

complaint

Mr and Ms J complain that Allianz Insurance Plc hasn't yet completed the repairs to their property following a subsidence claim. They are also unhappy that it's no longer offering them home insurance.

background

Mr and Ms J made a subsidence claim on their home insurance policy in 2004. They have already had complaints about the claim considered by this service in 2011 and 2017. A few months ago, we also considered a complaint about the premiums they had paid since the start of the policy.

In 2011, another ombudsman at this service issued a final decision. She directed Allianz to appoint an independent engineer to determine what work was needed at Mr and Ms J's home. Both parties were to be bound by the engineer's findings. The engineer was to recommend three contractors for the work, and Allianz was to choose one.

In 2017, the same ombudsman considered a further complaint about how the claim had progressed since her final decision in 2011. The ombudsman concluded there had been delays caused by both parties, and she addressed concerns raised by Mr and Ms J in relation to the repairs and costs. In her final decision, the ombudsman made several directions about how the claim, repairs, and policy cover should move forward.

A week after Mr and Ms J had accepted the 2017 final decision, the independent engineer that was appointed after the 2011 final decision, told Allianz he was no longer willing to be involved in the claim. Allianz asked us how it should move forward given the ombudsman's previous directions required the involvement of an independent engineer. Allianz also confirmed it had now appointed a loss adjuster to handle the administrative duties associated with the claim, as per the ombudsman's latest final decision.

In the meantime, Mr and Ms J wrote to us about a letter they had received from the loss adjuster. The loss adjuster's letter explained that it needed to assess the damage to determine whether there was a valid claim. Mr and Ms J were unhappy about this.

Following a discussion with Allianz, one of our investigators wrote to Mr and Ms J to explain the independent engineer had withdrawn his services. We explained the recently appointed loss adjuster could also fulfil the duties of the independent engineer; or Allianz could identify three more independent engineers, and Mr and Ms J could choose one from that list. We asked Mr and Ms J to confirm their preference. Shortly afterwards, in August 2017, Allianz told us they had received a letter from Ms J which explained they were unable to reply yet, due to Mr J's ill health.

We next heard from Mr and Ms J in July 2018. They explained the repairs to their home still hadn't been completed, and they were unhappy they had been paying policy premiums over the last 14 years without Allianz reinstating the property. They were also unhappy with how their premiums had increased during that period. In January 2019, they also told us Allianz were no longer offering them cover, which contradicted the last final decision.

The issues being considered under this case are the claim's progression since the last final decision in 2017 and Allianz's withdrawal of cover. A separate case was set up to consider the premiums paid since the policy started, and another ombudsman has already issued a final decision on that matter. Therefore, I won't be commenting on the arguments made about the premiums. I'll simply focus on the claim and the issue of ongoing cover.

Since May 2019, correspondence has been exchanged between our investigator who considered this case and the parties involved.

Allianz has made the following points and/or taken the following actions:

- Allianz attempted to contact Mr and Ms J after the ombudsman's last final decision to discuss the next steps, but at that time it wasn't convenient for Mr and Ms J. So, no further action was taken. Allianz accepted that it should have followed up with them and maintained contact.
- Allianz wrote to Mr and Ms J again in February 2019. Allianz explained it needed to appoint another independent engineer to draw up an up-to-date schedule of works. About a month later, Allianz sent them another letter to explain it hadn't received a response from them. It said its loss adjuster would now contact them to assist with the claim.
- In February 2019, Allianz also clarified its position about providing Mr and Ms J with ongoing home insurance cover. Allianz explained that, although in the previous final decision the ombudsman had directed it to maintain cover for Mr and Ms J, it had since withdrawn from the personal home insurance market. Allianz said it was therefore unable to provide new quotations or continue cover for its existing customers beyond renewal dates.
- In July 2019, Allianz sent a further letter to Mr and Ms J. It explained although it was exiting the personal home insurance market, it had become a minority shareholder in Liverpool Victoria General Insurance Group (LV). Allianz explained LV was prepared to offer Mr and Ms J home insurance. However, because LV doesn't provide cover on a direct basis, Mr and Ms J would need to contact a broker with an LV agency agreement to initiate the process.
- Allianz later provided Mr and Ms J with a list of brokers and it asked them to select a few. It said LV's products don't normally accept properties with a subsidence history, but LV will work with a broker behind the scenes to arrange a policy. Allianz noted that it couldn't guarantee the brokers will want to be involved, hence why it asked Mr and Ms J to select a few. LV will contact the selected brokers and if one is prepared to help, Mr and Ms J can contact that broker, or it can contact them.
- Mr and Ms J will need to select the broker so they can receive the sales process required by the regulator; and through that process they will be informed of the product's features, benefits and exclusions; and they can make their informed decision. The broker also needs to make sure they have up-to-date details for Mr and Ms J and their property.

