

complaint

Mr T complains about the settlement of a subsidence claim by Allianz Insurance Plc. He also complains about the handling of that claim.

background

Mr T had home insurance with Allianz. In 2010, his tenant reported cracking to both the inside and outside at the front of the property. Mr T told Allianz the adjoining property had suffered similar damage and had been underpinned as part of a separate insurance claim. Allianz' loss adjusters inspected the property and concluded that the cracks were a result of *'thermal movement'*. This was excluded under the policy, so Allianz didn't accept the claim.

In 2015, Mr T contacted Allianz again to tell it the cracking had worsened. But Allianz refused to re-open the claim. Mr T subsequently engaged a structural engineer who inspected the damage in May 2015. The engineer identified the existence of a possible underground watercourse and concluded that the wall at the front of the house was moving downwards and that it needed to be taken down, underpinned and re-built.

On receipt of the report, Allianz asked its loss adjusters to undertake further testing. But in May 2016 Mr T complained to Allianz about the service he'd received, including the fact the loss adjuster had left the company and up to that point, nothing had been done to advance the claim. Allianz accepted there'd been poor service. It offered to pay £350 compensation and to arrange to monitor the movement at the property.

Allianz looked at the results of crack monitoring for the six months from May 2016 and concluded there was no ongoing movement and that the property had stabilised. It said underpinning wasn't necessary and offered to pay for minor repairs. It also said Mr T was underinsured by 38% and so the settlement would be reduced by that amount. In April 2017, a hole developed in the public pavement immediately in front of the front door.

The council conducted investigations and concluded there was a void under the front wall of the house. Mr T contacted Allianz who said the problem with the pavement was unrelated to the existing claim and that he would need to contact his new insurer (Mr T had moved to a different insurer in June 2016). The new insurer said it was related to the ongoing claim and was a matter for Allianz.

In June 2017, Mr T appointed another structural engineer to inspect the damage. This expert challenged the conclusions from previous inspections, concluding *'the undertaking of appropriate site investigations at relatively little cost would, with correct interpretation, allow firmer conclusions to be drawn as to cause and mitigation/remedy'*.

Mr T complained to this service in July 2017. He explained he'd spent a lot of money on repairs to the foundations and on getting reports and that he wants Allianz to reimburse him in cash for his outlay. He believes the repairs Allianz proposed in 2016 were inadequate and that the front wall of the property now needs to be rebuilt.

He believes the internal floor in the hall should be re-laid to ensure the front door shuts and that the pillar that has moved forward and deflected should be fixed using an internal bar system. He thinks the front of the house should be re-rendered. He wants Allianz to pay for his tenants to live elsewhere while the work is done.

Mr T also believes the damage has worsened between 2010 and 2015 and that because Allianz failed to conduct proper investigations in 2010, it's responsible for the additional costs he's incurred. He's argued that the fact the repairs ended up costing more than they would have done when he first made the claim is relevant to the issue of underinsurance. He wants compensation for the distress and inconvenience he's suffered as a result of Allianz' failings and he thinks the reduction in value of his house should be allowed for in any settlement. Allianz has explained that its loss adjusters were about to arrange the repairs but this wasn't done because the sink hole appeared. The loss adjuster suggested a cash settlement but this didn't happen either.

my provisional decision

underpinning

Mr T had said he'd paid to underpin the property. As this work wasn't authorised by Allianz, I said I needed to consider whether or not I could fairly make Allianz reimburse his costs.

Allianz had ultimately accepted the claim as a valid subsidence claim, but, based on the results of the crack monitoring it had undertaken in 2016, it had concluded the property had stabilised and agreed to pay for minor repairs. But, relying on the recommendations of the structural engineer he'd engaged and paid for, Mr T went ahead and had the property underpinned.

The structural engineer had said the whole of the front wall had been affected and had recommended full underpinning of the front wall panel, in addition to making good the cracks around the window openings and re-rendering as necessary.

