

The complaint

M complain about Allianz Insurance Plc's decision to decline a claim relating to subsidence damage.

What happened

The background to this complaint is very well known to both parties, so I'll provide only a brief summary here, focussing on the key issues.

M is a company and the freeholder for a residential building divided into a number of flats. M is owned by the long-term leaseholders at the property.

M had property owners' insurance underwritten by Allianz between mid-2012 and mid-2017. Since then, M have been insured with three different companies (one of whom provided cover for two separate periods).

In January 2023, M made a claim to Allianz relating to subsidence damage at the property. This appears to be on the basis that the damage began during the period when Allianz were providing cover.

Allianz declined the claim. In essence, their reasons were: (a) the damage pre-existed their time providing cover; (b) M didn't notify them of damage which might lead to a claim within 30 days (as required by the policy terms); and (c) M hadn't taken steps to mitigate the damage once it was apparent.

In connection with the final point, Allianz also said the policy required M to carry out inspections at least every six months, to keep records of those inspections, and to ensure any defect identified at those inspections was remedied immediately (unless otherwise agreed by Allianz).

Allianz said the damage had been apparent for many years before the claim in 2023. And M had therefore failed to comply with the conditions of the policy, so prejudicing Allianz's position.

M weren't happy with this outcome and made a complaint to Allianz. And when Allianz maintained their position, they brought that complaint to us.

Our investigator looked into and didn't think Allianz had done anything wrong in declining the claim, for the reasons they'd given.

M disagreed and asked for a final decision from an ombudsman. They say they did in fact notify Allianz of the damage – and indeed made a claim – in 2015. They want Allianz to pay for expert reports they've commissioned to identify the cause(s) of the damage – and for remedial works to the property.

I was minded to agree with our investigator that the complaint shouldn't be upheld. But my reasons for coming to that conclusion were slightly different to hers. So, I issued a provisional decision. That gave both parties a chance to provide further information or

evidence and/or to comment on my thinking before I made my final decision in this case.

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.

There’s no dispute here about the terms of the policy, as far as I can see. If I’m mistaken, no doubt M or Allianz will correct me in response to this provisional decision.

There’s also no dispute, I believe, about the fact that the property is suffering from subsidence damage – which started at some point before Allianz ceased to be the insurer in mid-2017. Again, either party can let me know if they disagree.

This is a complex and unusual situation. I am assuming that (at least some of) the later insurers of the property have been approached by either M and/or the current insurer to see if they were willing to cover some (or all) of the costs of repairs to the damage.

I’m also assuming the current insurer has either declined a claim, or made it clear in advance to M that they wouldn’t be covering any of the damage.

It would be useful if, in response to this provisional decision, M – or Allianz if they’ve been informed - could provide more information about this. If other insurers have declined claims and/or said they can’t help M, I’d be interested to know their reasons.

I’ll now turn to the reasons Allianz gave for declining the claim. As I say, there were in essence three reasons given and I’ll look at these in turn below.

The damage was pre-existing

If all the damage was in fact pre-existing, it would be reasonable for Allianz to refer M to their previous insurer.

However, I don’t think anyone is suggesting that all the damage is pre-existing. It’s clear the subsidence was on-going beyond mid-2012 when Allianz became the insurer. And it was on-going after they ceased to be the insurer.

That being the case, and all else being equal, we might expect Allianz to discuss liability with the previous and more recent insurers - on the presumption that all of M’s losses would be covered, one way or another.

I’m also satisfied that the damage was not known to M before they took out their policy with Allianz in 2012.

The buyer’s survey we’ve seen for the flat closest to the damage notes some historical cracking in certain parts of the property but concludes that there’s no current movement.

And a structural survey carried out in 2012, on the instruction of the Property Manager at that time (a company I’ll refer to as W), to support their plans for maintenance and preventative work, concluded that there were no structural issues

in the relevant areas of the property.

So, on the face of it, I'm minded to conclude it would be unfair for Allianz to decline M's claim on the basis that the damage was pre-existing. It's possible the movement began before 2012, but any damage - or indeed any other signs of a subsidence problem - wouldn't have been evident to M until after 2012 (at the very earliest – see below).

M didn't notify Allianz of damage which might lead to a claim

In October 2014, W told M they'd noticed cracking outside the ground floor flat (in the area where the subsidence has now been established to be affecting the building).