- Allianz has provided assurances that the LV policy would, as far as possible, match the terms of Mr and Ms J's Allianz policy. LV will also match the premium at point of lapse with Allianz, with an allowance for inflation on top. Allianz noted LV's view of risk may change each year, therefore, inflation might not be the only factor influencing future rate changes. However, LV will simply charge Mr and Ms J the required price via the broker each year, discounting the amount it would have otherwise charged for the 'subsidence history' risk.
- Allianz has offered to appoint a loss assessor to handle the claim on Mr and Ms J's behalf and cover the costs. Allianz explained to Mr and Ms J that a loss assessor would act in Mr and Ms J's best interests and liaise with the other appointed third parties to oversee the repairs. Allianz has also since clarified Mr and Ms J could choose their own loss assessor, providing the loss assessor is regulated by the Financial Conduct Authority. Allianz also gave Mr and Ms J the name of three companies at their request, for them to choose from.
- Due to the distress and inconvenience Allianz has caused by its handling of matters since the last ombudsman's final decision, it offered Mr and Ms J £1,500 compensation.
- In May 2020, Allianz asked the previous independent engineer if he was prepared to oversee the project. However, he declined citing a breakdown in his relationship with Mr and Ms J. He didn't consider it would be possible for him to manage the repairs. However, he said he would answer questions from the new independent engineer, providing Allianz paid for his time. Allianz agreed, subject to prior approval.
- Allianz has now provided Mr and Ms J with a dedicated claim handler, so they have a single point of contact at Allianz moving forward. It also advised our investigator that two senior colleagues would oversee the claim to settlement.
- In July 2020, the claim handler wrote to Mr and Ms J to explain he had requested the independent engineer's technical papers, and he was aiming to put together a team of subsidence and building experts to work with Mr and Ms J to agree a strategy for the repair. He noted the repair scheme previously agreed with the independent engineer would likely need revisiting.
- The claim handler also asked Mr and Ms J if they could hold a socially distanced meeting so he could introduce the team, inspect the property, and agree an action plan – or if they preferred not to meet due to current Coronavirus restrictions, if his team could inspect the property. In response, Mr and Ms J explained Mr J was in lockdown due to his ill health, and they currently had other difficult circumstances. They asked to delay the site meeting and said they would make contact once the meeting could be accommodated.

Mr and Ms J have made the following points:

- They have been caused extreme distress due to them being back to where they started in 2004, and they raised concerns Allianz had disregarded the previous ombudsman's final decisions.