In June 2017, a second structural engineer concluded *'the subsidence peril has operated and there is a valid claim. The remedial measures needed would be to underpin the front wall and a pumped grout system would appear to be the approximate solution, followed by crack repairs and decorations internally and render repairs/replacement externally'*. The structural engineer also commented that *'the only monitoring undertaken was from July 2016 through until January/February 2017 during the driest Autumn/winter period in over 20 years, so I do not consider the <1mm of movement apparently recorded as being a true reflection'*.

I thought it was significant that, declining the claim in 2010, Allianz appeared not to have considered the fact that the neighbouring property had been recently underpinned and that once it had accepted there was a valid subsidence claim, its investigations were limited. In those circumstances, I thought Allianz should reasonably have carried out more significant site investigations.

I considered the circumstances leading up to Mr T's decision to underpin the property, and I was satisfied his decision was reasonable. Several years after declining the claim, Allianz had eventually accepted there was subsidence, but after conducting limited investigations, it offered to settle the claim by paying for minor repairs only. However, two experts had advised Mr T that the property should be underpinned, and he was, understandably, keen to achieve a lasting and effective repair, particularly as he had tenants living there. I thought this was reasonable and in the circumstances, I thought Allianz should reimburse the money Mr T had spent on underpinning, plus interest*. However, because, arguably, the property would always have needed to be underpinned, I thought Allianz could fairly apply the 38% reduction for underinsurance to this amount.

future repairs

Mr T had said the underpinning hadn't resolved the problems with the front wall or the issues with the door. I couldn't hold Allianz responsible for repairs that it didn't arrange. However, I said I'd expect any outstanding damage associated with the subsidence to be taken into account as part of the settlement of the claim.

I thought the fairest thing would be for Allianz to appoint an independent structural engineer to comment on what, if any, outstanding repairs are required to resolve the subsidence damage. It should then settle the claim based on those findings and in line with the terms and conditions of the policy. To ensure Mr T was satisfied with the arrangement, I said Allianz should select three structural engineers and allow Mr T to choose which one he prefers Allianz to use. In moving ahead in this way Mr T would be signifying that he agrees to be bound by the expert's findings, and Allianz will be bound by those findings too.

I also said that if Mr T's tenants needed to move out of the property because it was uninhabitable, either due to the subsidence or the necessary repairs, the policy would require Allianz to pay Mr T for any lost rent during the period the property was uninhabitable.

underinsurance

Following a claim, the insurer sometimes decides that the 'sum insured' is not enough to cover the full rebuild or replacement cost of the building. Allianz had reduced the settlement amount by 38% because the property was built of stone. When we consider a complaint about underinsurance, we look at whether the consumer was asked for specific information, whether it was clear what needed to be included in rebuild cost and also whether the consumer was pointed in the right direction to reach an accurate figure.

I was satisfied the policy featured an average clause and that the basis of the rebuilding value was made clear on the policy schedule, therefore, in the absence of any other evidence, I was satisfied the property was underinsured. Therefore I thought it was fair for Allianz to reduce its settlement by 38% to reflect the fact the property was underinsured.

Mr T believed the outstanding repairs had become more costly due to Allianz' failure to accept the claim sooner. He'd explained that when he first made the claim in 2010, the main pillar between the window and front door *'wasn't cracked through with a ledge where it had deflected and come forward'*. He'd also explained that the new UPVC door which was fitted in 2007/8 was clearing the floor inside by a large margin and is now hitting the floor and needs remedial work on the house to lift the doorstep or reduce the floor.

