianz has caused significant additional distress and inconvenience for Dr C and Ms F as part of this claim. It failed to identify the cause of the subsidence promptly, delayed acting when Dr C and Ms F raised concerns and pursued the removal of the tree for far longer than was reasonable which created a very difficult environment for them. For these reasons I agree with our investigator that Allianz should pay Dr C and Ms F an Additional £7,500 compensation on top of the £1,000 already offered to apologise for the distress and inconvenience it's cause through the poor handling of the claim.

Additional financial losses

Dr C and Ms F have also explained that they have suffered some direct financial losses due to the length of time the claim has gone on for.

They've said they had a lodger at the start of the claim but were unable to continue the arrangement due to the condition of the property. They've also explained that while Allianz cash settled the initial repairs on the claim in 2017 for around £12,000 this actually cost them around £15,000, so they had to pay additional funds towards this. Finally, they've said they originally applied for planning permission as they intended to make improvements to their property, however this has since fallen through due to the amount of time repairs have taken to arrange.

I agree with our investigator that Dr C and Ms F should provide Allianz with evidence of these losses and on receipt, it should consider these as part of the claim settlement. Should they be unhappy with any settlement offered then they would be able to make a separate complaint about this issue that they'd be free to bring to this service should they remain unhappy.

Putting things right

For the reasons I've given, I am minded to uphold Dr C and Ms F's complaint and direct Allianz Insurance Plc to:

- Carry out underpinning of Dr C and Ms F's property to resolve the subsidence issue rather than pursuing removal of the tree, proactively working with the neighbouring property and their insurers to achieve this.*
- Settle the claim without applying any remedies in relation to underinsurance that would reduce the settlement.*
- Pay Dr C and Ms F an additional £7,500 compensation, on top of the £1,000 already offered.*
- Consider evidence provided by Dr C and Ms F in relation to any additional financial losses provided within six months of the acceptance of my final decision.*

As the claim has already taken a significant amount of time, I'd expect Allianz to take steps to begin the underpinning promptly following Dr C and Ms F's acceptance of my final decision.

This service's award limit

Where I uphold a complaint, I can direct a financial business to take such steps in relation to a complainant, as I consider just and appropriate (whether or not a court could order those steps to be taken) up to £375,000. If I think that complying with the direction leads to a payment by the business to Dr C and Ms F or to another party for their benefit which is more than £375,000, may recommend that the business complies with the direction in excess of £375,000.

Here, the outcome I have come to is for Allianz to underpin Dr C and Ms F's property and pay compensation for distress and inconvenience.

If complying with my direction leads to a payment by the business to Dr C and Ms F or to another party for their benefit which is more than £375,000, I recommend that the business

complies with the direction in excess of £375,000.

This recommendation is not part of my determination or award. Allianz doesn't have to do what I recommend. It's unlikely that Dr C and Ms F can accept my decision and go to court to ask for the direction to be complied with in excess of £375,000. Dr C and Ms F may want to get independent legal advice before deciding whether to accept this decision.'

Response to my provisional decision

Allianz responded to say that it was entering into discussions with Dr C and Ms F about a possible cash settlement to the claim. It didn't provide any further comment on the contents of my provisional decision.

Dr C and Ms F responded with a number of comments. While not exhaustive, in summary they said:

- They highlighted a number of areas of the 'background' section of my decision that they felt weren't representative of what happened. They asked that these were amended to better reflect the journey of the claim.
- They didn't agree that the cause of the subsidence has been proven to be solely due to the tree. They said that there is no evidence that removing the tree would resolve the problem and at the least would lead to a long period of further monitoring and possible heave.
- They said that the only matter in dispute, as part of this complaint, was the underpinning. The superstructure repairs had already been agreed by Allianz. So the decision should focus only on the underpinning. They said that the cost of the underpinning alone should fall under this service's award limit, therefore we should be able to direct Allianz to carry out all the underpinning required as part of a final decision, without our limit applying.
- They wanted it to be made clear that should they be unhappy with work carried out by Allianz' contractors that they could make a further complaint and bring it to this service.
- They wanted it to be clearer in my decision that Allianz hadn't just considered underpinning as an option earlier in the claim but had agreed to it.
- They thought it should be clearer in my directions to Allianz that my decision remained, regardless of whether the tree was removed.
- They said the decision focussed on the time that had elapsed since Allianz started to pursue tree removal but the claim had been going on for eight years before it even started to pursue this solution. And there had been no work on the property since 2017. This shows that Allianz had neglected its obligation to reinstate Dr C and Ms F's home and should have been of greater prominence in the decision.
- They also provided ample evidence of the additional financial losses they have suffered as a result of the claim, such as the increased cost of a planned extension and lost earnings from their lodger. They asked that a direction was included in my decision for Allianz to pay these losses, rather than just to consider them.