- In 2018, Allianz gave three weeks' notice of its withdrawal of cover, and its decision contradicts the previous final decisions issued by our ombudsman. They highlighted their property is no longer insured. They said they had been in touch with a broker, but they were told no insurer will offer them cover due to the subsidence claim.
- If Allianz can't insure the property, it should make alternative arrangements and pass all the relevant information to a broker or insurer. They don't believe that it's their responsibility to provide information, and they don't know what disclosures they would need to make. However, they confirmed that they would assist with the completion of forms if required.
- Following the first final decision in 2011, the independent engineer was appointed by Allianz to complete a schedule of repairs; arrange for three contractors to tender for the works; and oversee the project to completion. Mr and Ms J believe the engineer had been allowed to walk away from the job without any warning, when his repair schedule had been agreed. They asked if he had breached his contract and they questioned why Allianz hadn't acted so he undertook his responsibilities. They thought Allianz should have been aware in 2014 that he was withdrawing his services, and it should have arranged a handover with a replacement.
- They highlighted that the party wall agreements are yet to be arranged. In 2017, the ombudsman clarified that it was Allianz's responsibility to provide the independent engineer with loss adjusting support, to complete administrative tasks such as arranging the party wall agreements.
- The lack of progress since 2004 has allowed their home to become squalid. They said measures hadn't been taken to prevent damage becoming worse, and they thought they should be compensated for the property's loss of value.
- Temporary arrangements haven't been provided so they can use their kitchen area after it was dismantled; and their contents haven't been moved into storage to prevent them from perishing.
- They set out the impact of the last 16 years, and their difficult personal circumstances in respect of their health. They emphasised they hadn't heard from the independent engineer since 2014, and no progress had been made since. They said their time, expense, emotional distress and suffering hadn't been addressed by our previous final decisions and Allianz's further £1,500 offer isn't enough. They said £16,000 should be awarded given there's been 16 years of delay.
- In respect of a loss assessor, whilst they have been provided with the names of three companies, they require Allianz to contact them first and to brief them with the history and circumstances of the claim. Mr and Ms J said they will only make contact once the loss assessors have confirmed they have the engineering capability; Allianz has provided a named person for each company; they are fully briefed; and they have provided written confirmation they have the capacity to see the job through. They also asked our investigator several questions about the loss assessor's role and sought assurances the previous independent engineer would be available for questions.

- They highlighted that following the last final decision, the new loss adjuster wrongly told them their claim needed to be assessed for validity. About six weeks later, the loss adjuster turned up at their property without any notice, no business card, and appeared unclear on what his company was expecting him to do.
- They requested details of the loss adjuster's role and responsibilities; and for a list of planned activities so they could understand the duration the claim would take. They said Allianz needed to brief the loss adjuster with the details of the agreements previously reached in respect of the repairs and the party wall agreements.

Our investigator has set out the following:

- In the ombudsman's last final decision, she set out what Allianz needed to do next in respect of the repairs. That decision was accepted by Mr and Ms J, so it became legally binding. However, our investigator didn't think Allianz had been given an opportunity to implement the ombudsman's directions.
- He said it was unfortunate the independent engineer had withdrawn his services, but he didn't consider Allianz to be responsible for that. He said the engineer was acting independently of Allianz, not as its agent. He thought Allianz's responsibility was limited to appointing a replacement independent engineer, so the ombudsman's directions could be implemented.
- He noted that this service wrote to Mr and Ms J soon after the independent engineer withdrew his services, and we suggested Allianz select three alternative independent engineers for Mr and Ms J to choose from. However, Mr and Ms J then requested Allianz to put the claim on hold due to Mr J's ill-health. Although our investigator acknowledged Allianz ought to have maintained contact with Mr and Ms J, he highlighted they were unresponsive when Allianz did attempt contact between January and March 2019. He also noted Allianz had offered to pay for a loss assessor to independently represent Mr and Ms J. Overall, our investigator concluded Allianz had shown a willingness to implement the ombudsman's directions. He said there was little that Allianz could do until a replacement independent engineer has been appointed.
- He clarified that Allianz's offer to pay for a loss assessor to represent Mr and Ms J, was in *addition* to appointing a replacement independent engineer to oversee the repairs *and* a loss adjuster to provide the administrative support.
- He agreed with Mr and Ms J that Allianz should provide them and the loss assessor with copies of the relevant documents, including a summary of the work undertaken so far, once a loss assessor has been appointed.
- He concluded that Allianz's proposal for arranging alternative cover via LV would ensure future cover and meet the intentions of the ombudsman's direction.

- In respect of compensation, our investigator clarified that he was unable to consider anything that had happened before the ombudsman's last final decision. He said he was only considering events afterwards. He acknowledged Allianz could have done more to maintain contact after Mr and Ms J put the claim on hold, but in view of the claim being placed on hold, and the lack of response in early-2019, Allianz wasn't responsible for all the delays. He noted a loss adjuster had been appointed as per the ombudsman's direction, but he thought it was evident the loss adjuster hadn't been briefed enough given the letter it sent to Mr and Ms J about determining the cause of damage, which he accepted would have caused them to worry. He also noted Allianz didn't work with Mr and Ms J to ensure they maintained their home insurance cover when it withdrew from the market – and he acknowledged the distress and inconvenience this situation had caused them. Taking all these circumstances into consideration, he thought £1,500 compensation was fair.