W said they'd instructed a surveyor – which clearly indicates that there were significant concerns. And they told M the surveyor had concluded the cracks should be monitored to establish their nature and to determine how serious they were.

In October 2015 (a year later), W provided a further report to M. This said there was recent movement to the structure of the property. And it recommended a drainage survey and monitoring.

Based on the evidence we have at the moment, it appears nothing was done to mitigate any risks to the building between October 2014 and October 2015 (12 months). There were no repairs – and nor was there any monitoring (as recommended by W and/or the surveyor in October 2014).

As mentioned above, the policy requires M to tell Allianz about any damage or loss which might lead to a claim within 30 days. It also requires M to inspect the property every six months (at least) and rectify any defects identified.

I bear in mind that this is a commercial property insurance policy – which means Allianz might reasonably expect the policyholder to be better informed, and more attuned to their obligations under the policy terms, than the average domestic policyholder.

It appears W also recommended, in October 2015, that M's insurers were informed about the situation.

So, clearly, by that point in late 2015, M hadn't yet informed Allianz or indeed made a claim. I'm satisfied that by that point, they'd failed to comply with their obligations under the terms of the policy (to refer any damage to Allianz within 30 days).

And it's arguable that by that point, Allianz' position was already prejudiced by M's failure to notify them – to the extent that they may have been justified in declining the claim.

M say they made a claim to Allianz – via W – in 2015 (I'm assuming that would be in or after October 2015).

If they had made that claim, then we might be in the rather difficult position now of trying to determine whether (the technical failure to comply with the policy terms notwithstanding) Allianz' position had truly been prejudiced. And if so, how far they were entitled to go in either declining that claim or settling it only in part.

Allianz have no record of any claim in late 2015 relating to the cracking at the property. They do have records of an earlier – and entirely unrelated – claim. That tends to suggest that if a claim had been made in October 2015, they would still have a record of it (even if it had been made via their managing agents for the policy, as M suggest it may have been).

M have no record of the claim being made (either by themselves or by W on their behalf). They say W told them – in October 2015 - they'd been speaking with the insurer(s). But M tell us they have no documentary evidence to support the idea that a claim was in fact made in October 2015 (or soon thereafter).

M also tell us that W reported to them – in late 2015 - that the supposed claim had been declined. They don't say what W reported as the reasoning behind that supposed decline decision.

M also haven't told us what happened after that. On the face of it, you'd think it likely M would have queried a decision to decline the claim – and/or complained about it to Allianz (and possibly to us). Instead, there appears to be nothing more done until 2019, when M commissioned a further surveyor's report.

So, in the absence of any evidence that a claim was in fact made in October 2015, I'm sure M will understand my current thinking.

On balance, I can't sensibly conclude that Allianz are unjustified in saying they first heard of the subsidence issues in 2023 (when they received the current claim). That being more than five years after they'd ceased to be the insurer for the property. And more than eight years (at least) after the issues were identified.

And if that is the case, then it's clear that Allianz' position has indeed been prejudiced by M's failure to notify them of the damage.

M tell us they noticed a significant step change in the damage in 2019 / 2020. That further - and more radical - damage may not have occurred if Allianz had been informed of the issues in 2014 and the correct remedial steps had then been taken then to rectify the issues and protect the property from further loss or damage.

Failure to mitigate M's losses

It's an accepted principle in insurance that a policyholder has a duty, when they have suffered damage or loss, to do whatever is reasonable to limit that damage or loss as far as possible.

It appears from the evidence we have at the moment that M knew there was an issue with cracking at the property in October 2014 (at the latest).

It also appears that no monitoring or mitigation was carried out between October 2014 and around 2022 or 2023 (the date isn't entirely clear to me from the evidence we have), when M commissioned resin injections (which they are now asking Allianz to pay for).

On that basis – and in the absence of any further information or evidence in response to this provisional decision – I'm minded to conclude that Allianz are justified in suggesting that M haven't reasonably mitigated their losses.

On balance, it seems very likely to me that the costs associated with the repair work

now will be significantly higher than they might have been in 2014 or 2015. Particularly given the “step change” (their own words) in the damage noted by M in 2019 or 2020 (some years after Allianz ceased to be the insurer).

And in that context, it’s not unreasonable for Allianz to decline M’s 2023 claim on the basis that M didn’t reasonably mitigate their losses.