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 considered all the points Dr C and Ms F have raised in regards to what they consider to be inaccuracies in my original provisional decision. Where I agree there is a discrepancy in the facts or timeline, I have made changes to the background section in this decision, to better reflect the claim journey.

However, the background section of the decision is intended to be a brief summary of the details of the claim, and not an exhaustive account of everything that's happened to date. Therefore I've not incorporated every request they've made for additional detail.

Further, they've asked for some changes to my provisional decision. As the wording of the provisional decision above is provided as a reference to what was initially issued, I have made no changes to this to ensure it is an accurate record of the original document. However I've considered each of the points Dr C and Ms F have raised in relation to the wording and content of this, when reaching my final decision.

One of Dr C and Ms F's key concerns is that they don't agree the tree has been proven to be the sole cause of the subsidence. Subsidence can be caused by a number of different factors. And often, it will be a combination of these that lead to the movement of a property.

Here, a number of investigations have been carried out across the years the claim has been ongoing. And from these it seems likely that the council owned tree is a prominent cause of the damage. However, I agree that other influences can't be ruled out. And therefore removing the tree wouldn't guarantee the subsidence problem would be resolved in full. In order to determine if the tree removal had solved the issue, a period of at least 12 months monitoring would be required. Then, only if the property was shown to have stabilised, would repairs be able to commence. So while I think Allianz has shown the tree is a prominent cause of the issue, I agree its removal wouldn't guarantee the problem is resolved and that there would still be a further wait before any repairs to Dr C and Ms F's property could commence.

Underpinning is also a lengthy process that wouldn't provide an instant fix. However it would stabilise the property, regardless of the various factors influencing the movement. And it eliminates the risk of heave, that sometimes follows the removal of significant vegetation. As Dr C and Ms F have already waited a significant period of time for any progress to be made in stabilising their property, I think moving straight to underpinning is the fairest solution in the circumstances.

Dr C and Ms F have also asked whether our award limit should apply. As the only part of the claim in dispute is the underpinning, which they say falls under the applicable limit. When assessing a complaint, our award limit applies to the total cost of the claim. Not just the specific costs we are deciding on. And in this complaint, we only have the power to direct Allianz to pay up to £375,000 in total. However, we are able to decide what we think would be a fair resolution to the complaint, including awards above this amount. And recommend Allianz pay for this in full. And this is laid out in my provisional decision.

Dr C and Ms F have also requested that should they remain unhappy with any work carried out by Allianz following this decision, that they are able to make a separate complaint that they could then bring to this service. If further issues arise after this final decision that haven't been considered as part of this complaint, then Dr C and Ms F would be able to make a separate complaint about these that this service could consider should they remain

unhappy with Allianz's response.

I've considered what Dr C and Ms F have said about Allianz's previous decision to underpin the property. I can see that a lot of time and effort was put into coming up with a suitable underpinning schedule and going out to tender for this work. So I agree that Allianz committed to this as a solution at an earlier point in the claim. And it wasn't until the costs were received that this decision was reneged. This change of direction in the claim caused further significant delays to Dr C and Ms F's claim and I considered this when deciding a suitable level of compensation.

Further, while my decision focussed on the amount of time Allianz had spent pursuing the removal of the tree, I recognise that the length of the claim in total was unreasonable. And this formed a large part of my considerations around a suitable level of compensation. Allianz had ample opportunity to move forward with either an engineering solution or removal of the tree but by 2022 had made no meaningful progress with either resolution. I agree this delayed the claim significantly and led to significant distress for Dr C and Ms F.

In my provisional decision I said that regardless of whether the tree is now removed, I still consider that Allianz should proceed to underpin Dr C and Ms F's property and my position on this remains. They've asked that this is included in my formal recommendations, and I agree this would make my decision clearer, so I have incorporated this into my final decision below. It is of note that in Allianz's previous submission it said it expected the tree to be removed in December 2023, however at the point of issuing this decision the tree still remains in place. This means Allianz has now been waiting for 22 months for the removal of the tree. As the claim began in 2014, and there has been little meaningful progress throughout this entire period, I think the only fair solution for its customers is to move to underpinning to resolve the issue and fulfil its obligation to restore Dr C and Ms F's property.