Because Mr and Ms J disagreed with our investigator's conclusions, the complaint has been passed to me to decide.

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 and Ms J have raised multiple points and questions throughout their submissions to us. However, it's not our role to answer every question or to comment on every point made. It's for me to determine the crux of a complaint and to address the issues I consider relevant to its outcome. I have carefully considered Mr and Ms J's submissions, and where I haven't directly commented on their points or questions, this isn't intended as a discourtesy; but rather, this reflects the informal nature of our service, its remit, and my role in it.

Also, I'm only considering what's happened *since* our March 2017 final decision. I won't be considering, or awarding compensation for, anything that happened before then. This is because I can't revisit events or periods that have already been the subject of a final decision.

I will set out my findings on the events I am considering, under the following headings: 'the independent engineer and the claim's next steps'; 'loss assessor'; 'ongoing cover'; 'other issues'; and 'compensation'.

the independent engineer and the claim's next steps

In the 2017 final decision, the ombudsman clearly outlined how the claim should proceed and the responsibilities of both parties. Her final decision was accepted by Mr and Ms J, which means it became legally binding. Therefore, in terms of the claim's next steps, her directions in that final decision still stand.

It's unfortunate that the independent engineer has declined to oversee the repairs. However, Allianz is willing to appoint a replacement. Mr and Ms J need to engage with Allianz about this. Allianz first gave them the option of appointing a replacement engineer in June 2017; and it also wrote to them about this in February 2019.

I'm not persuaded Allianz is responsible for the decision of the independent engineer to step away, or that it can reasonably do anything more. Based on the engineer's comments to our service and the previous final decision, his relationship with Mr and Ms J had broken down.

Importantly, Allianz has offered to find a replacement. It's also offered to cover the previous engineer's fees, subject to prior approval, should the new engineer need to consult with him. I'm satisfied that's a reasonable solution. However, to be clear, the decision about whether consultation is needed will rest with the new independent engineer, not Mr and Ms J. As a reminder, Mr and Ms J agreed both they and Allianz would be bound by an independent engineer's decisions, when accepting the first final decision.

Allianz has confirmed that the replacement independent engineer will be jointly selected by both parties. Mr and Ms J will be given the opportunity to choose from a list provided by Allianz; or if Mr and Ms J do appoint a loss assessor, the loss assessor may be able to recommend one.

Once Mr and Ms J can give Allianz access to the site, the claim can be taken forward again and as per the previous final decisions. Although the new independent engineer will have access to the previous engineer's papers and can consult if necessary, it's likely a new repair scheme will need to be designed based on the current condition of the site and property. I appreciate Mr and Ms J will be unhappy about going back a step, however, revisiting the repair scheme is in their interests.

Based on everything I've seen, I'm satisfied that Allianz has endeavoured to comply with the previous final decisions. However, if Mr and Ms J don't consider Allianz is complying, they can seek legal advice about enforcing the decisions through the courts. Whilst this service would try to assist if there was uncertainty following a final decision, unlike the courts, we don't have enforcement powers.

loss assessor

Allianz has offered to pay for a loss assessor to professionally represent Mr and Ms J, *i.e.* someone who is experienced with this type of claim and will act in their interests.

Mr and Ms J have outlined their expectations in terms of how a loss assessor is appointed, and with regards to their capability and capacity. However, in my view, I can't reasonably decide that Allianz is responsible for sourcing a loss assessor that meets Mr and Ms J's requirements.

Loss assessor fees aren't covered by Mr and Ms J's policy. As such, Allianz's offer to pay for one is very fair, in my view. It's up to Mr and Ms J whether they accept the offer. But if they do, it's for them to contact their potential loss assessors themselves in first instance, so they can obtain the reassurances they desire and make an informed choice. I can't fairly decide Allianz has to do all the legwork, or that it's responsible for Mr and Ms J's chosen representative.

