

The complaint

B complains about Allianz Insurance Plc's handling of a subsidence claim made under their Property Owners Insurance policy.

What happened

The background to this complaint is well known to both parties. So, I'll provide only a brief summary here, concentrating on the key issues as I see them.

B have a Property Owners insurance policy underwritten by Allianz, which covers a property they own and rent out.

They made a claim in September 2019 after discovering damage at the property which was typical of subsidence. Allianz accepted the claim and appointed loss adjusters.

In short, the claim is still on-going, and B are unhappy with the way it's been handled by Allianz and/or their agents.

B have made a number of complaints, receiving final responses from Allianz in March 2021, May 2022, May 2023, October 2023, and May 2024.

Before the most recent complaint, Allianz had paid B £1,000 in compensation for the inconvenience caused by delays, poor communications, and poor customer service.

In May 2024, Allianz agreed to cover legal costs B had incurred when pursuing rental payments from an ex-tenant, up to what they said was the policy limit of £5,000.

They also agreed to pay £9,400 to cover consequential losses (loss of rent) B had suffered after the time limit for loss of rent payments under the policy had elapsed. According to Allianz, this is the equivalent of four months' rent.

And they agreed to pay B a further £600 in compensation. This reflected the fact that in their final response in October 2023, they said they'd update B about their views on the consequential loss of rent and legal costs within a week or two. Whereas they in fact didn't do so until the final response in May 2024.

B weren't happy with Allianz's response to their most recent complaint and brought it to us. Our investigator looked into it and thought it should be upheld in part.

She thought Allianz should pay for all of B's legal fees incurred in pursuing the ex-tenant for missing rent payments. This was a further £1,900 or so. Allianz have now agreed to do that, as I understand it.

But she thought Allianz's offer to pay for four months' lost rent (after the time limit set out in the policy had passed) was fair.

She said that reflected the extent to which B's losses were a consequence of avoidable delays caused by Allianz's and/or their agents' errors or omissions.

And she thought the compensation offered to B was fair and reasonable.

B disagreed and asked for a final decision from an ombudsman. Their view is that Allianz should pay for loss of rent between mid-July 2023 and mid-January 2024 – around six months' lost rent, at a total of £15,315.

They also want interest on some of the payments Allianz will now make (or have already made) at our usual 8% simple plus the Bank of England base rate.

And they feel the compensation proposed by Allianz - and accepted by our investigator – is insufficient.

I agreed with our investigator that the complaint should be upheld in part. But I disagreed with her view about what Allianz needed to do to put things right for B. So, I issued a provisional decision. That allowed both B and Allianz a chance to provide further information or evidence and/or to comment on my thinking before I make my final decision.

My provisional decision

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained to B why the rules which govern our service - the Financial Conduct Authority’s dispute resolution (or DISP) rules – mean that we can’t look into the earlier complaints they made to Allianz (with final responses from Allianz in March 2021, May 2022, May 2023 and October 2023), because they weren’t referred to us within six months.

So, I’m not going to consider in this decision the specific points raised in those earlier complaints. Although I should point out that the issues which were in effect parked by the October 2023 final response – and then only fully answered in May 2024 – are part of what I’m able to look into here.

I should also make it clear that I’m considering matters up to (but not beyond) the date of the most recent final response letter to B (in May 2024). This is an on-going claim and it’s not for us to act as a substitute claims handler as the claim progresses (or not).

As our investigator explained to B, if they are unhappy with anything Allianz have done after May 2024, they will need to make a new complaint to Allianz – and bring it to us if they aren’t satisfied with Allianz’s response.

I’ll now deal below with the outstanding issues between B and Allianz which I can consider.

The legal costs

There’s no dispute remaining about the legal costs. Allianz have agreed to pay the full amount – which means a further payment of just over £1,900.

Because that was not agreed by Allianz before our investigation – and because that investigation has now come to a final decision – I will now (in my final decision) have to uphold this part of the complaint and require Allianz to make the further payment

(see also my comments below regarding interest on payments connected with the claim).

If either party has any issue with this, no doubt they will let me know in response to this provisional decision.

Consequential losses (loss of rental payments)

B's policy essentially says Allianz will cover loss of rent for up to three years after damage to the property is reported (assuming a valid claim, of course).

In this case, the claim was first made in September 2019, so Allianz's strict obligations in terms of loss of rent (under the policy) ended in September 2022.

We take the view that where avoidable delays (caused by the insurer or their agents) mean that a property remains damaged for longer than the period set out for loss of rent cover in the policy, then usually the insurer should cover – as consequential losses – any further loss of rent suffered by the policyholder in that period.

Allianz clearly accept that principle. And they accept that the property wasn't rented out in the period B now want them to cover (mid-July 2023 to mid-January 2024) due to the subsidence damage.

