

The complaint

Mr and Mrs D are unhappy with what Alwyn Insurance Company Limited did after Mr D made a claim on his landlord legal protection insurance policy.

All references to Alwyn include its agents and claims handlers.

What happened

Mr D is the policyholder of a landlord legal protection policy underwritten by Alwyn. In November 2021 he contacted Alwyn and said the tenants of his property had moved out and it was now occupied by others who weren't named on the tenancy agreement. The rent for the property was being paid by the guarantor named on that agreement. He made a claim on his policy.

Alwyn didn't think the claim was covered because Mr D hadn't served the relevant legal notice on the occupiers of his property. And that was a requirement of the repossession section of his policy. There was then discussion over whether the people in the property were squatting and whether cover could be provided for trespass. Alwyn said he'd need a police incident report if that was the case. But as the guarantor was still making payment it wasn't clear if the property had in fact been sublet. It recommended he seek legal advice and said it would reconsider matters once the position was clearer.

In December Mr D said he'd contacted the police who hadn't taken action and advised him to contact the immigration service. Alwyn escalated matters internally to see if cover could be provided without evidence of a police referral. At the end of January it agreed to accept the claim and the matter was referred to a panel solicitor for an assessment of whether it had prospects of success (a requirement of the policy). That was provided at the end of March. It concluded the claim didn't have reasonable prospects but advised Mr D on next steps.

In April Mr D provided notices that had been served on the occupiers of the property. Alwyn agreed funding for the panel solicitor to review matters. His advice was prospects were still below 50% because the notices had been served on the former tenants and not the current occupiers. Alwyn agreed further funding for a discussion and review of points made by Mr D.

That was provided but due to complaints Mr D had made the panel firm said they were conflicted and asked Alwyn to appoint another firm. It doesn't appear it was necessary to do so because Mr D obtained possession of the property at the end of May.

Mr D said Alwyn should have taken action on his claim when he first contacted it in November 2021. He thought it should provide compensation for the lost rent and stress he'd been caused because it didn't do that.

In his most recent view our investigator said Alwyn was entitled to rely on the prospects assessment the panel solicitor had carried out. But it should have provided Mr D with more information about what he could do if he disagreed with that. And he didn't think it had been clear in its communication with him and thought there had been delay in progressing the claim. He said it should pay Mr D £500.

Mr D accepted that (though made clear his ongoing dissatisfaction with the actions of the panel solicitor who he'd complained to the Legal Ombudsman about). Alwyn didn't agree. It didn't think there was justification for the compensation amount and queried what delays it had caused. And it said the policy wording explained what a policyholder needed to do if they wanted to challenge a legal assessment. So I need to reach a decision.

I issued a provisional decision on the complaint earlier this month. In summary I said:

The relevant rules and industry guidelines say Alwyn has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

First, I appreciate Mr D has found the number of different bodies involved with his claim confusing which I understand. But it's not unusual for an insurer to delegate the handling of a claim. Mr D has suggested that's an abrogation of responsibility but I don't agree. Even where claims handling has been delegated, the insurer remains responsible for the actions (or inactions) of the handler. And we would consider any failing on the part of the claims handler to be a failing by the insurer.

I think what's caused further confusion in this case is the claims handling has been delegated to a solicitor's firm. And that solicitor's firm also act in a legal capacity when (for example) carrying out an assessment of whether a claim has reasonable prospects of success. What the firm does when carrying out its legal role isn't something I can consider (that's something the Legal Ombudsman can look at and Mr D is pursuing a complaint with them). What I can consider is how the claim itself was handled (as that's something Alwyn is responsible for) so I've gone on to look at that in this decision.

I understand Mr D initially contacted the legal helpline offered by his policy. But, as the issues he was raising were too specific for it to assist with, he was advised to make a formal claim on his policy. I don't think that was unreasonable. The issues raised by Mr D were complicated by the fact those named on the tenancy agreement were no longer residing at his property and the status of the actual occupiers was unclear.