Allianz has confirmed that once a loss assessor has been chosen, it will provide them with an overview of the claim history and the technical details from the previous independent engineer's files. I'm satisfied the approach suggested is reasonable.

ongoing cover

The Association of British Insurers (ABI) has published guidance on the continuation of cover after a subsidence claim. In summary, an insurer should usually continue to offer cover. This is partly because, a policyholder with subsidence history will find it difficult obtaining cover elsewhere, or prohibitively expensive, due to the perceived risk.

The previous final decision made a direction as per the ABI's guidance. However, Allianz has withdrawn from the domestic home insurance market, so it says it can no longer offer domestic policies. As explained above, I can't enforce the ombudsman's previous final decision. However, I can consider what steps Allianz took to help Mr and Ms J find alternative cover, and whether the solution now proposed is fair and reasonable.

I'm persuaded that an LV policy covering the same events as the Allianz policy, for the same price (with an allowance for inflation), is a fair and reasonable solution. Importantly, there will be no additional amount applied to the LV premium due to the subsidence history, that wouldn't have also been applied to the Allianz policy had it renewed. I'm satisfied that Allianz's proposal is in keeping with the principles behind the ABI guidance.

Allianz has offered to contact brokers on Mr and Ms J's behalf, once they have selected a few, to get the process started. But inevitably, Mr and Ms J will need to be involved in the process once a broker has agreed to assist. At this stage, I'm not persuaded Allianz can reasonably be directed to do something more. Unfortunately, the broker that arranged Mr and Ms J's Allianz policy didn't want to be involved despite having an LV agency. Therefore, the onus is now on Mr and Ms J to provide Allianz with a few selected alternatives, from the list of brokers provided.

However, I'm not persuaded that Allianz did enough to support Mr and Ms J when it first told them about its withdrawal from the market. In February 2019, in response to their complaint, Allianz simply said it was unable to help. In my view, given the ABI guidance and the likely difficulties Mr and Ms J would face trying to find alternative cover, Allianz ought to have offered more support. It wasn't until five months later that it came forward with the LV solution.

On the other hand, Mr and Ms J have shown a reluctance to undertake any of the legwork themselves since Allianz first proposed LV as a solution in July 2019; and they haven't yet provided Allianz with their chosen brokers from the list it gave them three months ago. As such, I'm not persuaded Allianz is responsible for all the delays in obtaining alternative cover.

other issues

Allianz tried to move the claim forward after the last final decision, but Mr and Ms J asked to put the claim on hold due to their personal circumstances. Nonetheless, Allianz accepts it ought to have followed up and maintained contact. Given the history of this claim, I agree Allianz should have been more proactive here.

I also accept the loss adjuster's letter about determining if there was a valid claim, would have been distressing for Mr and Ms J.

In terms of the deterioration of the property, the damage will be put right through the repairs. If the property is considered to have lost market value after the repairs are successfully completed, such losses are specifically excluded by the policy.

In terms of the kitchen, I understand from the last final decision that Mr and Ms J are living elsewhere; and we haven't been told anything that leads me to believe they have been impacted by the kitchen being out of use.

If Mr and Ms J's contents have been damaged as a result of not being moved into storage, this loss needs to be presented to Allianz so it can be considered as part of the claim. I've not seen that they have previously presented this loss.

compensation

Allianz has offered Mr and Ms J £1,500 compensation for all the issues since our last final decision in March 2017. I acknowledge the claim hasn't progressed since then, and they have been left without cover. However, taking into consideration everything I have said above, I'm satisfied that Allianz's offer fairly acknowledges the delays, distress, and inconvenience it can reasonably be held responsible for.

my final decision

For the reasons I've set out above, I uphold this complaint.

My final decision is Allianz Insurance Plc should:

- once Mr and Ms J has given access to the site again – appoint a replacement independent engineer and progress the claim as per the 2011 and 2017 final decisions;
- cover the cost of the previous independent engineer's fees, if the new independent engineer considers consultation necessary;
- on receipt of Mr and Ms J's selected brokers – work with a broker to inception an LV policy that covers the same standard insured events as Mr and Ms J's previous Allianz policy, for the same price of the Allianz policy had it renewed (subject to inflation); and without the property's subsidence history impacting the LV policy beyond the impact the history would have had on the Allianz policy; and
- compensate Mr and Ms J £1,500

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Ms J to accept or reject my decision before 13 November 2020.

Vince Martin
ombudsman