I say that because they've offered to cover lost rent (as a consequential loss) for four months of that period. They said that was the full extent of the avoidable delays they and/or their agents had caused.

Our investigator agreed with Allianz on that issue, but as things stand, I'm minded to agree with B that the full six months ought to be covered. I'll explain my thinking.

First, if we take a step back from the detail, this claim has been on-going since September 2019. And up until May 2024 (the period I can consider here), little to nothing had been done to mitigate the causes of the evident and profound subsidence at the property.

That's almost five years (and counting). On the face of it, Allianz suggesting they'll take responsibility for only four months of avoidable delays appears unconvincing.

When we look in detail at why it's taken so long, one can see that there are some quite considerable factors which might explain some of the delay.

The tree which appears to be a primary cause of the subsidence is owned by the local Council. And they are reluctant to take it down.

It appears that the Council eventually agreed some work to restrict the tree (by reducing the size of its crown). But unsurprisingly perhaps – and Allianz's loss adjusters claim notes seem to suggest they knew this was likely – the damage continued to progress after that work had been carried out.

I can see that the loss adjusters have been in touch with the Council reasonably regularly. However, when they've met with a refusal to fell the tree, they appear to have retreated into continuing and repetitive bouts of monitoring, which (not surprisingly) confirmed further and on-going damage.

If I'm being generous, the monitoring was an attempt to prove to the Council that the

damage was on-going, despite their efforts to restrict the tree's impact.

However, long before we get five years into the claim, I would have expected the loss adjusters to think about other possible solutions – for example, root barriers or underpinning in some form.

I can see from the claim notes that a root barrier was considered. But it was decided not to go ahead partly because at least two neighbouring properties would have been involved.

One of those properties had a subsidence claim underway and seemed to be cooperating with Allianz. I can't see that the other was approached at any point to discuss the possibility of a barrier.

The other reason for not proceeding with a barrier appears to be that the Council would in that case have had to agree to the roots of the tree being severed (and/or restricted).

There appears to have been an assumption that the Council would be unlikely to agree to that. But again, I can't see that the proposal was ever floated with the Council.

So, there are complications with this claim – Council ownership of the tree, and neighbouring properties affected by the subsidence and/or likely to be affected by attempts at mitigation.

Those complexities explain why this claim was never going to be as simple as identifying the cause of the subsidence, immediately mitigating it, monitoring to confirm stability, and then carrying out superstructure repairs (which might have taken 18-24 months or so at most).

However, those complications don't alter the basic fact that B reported a valid subsidence claim in September 2019 - and was no closer in May 2024 to having a lasting and effective solution in settlement of that claim.

There have been some temporary repairs carried out – which failed (because the cause of the subsidence hadn't been mitigated). There has been monitoring on and off throughout the almost five years in question.

But there was no progress when it came to addressing the fundamental causes of the problem. And in that respect, it's not difficult to make an argument that Allianz failed B and didn't meet their basic obligations under the contract of insurance.

I also note that, around three years or so into the claim, the loss adjuster's claim notes suggest that there was an internal discussion about the possibility that at least one other tree in the vicinity of the property might be contributing to the subsidence.

It's fair to assume that tree – if it's large enough to possibly be affecting the property – was there (and reasonably large) when the claim was made.

It doesn't help Allianz's argument that they're only responsible for four months of avoidable delay when their loss adjuster is identifying – for the first time – potential causes of the subsidence a number of years (not months) into the claim.

So, in summary, it's my current view that this claim hasn't progressed as it ought to

have done. That has in turn meant that the loss of rent period in the policy has been exceeded, through no fault of B's.

One way or another, there ought to have been a resolution of this claim – or at the very least mitigation of the causes of the subsidence – very likely before three years (and the loss of rent time limit) had passed - and certainly before mid-July 2023 (almost four years into the claim), the start of the period B went without rent that they now want Allianz to cover.

So, I'm minded, as things stand, to say that Allianz should cover B's loss of rent for the whole of that six month period (mid-July 2023 to mid-January 2024).

B have calculated that the loss of rent for the period in question amounts to £15,315. That's around £2,550 per month. Allianz offered £9,400 for four months – which amounts to around £2,350 per month.

I can see from the claim notes that Allianz's loss adjuster believes a commercial rent for B's property – at close to the same period – would be up to around £2,600 if the property were fully repaired.

For the reasons I've mentioned above, I'm minded to conclude that the property should have been fully repaired by mid-July 2023 (at the latest). And so, for the period in question, B could reasonably have expected to be pulling in a full commercial rent for the property.

So, I'm minded, unless I get persuasive evidence or information to the contrary in response to this provisional decision, to say that Allianz should pay B the £15,315 they calculate as being the lost rent between 18 July 2023 and 15 January 2024.

I'd ask Allianz to also bear in mind what I say below regarding interest on any payments they make (or have made) for losses incurred by B.