Mr D says after he made his formal claim Alwyn should have ensured he received the more detailed legal advice that was later provided. But in order for any cover to be provided under the policy a claim needs to meet its terms and conditions. In the first instance that means an insured event, as defined in the policy, needs to have taken place.

Mr D was seeking to regain possession of his property so I don't think it was unreasonable Alwyn considered the claim under the repossession section. That does provide cover for "adviser's costs and expenses to pursue your legal rights to gain vacant possession of your insured property from the tenant."

But that section also says "you must have given the tenant the correct notices required to obtain vacant possession of your insured property and you must have complied with statutory legislation relating to the letting of your insured property."

I don't think it's in dispute that, at the point he contacted Alwyn, Mr D hadn't served notices on the occupiers of his property; in fact he didn't accept those individuals were tenants at all. So I think Alwyn was right to conclude cover wasn't available under this section of the policy.

Mr D then queried whether cover could be provided under the nuisance and trespass section of the policy as he believed the occupants of his property were squatting. That section of the policy does cover "adviser's costs and expenses to pursue your legal rights to evict anyone who is not your current or former tenant from your insured property." However, it also says

“Please note that in England, Wales and Scotland, squatting in a residential property is a criminal offence and in such circumstances you should first contact the Police for assistance.”

Mr D hadn't done that when he made his claim. Again I don't think it was unreasonable of Alwyn to say cover wouldn't be available under this section of the policy until he'd done that. However, it did say a police incident report would be required. I appreciate a police referral could lead to an incident report being produced but that isn't a requirement of the policy which simply refers to a policyholder having contacted the police for assistance.

In any event Mr D did contact the police and told Alwyn in mid December they hadn't provided an incident number and advised him to speak to the immigration service (because of concerns about the occupiers immigration status). Alwyn considered whether cover could be provided without evidence of a police referral and agreed at the end of January to do so (when further information was requested from Mr D to inform the assessment of his claim's prospects).

It's a requirement of the policy that for cover to be provided a claim must enjoy reasonable prospects of success. And that's something which should be assessed by a qualified lawyer. I think it was right Always asked the panel solicitor to do that. But I think at the point Mr D contacted Alwyn in December he'd met the requirements of the policy because he'd contacted the police for assistance and been told they couldn't help. So the claim should have been accepted for assessment around that time rather than at the end of January.

I appreciate Mr D is unhappy with the outcome of the legal assessment that was then produced and his further contact with the panel solicitor. But it's clear the panel solicitor was acting in his legal capacity in providing that advice and in the further discussions he had with Mr D. So that isn't something I can consider. And I think the assessment is properly written and reasoned and from someone qualified to provide it. I don't think Alwyn did anything wrong in relying on that when concluding the policy terms as they relate to prospects of success hadn't been met.

However, I agree it should have been clearer with Mr D about what options were open to him if he wanted to challenge that assessment. I'm not persuaded the policy terms do make the position on that clear. In any case I think Alwyn should have drawn this to his attention at the time. But that didn't prevent Mr D from challenging the assessment because he responded explaining why he disagreed with it.

And I think it was appropriate of Alwyn to agree further funding for the panel solicitor to review matters once Mr D provided the notices that had by then been issued. That didn't change the panel solicitor's opinion (meaning no cover was available under the terms of his policy) but Alwyn nevertheless agreed additional funding for a discussion and review of points he made prior to him regaining possession of his property.

Overall, I do think there have been some failings by Alwyn here. In particular I've identified some delay in moving matters forward between mid December and the end of January. I also think Alwyn could have been clearer with Mr D as to who the various parties involved with this claim were. I appreciate it did explain this when it wrote to him in July 2022. But I think Mr D's concerns about this were apparent at an earlier stage and an explanation with that level of detail could have been provided sooner.