I hadn't seen any evidence relating to how much the repairs cost in 2010 or any evidence that the ultimate cost of repairs increased over time in comparison to what they'd have been if the claim had been accepted at the outset. However, taking into account the history of the claim, I didn't think it would be fair for Allianz to apply the average clause to any damage that occurred or worsened after Mr T first made the claim in 2010. So, I thought the fairest way forward was to ask the independent structural engineer to comment on whether, if any, of the damage had (or is likely to have) occurred or worsened since 2010. If it had, the 38% reduction in the settlement for underinsurance shouldn't be applied to that part of the repairs.

expert reports

Following Allianz' decision to decline the claim, Mr T paid £274 and £540 for expert reports to challenge it. I was satisfied that these reports were influential in Allianz' review of its position and decision to accept the claim. They also influenced my findings in this decision. In those circumstances, I was satisfied Allianz should reimburse Mr T for the cost of the reports plus interest* from the date he paid the sums until settlement is made (upon receipt of evidence of how much was paid and when).

compensation

Mr T had explained he had sleepless nights about the possible risk to his tenants. And that he'd had to attend site on many occasions to meet people over the years. This took half a day each time and he had to spend money on petrol to get there. He felt that in doing the job himself, he had a lot of personal risk and additional worry as he'd put himself in the position of contractor and has liabilities if there are any issues.

Mr T had suffered a great deal of distress and inconvenience as a result of Allianz' handling of the claim. For that reason, I thought it should pay him an additional £650 compensation (making total compensation £1,000). In making that award, I took into account Allianz' failings at the start of the claim along with the unnecessary inconvenience Mr T suffered during the period after he asked Allianz to re-open the claim.

Finally Mr T had said the claim had resulted in the reduction in the value of his house. I accepted subsidence claims could affect house prices. However, it was often the fact of subsidence having occurred that made the property a less appealing option to buyers. And Allianz wasn't responsible for that.

developments

Regarding my comments about work that wasn't authorised by the council, Mr T's explained that time was of the essence because of the risk associated with the collapse of the front wall onto the pavement. He'd been given a month to repair the foundations by the council. He's confirmed that there's no outstanding problem with the pavement because the void underneath it was filled by the council. He's also said he's happy with the proposed appointment of a structural engineer.

Mr T remains dissatisfied with the 38% reduction for underinsurance. He's argued Allianz used the dressed stone figure for the valuation of the insured value and that the house is undressed stone with pebbledash render, which makes the underinsured value 27.7%. Allianz has responded to say it doesn't have any further comments to make. But it's agreed to apply a 27.7% reduction for underinsurance, rather than 38%.

my findings

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

Mr T's made numerous points in support of his complaint. We're an informal service and our rules allow me to focus on what I consider relevant. So, if there's something I've not mentioned; it isn't because I've not considered it. Rather I've focussed on and set out what I think are the key issues.

Regarding the issue of underinsurance, as Allianz has agreed to apply a reduction of 27.7% for underinsurance, I would expect this to be reflected in the future settlement of this claim.

Mr T's indicated that he accepts my findings. And Allianz has made no further comment. Therefore, the findings in my final decision will be the same as the findings in my provisional decision.

my final decision

I uphold this complaint in part and to direct Allianz Insurance Plc to:

- where relevant, it should apply 27.7% for underinsurance (rather than 38%).
- reimburse Mr T the money he's spent on underpinning to date (upon receipt of evidence of how much was paid and when) minus the 27.7% reduction for underinsurance. This to include a payment of 8% simple interest* from the date the costs were incurred.
- appoint an independent structural engineer (in accordance with what I've said above) to comment on what, if any, further repairs are required, including those associated with the pavement. It should then settle the claim in line with the terms and conditions of the policy.
- the structural engineer should identify whether any of the damage has (or is likely to have) occurred or worsened since 2010. Allianz should then pay the full cost of repairing any such damage identified.
- reimburse Mr T the money he's spent on expert reports (upon receipt of evidence of how much was paid and when) plus 8% simple interest* from the date the costs were incurred and until settlement is made.
- pay Mr T £650 compensation in addition to the £350 it's already paid (making total compensation of £1,000). The additional compensation is to be paid within 28 days of the date on which we tell AXA Mr T accepts my final decision (if he does). If it pays any amount later than this then interest* will have to be added to the unpaid amount from the date of my final decision until settlement is made.

* If Allianz Insurance Plc considers that it's required by HM Revenue & Customs to withhold income tax from this interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 January 2019.

Carolyn Bonnell
ombudsman