Compensation

B is a limited company. There are advantages in that for the owner of the property, as they are clearly aware. However, a limited company, by definition, can't suffer distress, anxiety or upset.

That being the case, the compensation to be agreed here is compensation for the inconvenience caused to B by Allianz's errors or omissions.

It will obviously not cover any upset, frustration, anxiety, and/or distress which may have been experienced by the director of B and/or the owner of the property.

Considered in those terms, I'm minded as things stand to say that the £600 compensation offered by Allianz in May 2024 (to add to the £1,000 they previously paid to cover the period up to October 2023 – which was accepted by B, on condition that it wasn't taken to include any consequential financial losses) is a more than fair and reasonable reflection of the inconvenience B experienced in the period between October 2023 and May 2024.

Interest on payments previously made – or now to be made – by Allianz

It's our view that financial businesses should pay interest (at 8% simple per annum) on payments they make to put right losses suffered by their customers as result of

their errors or omissions, where the customer has therefore been out of pocket for a period of time.

I'm minded as things stand then to require Allianz to consider all payments made – or to be made – to B relating to this claim (including any loss of rent payments and/or consequential loss payments).

And where those payments are in effect reimbursements for payments already made by B and/or of losses already incurred by B, I'm minded to require Allianz to add interest to any such payment at 8% simple per annum. That interest should be calculated from the date B paid out or lost out (on rent, for example) to the date Allianz make (or made) the payment.

As we've explained to B already, interest isn't payable on compensation payments. Those aren't paid to reimburse B for a payment they've previously made or for a financial loss they've incurred.

It's not clear to me why B thought interest ought to be calculated at 8% simple plus the Bank of England base rate. Put simply, in reality, it should be one or the other – 8% simple or the Bank of England base rate (and at this time, we use 8% simple). I can't see any logic that would get us to the conclusion that we should add the two together when calculating the interest payable."

The responses to my provisional decision

Allianz didn't respond to my provisional decision.

B responded, primarily to say that they agreed with my proposed outcome. They also asked me to correct a small number of assumptions made in my provisional decision, which I'm happy to do (see the section immediately below).

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'm grateful to B for their clarifying the following points for me.

The tree which has been seen throughout as the primary cause of the subsidence isn't in fact owned by the Council but is subject to a tree preservation order – which is why the Council are involved.

As B points out, this makes no substantive difference to the logic set out in my provisional decision – nor would it alter the proposed outcome of this case in any way.

The £600 compensation offered by Allianz in October 2024 has been paid (in May 2024) and B weren't expecting any interest to be added to this (or other) compensation payments.

Again, this doesn't change the substance of my decision in this case, though I am grateful to B for clarifying the position.

B's claim for £15,315 for the period mid-July 2023 to mid-January 2024 covers £14,138 in lost rent (at £2,350 per month) plus "rates" (at £1,177), which were also a consequential loss.

I'm happy to agree that this relatively small amount, on top of (estimated) lost rent, should be covered by Allianz. B's claim overall is not unreasonable given Allianz's agent's own estimate of likely rent for the property in the relevant period.

B also provided calculations of the interest payments they believe they will be due to receive from Allianz as a result of my decision in this case.

I don't have any reason to doubt what B tell me – which they say is based on what I said about the interest payments in my provisional decision.

However, in this decision, I'm not going to approve those detailed calculations and give Allianz a very specific figure to pay. I said in my provisional decision that Allianz should make those calculations – and it would be unfair to reverse that proposed outcome now.

B may wish to send a copy of their calculations to Allianz to assist in the process. There's no reason at present for me to suspect there will be any dispute about them, but I think it's right to give Allianz the opportunity to review them.

Putting things right

I said in my provisional decision that Allianz should: pay B's legal costs in full; pay £15,315 to cover lost rent between mid-July 2023 and mid-January 2024; pay the £600 in compensation offered in October 2024; and review all payments made - or to be made - to B and pay interest at 8% simple where those payments were to cover losses incurred by B.

The substance of that outcome remains the same. I've been given no reason to change my view about the right outcome in this case.

The version I'll set out in the section below differs slightly from the one set out with my provisional decision, based on the clarifications provided by B. This is primarily to reflect the fact that Allianz have already (and promptly) paid the £600 compensation they offered in October 2024.

My final decision

For the reasons set out above, I uphold B's complaint.

Allianz Insurance Plc must:

- pay B's legal costs in full (as set out above);
- pay B a total of £15,315 to cover lost rent (and other consequential losses) between mid-July 2023 and mid-January 2024;
- review all payments made – or about to be made – to B during the course of this claim and add interest at 8% simple to any payments covering losses incurred by B (as set out above) – that interest to be calculated from the date of the loss to (or the payments made by) B to the date Allianz make (or made) payment to B.

If Allianz considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell B how much it's taken off. It should also give B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or

reject my decision before 14 October 2025.

Neil Marshall
Ombudsman