Summary

As things stand, I’m minded to draw the following conclusions in this case.

One – Allianz aren’t justified in declining the claim on the basis that the damage was pre-existing.

Two – they are however justified in declining the claim on the basis that M didn’t notify them in a timely fashion of damage which might (and did, in fact) lead to a claim.

Three – Allianz also have grounds to decline the claim on the basis that M did not take timely action to mitigate their losses, when they ought reasonably to have done so.

I understand why M are concerned that the changes in insurer they’ve made over the years shouldn’t somehow confuse matters. And shouldn’t mean that they find themselves without cover simply because the various insurers all look to each other - and aren’t willing to take their part of the liability for what’s been a lengthy on-going subsidence issue.

However, as things stand, I don’t think that’s the issue here. If M had had the same insurer throughout – and they’d made a claim in 2023 relating to damage first evident to them in 2014 – I think that insurer might have some perfectly reasonable reservations about covering the repair costs.

So, I’m minded not to uphold M’s complaint, unless I receive, in response to this provisional decision, persuasive evidence or information to make me change my mind.”

The responses to my provisional decision

Allianz haven’t provided any response to my provisional decision. I assume that’s because they agree with the provisional outcome.

M have responded. They agree with my conclusion that Allianz wouldn’t be justified in declining the claim because the damage was pre-existing. But they don’t agree with my other conclusions or with the provisional outcome.

In short, M have insisted that Allianz were informed of a claim in 2015, through W. They believe W spoke only to the managing agent for the policy (who I’ll refer to as A) and not directly to Allianz.

They believe Allianz have not been willing to accept responsibility for A’s actions, or to press them to fully investigate the matter and/or search their own records. They believe A have an interest in downplaying the number of claims made on the policies they managed (and Allianz underwrote).

M say the rejection of that claim left them without technical and financial support – and whilst they monitored the cracks, remedial action seemed an unnecessary and substantial expense until the point the cracks became considerably worse in 2020.

In M's own words, they feel they should not have been expected to "*take earlier unspecified action to protect the interests of the insurer after their rejection of liability*".

M also say the largest part of the current claim is for the cost of the remedial resin injections. And they say that option wasn't available more than five years ago, so they have in effect saved Allianz money by not undertaking earlier remedial actions – which would at the time have been more expensive underpinning.

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.

M have my sympathy, the subsidence to the property is unfortunate, not their fault, and has caused them considerable trouble and financial loss. However, nothing they've said in response to my provisional decision has caused me to change my mind.

As I said in my provisional decision, M have not provided any persuasive evidence that they made a claim in 2015. The fact that a managing agent is involved is, in my view, a red herring. As I said, Allianz have records of another claim from around the same time – when the policy had the same managing agent.

But even if M had made a claim in late 2015, it was already late - according to the policy terms, which require notification within 30 days.

More importantly, if a claim was made and declined (for reasons we don't now know), that doesn't mean M had no responsibility to put the damage right. And indeed, under the policy terms, to carry on with six monthly inspections, after which all existing damage had to be put right (unless otherwise agreed with Allianz) – at least until Allianz ceased to be the insurer in 2017.

In response to M's argument that they had no obligation to "*protect the insurer's interest*", if the claim were declined, they did in fact have exactly that obligation (whether a claim was declined or not). And I note that M had a very significant interest themselves in making sure that any subsidence issues at the property were addressed as soon as possible.

I'm sure M will see that I'm not going to uphold a complaint which is essentially as follows. M made a claim knowing they likely had on-going damage. But because the insurer declined that claim, M then left the issue to get worse for eight years. And then made another claim to the insurer for the (by now much greater) damage caused by the same issue.

So, in summary, I'm not persuaded a claim was in fact made in late 2015 (M may want to follow that up with W if they haven't already done so).

But even if it had been - and it had been declined - I don't think Allianz would be obliged to cover the current claim now. M seemingly did not take any action (which they might reasonably have been expected to take) to mitigate their loss in the period between late 2015 and at the earliest 2019 / 2020 (when they spotted the step change in the cracking).

I note that in my provisional decision, I asked for clarification about any claims made to M's current or other previous insurers, to help me to better understand the broader situation. M

didn't provide any such information.

My final decision

For the reasons set out above, I don't uphold M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 April 2026.

Neil Marshall
Ombudsman