Financial losses

In my provisional decision I said that Allianz should consider evidence provided by Dr C and Ms F in relation to any additional financial losses provided within six months of the acceptance of my final decision. In response Dr C and Ms F have provided substantial evidence of their losses. They've asked that these are included in my recommendations as part of this decision.

While I understand why Dr S and Ms F are keen to resolve the whole claim at once, it wouldn't be fair to ask Allianz to pay the financial losses without first giving it time to review and validate these. And I don't think it fair on either side to further delay a resolution to the subsidence issue, while waiting for it to do so. Therefore Dr C and Ms F should provide the evidence sent to this service to Allianz directly to consider. And, we'd expect it to consider these costs and respond promptly to confirm payment. As Dr C and Ms F have now collated the information required, and can provide it straight away, we'd expect this to be reviewed and paid promptly – certainly within three months of acceptance of this decision. Should Dr C and Ms F be unhappy with how Allianz settles this part of the claim, they would be free to make a separate complaint that could be reviewed by this service should they remain unhappy.

Allianz's response

In response to my provisional decision, Allianz has provided no comment other than to say it is entering into discussion with Dr C and Ms F about a possible cash settlement. I don't consider this to have any impact on the contents of my decision, as Dr C and Ms F are free to choose whether to accept or reject my final decision and have 28 days after its issued within which to do so.

Should they reach a conclusion that both sides are in agreement with, then Dr C and Ms F can accept that, and reject my decision. However I don't consider these discussions to have any impact on what I consider to be a fair outcome to the complaint, or a reason to further delay the resolution of this claim.

It's important to note that if Dr C and Ms F choose to accept an alternative settlement from Allianz then this would form the final resolution of the complaint and they won't also be able to accept this decision. Therefore they must consider whether they choose to either accept any offer from Allianz, and reject my final decision. Or, accept this decision and reject any offer from Allianz to resolve the complaint.

Should Dr C and Ms F choose to accept a settlement outside of this decision, I ask that both parties inform this service. In these circumstances Allianz wouldn't be expected to comply with this decision, even if accepted by the consumers.

Putting things right

For the reasons I've given, I uphold Dr C and Ms F's complaint and direct Allianz Insurance Plc to:

- Carry out underpinning of Dr C and Ms F's property to resolve the subsidence issue rather than pursuing removal of the tree. This should be carried out even if the tree is removed after this decision has been issued.
- Allianz should proactively work with the neighbouring property and their insurers to achieve an effective and lasting underpinning solution.
- Settle the claim without applying any remedies in relation to underinsurance that would reduce the settlement.
- Pay Dr C and Ms F an additional £7,500 compensation, on top of the £1,000 already offered.
- Consider the evidence provided by Dr C and Ms F in relation to any additional financial losses and settle this within three months of the acceptance of this decision.

As the claim has already taken a significant amount of time, I'd expect Allianz to take steps to begin the underpinning promptly following Dr C and Ms F's acceptance of my final decision.

This service's award limit

Where I uphold a complaint, I can direct a financial business to take such steps in relation to a complainant, as I consider just and appropriate (whether or not a court could order those steps to be taken) up to £375,000. If I think that complying with the direction leads to a payment by the business to Dr C and Ms F or to another party for their benefit which is more than £375,000, I may recommend that the business complies with the direction in excess of

£375,000.

Here, the outcome I have come to is for Allianz to underpin Dr C and Ms F's property and pay compensation for distress and inconvenience.

If complying with my direction leads to a payment by the business to Dr C and Ms F or to another party for their benefit which is more than £375,000, I recommend that the business complies with the direction in excess of £375,000.

This recommendation is not part of my determination or award. Allianz doesn't have to do what I recommend. It's unlikely that Dr C and Ms F can accept my decision and go to court to ask for the direction to be complied with in excess of £375,000. Dr C and Ms F may want to get independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons I've given, I uphold Dr C and Ms F's complaint and direct Allianz Insurance Plc to resolve it as laid out in the 'putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Dr C and Ms F to accept or reject my decision before 14 February 2024.

Sophie Goodyear
Ombudsman