I appreciate that will have caused him inconvenience. But I'm also mindful of the fact he's received funding for some legal advice that went beyond what he was entitled to under the policy. I also note that while Alwyn only gave a full explanation of the different responsibilities of those involved in July 2022 more limited information on that had been provided earlier.

Taking all of that into account I don't think the compensation of £500 our investigator recommended is appropriate. I think a sum of £200 would better recognise the impact on Mr D of what Alwyn got wrong.

Responses to my provisional decision

Alwyn didn't agree with my provisional decision in its entirety but didn't object to it.

Mr D didn't agree. In summary he said the claims handlers, who I'll refer to as L, said on their complaint form we were able to consider their actions and he queried why that hadn't taken place. He'd requested the qualifications of those who were interpreting the policy from them but hadn't received a response.

He thought I'd confused the repossession clause of the tenancy with that relating to nuisance and trespass. The tenants had left the property in July. And those occupying the property had been given access to it by the guarantor so they couldn't be squatters. It was therefore incorrect of Alwyn to say he needed to contact the police in relation to this.

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 appreciate L's complaints procedure says complaints can be made to our service. But we can only consider complaints about the activities set out in our rules. Claims handling would fall within the regulated activity of "*assisting in the administration and performance of a contract of insurance*". But there's a specific exclusion from regulation where that's done on behalf of a relevant insurer (such as Alwyn). So we can't consider a complaint against the claims handler in their own right for what they have or haven't done when carrying out that role.

But, as I explained in my provisional decision, where the handling of a claim has been delegated by an insurer it remains responsible for the actions (or inactions) of the handler. And we would consider any failing on the part of the claims handler to be a failing by the insurer. I made clear in the 'summary of complaint' section of my provisional decision that any references to Alwyn included its agents and claims handlers. So in reviewing this complaint I've considered the actions of both L and the panel solicitors when claims handling as that's something Alwyn is responsible for.

Turning to the points Mr D has raised about his claim I appreciate his policy provides cover for repossession and separate cover for nuisance and trespass. But in his initial contact with Alwyn Mr D was seeking to regain possession of his property. As I said in my provisional decision I don't think it was unreasonable it initially considered the claim under that section. In any event following further contact from Mr D it considered whether cover was available under the nuisance and trespass section a few days later. In relation to that Mr D says the occupants of the property couldn't have been squatters because the guarantor had given them permission to stay there. So there was no need for him to contact the police.

I appreciate there was discussion over this issue after Mr D made his claim. But I don't think it was clear what the exact status of the occupants was at that point. In correspondence Mr D acknowledged that if "*they are squatting irrespective of the fact that the Guarantor is paying the rent, we also need to inform the Police*". Given the uncertainty over the occupants status and, taking into account the policy wording, I don't think it was unreasonable of Alwyn to advise Mr D he should contact the police prior to cover being provided under this policy.

But, as I've said, I don't think a police incident report was required in order for that to be agreed. And I've concluded that did cause a delay to the progress of Mr D's claim. However, I explained in my provisional decision why I thought £200 was the right amount to recognise the impact of that failing on Mr D. His comments haven't led me to change my thinking on this; he hasn't made any reference to the impact on him of what Alwyn got wrong.

Finally, I can see Mr D did ask for the qualifications of those who gave him legal advice when dealing with his claim. That's something the solicitors involved in the claim would be responsible for providing. So Alwyn should either have told Mr D that or passed on that question to the panel firm. I'm not clear whether it did so. But as Mr D was also in direct contact with that firm I don't think he's lost out if it didn't do that. And while I appreciate Mr D also appears to have asked for the qualifications of Alwyn's claims handlers I don't think there's any requirement on it to disclose the qualifications of staff who handle claims on its behalf.

My final decision

I've decided to uphold this complaint. Alwyn Insurance Company Limited will need to put things right by paying Mr D £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 19 October 2023.

James Park
Ombudsman