

The complaint

Mrs W's complaint is about a claim she made on her Alwyn Insurance Company Limited ('Alwyn') landlord's legal expenses insurance policy.

Mrs W says that Alwyn treated her unfairly.

In this decision all references to Alwyn include their claims handlers.

What happened

Mrs W made a claim on her Alwyn landlord's legal expenses insurance policy to obtain possession of her property and recover over £7,000 in rent arrears and interest from her tenants who had stopped paying her rent.

Alwyn accepted the claim and appointed a firm of Solicitors (firm A) to assist Mrs W with her claim. Firm A were successful in obtaining possession of Mrs W's property. The issue that is the subject of this complaint is the claim for rent arrears. Firm A instructed a tracing agent to assess the former tenant's financial means. Upon receipt of that report firm A said the claim didn't have reasonable prospects of recovery. As such Alwyn declined to cover Mrs W's claim further.

Unhappy, Mrs W challenged this and said the findings of the trace report were outdated as it concluded that the former tenants were living at an address which she knew they had left. Alwyn appointed a second firm of Solicitors (firm B) to consider the claim who appointed tracing agent to consider the prospects of recovery of the claim. Based on the results of that report, the firm B said the claim didn't have reasonable prospects of recovery but they did send the former tenants a letter before action and a chaser letter, to which they received no response. Following this Alwyn, declined to cover Mrs W's claim any further.

Mrs W referred her complaint to the Financial Ombudsman Service. Our investigator considered this and concluded that Alwyn were entitled to decline funding the claim for recovery of rent when they did, based on the opinions of firms A and B. Mrs W doesn't agree, so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding Mrs W's complaint. I've explained why below.

Before doing so, I want to acknowledge Mrs W's detailed submissions in support of her complaint against Alwyn. I have considered them all, but I won't be addressing them individually in this decision. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service. In determining Mrs W's complaint, I have focussed on the crux of it, namely whether Alwyn were entitled to decline covering her claim when they did.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and a reasonable prospect of recovery. Mrs W's policy is no exception. That means her claim needed to have over 51% prospects of both succeeding and recovery in order for Alwyn cover it.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or if they're likely to pay more in costs than they are likely to recover. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Alwyn did this.

I'm satisfied that the lawyers determining the merits of the claim and prospects of recovery were suitably qualified and experienced in the area of law Mrs W was asking for help with, and I've seen nothing that suggests that their advice was based on factual mistakes other than firm A's reliance on a trace report that showed the former tenants as living at an old address. When Mrs W pointed that out, Alwyn funded firm B's costs to obtain a second opinion, including instructing another tracing agent to comment on the former tenant's financial means. Firm B determined that this made no difference to the prospects of recovery which still fell below 51%. I think the action Alwyn took by instructing firm B in this case was reasonable in the circumstances.

I appreciate Mrs W doesn't agree with the advice she's received. In particular she doesn't think the results of the trace report obtained by firm B supports that there are no prospects of recovery against the former tenants. But the absence of the information she's referred to (like not being able to confirm that both former tenants were unemployed instead of one, their having no county court judgements against them and there being no reference to finance on the former tenant's cars) doesn't mean that her claim has reasonable prospects of recovery. If Mrs W was able to provide an alternative reasoned opinion from a comparable Solicitor setting out her claim does have reasonable prospects of recovery, then I would expect Alwyn to consider that. Equally, if she provided Alwyn with any new evidence or information that has now come to light that might change the outcome of firm B's assessment, like a further trace report that suggests the former tenants are in a better financial position to discharge a debt of around £7,000 plus fixed costs applicable to small claims, then I would expect Alwyn to refer that evidence back to that firm. But as matters stand, I can't say Alwyn did something wrong by relying on the legal opinions they received, and I can't interfere in those opinions unless they were obviously wrong or based on factual mistakes. Other than the issue with where the first trace report determined the tenants were living (for which Alwyn took corrective action) I can't say that either of these circumstances apply in this case.

I know Mrs W wants firms A and B to provide her with detailed breakdowns of how they arrived at their opinions on the outcome of her claim, but that's not something that falls within my remit. And whilst I acknowledge her request to be afforded with further time to obtain further information from firms A and B or for this Service to request further information, this would make no difference to the outcome of her complaint. That's because my findings are based on whether it was reasonable for Alwyn to rely on the opinions of firms A and B. For the reasons I've set out above, I think it was. If Mrs W remains unhappy with the assessment of her claim by firms A and B, she can complain to them directly or the Legal Ombudsman.

Mrs W has also said that firm A isn't impartial because it is connected to Alwyn and Alwyn has instructed both firms A and B to provide their opinions. Whilst it's true that firm A is likely to be a panel firm for Alwyn, I don't think that means they're not impartial and we wouldn't treat them as not being so. Equally the fact that Alwyn have appointed firms A and B to provide assessments of Mrs W's claim doesn't in my view mean they aren't able to properly assess whether her claim has reasonable prospects of success and recovery. Firms of Solicitors are independent professionals with their own codes of conduct and their own regulator. So, whether or not they have a working relationship with the insurer of Mrs W's policy or have been instructed by the insurer to assess an issue that would have been the same issue had Mrs W been paying their fees, makes no difference to that. So, I don't agree that Alwyn did something wrong by instructing them or that this means that firms A and B aren't impartial.

My final decision

I don't uphold Mrs W's complaint against Alwyn Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 April 2024.

Lale Hussein-Venn
Ombudsman