

The complaint

Mr and Mrs E are unhappy with what Society of Lloyd's (Lloyds) did after they made a claim on their landlord's legal expenses insurance policy.

What happened

Mr and Mrs E's had landlord's legal expenses with Lloyds taken out through a broker. In January 2020 their tenant got into rent arrears. Their policy with Lloyds ended in November of that year and the broker advised cover would be placed with a new insurer from the renewal date. In January 2022 their tenant moved out of the property without providing any forwarding address. At that point the rent arrears amounted to over £10,000.

Mr and Mrs E contacted their broker in September 2022 to make a rent recovery claim. That was initially referred to the new insurer which turned it down as the date of occurrence wasn't within its period of insurance. Mr and Mrs E claimed on their policy with Lloyds. It said its policy required any claim to be reported during the period of insurance and, if it concerned rent arrears, within 30 days of rent first becoming overdue. In this case that term hadn't been met so it turned down the claim.

Our investigator said for claims involving late notification we'd normally expect an insurer to show how it had been prejudiced (adversely affected) by that in order to fairly turn down a claim. In this case she wasn't satisfied Lloyds had shown that. Even if the claim had been reported within the 30 days set out in the policy Covid-19 restrictions in place between March and September 2020 meant that eviction proceedings couldn't be progressed. So rent arrears would have continued to accrue.

Lloyds said this was a 'claims made' policy and so only covered claims made during the period of insurance. And while it accepted Covid-19 restrictions might have impacted the actions of any solicitor appointed it didn't think it would have stopped Mr and Mrs E making a claim under their policy. It said for other policyholders who reported claims at this time the matter was referred to panel solicitors for initial steps to be taken.

In this case that could have prevented arrears accumulating and commenced recovery action. But by the time this claim was made the tenant had left the property with no forwarding address and the arrears had substantially increased. It also said it had an agreement with the new provider of the insurance cover that regardless of when the incident giving rise to the claim took place it would take the matter on.

Mr and Mrs E also responded. They said the reason for delay in contacting the insurer was because the tenant told them in early 2020 he was being treated for cancer and would catch up on the outstanding rent. But that didn't happen. And in May 2020 Mrs E had a suspected heart attack and they prioritised her wellbeing over the outstanding rent arrears.

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

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

In this case Lloyds has suggested this is a claim the new insurer of Mr and Mrs E's policy should be responsible for. It says that formed part of an agreement with that insurer. Our investigator asked for further details of this agreement. In response Lloyds said there was no written agreement in place but it was an unwritten protocol which Mr and Mrs E's broker was responsible for.

However, Lloyds is clearly recorded in Mr and Mrs E's policy as the insurer and that cover was in place until November 2020. In the absence of any clear written evidence to show that liability for claims under its policy has been passed to a different provider I don't see any reason to conclude it wouldn't remain responsible for this claim. I've therefore gone on to consider the issues in relation to that.

Mr and Mrs E's claim is for assistance with recovering rent arrears from their former tenant. And their policy does provide legal expenses cover for the "pursuit of your legal right to recover rent due under a tenancy agreement for your property". However, it's a condition of cover being provided that "your claim...is reported to us during the period of insurance and as soon as possible after you first become aware of circumstances which could give rise to a claim". And "within 30 days of rent first becoming overdue if your claim concerns rent arrears".

In this I don't think it's in dispute that the rent arrears started accruing from January 2020. And Mr and Mrs E didn't make a claim on their policy with Lloyds until August 2023. I appreciate they did tell their broker about the claim in September 2022 and there was then a delay as the claim was initially pursued with the new provider of their policy. But even if it's fair to regard September 2022 as the date of notification that's still nearly two years after their policy with Lloyds finished (and its period of insurance ended). And clearly Lloyds wasn't told about the claim within 30 days of rent first becoming overdue.

So I'm satisfied the policy condition hasn't been complied with. I've therefore gone on to consider whether it's fair to apply it in the circumstances of this case. As our investigator said we'd normally expect an insurer to be able to demonstrate how late notification had adversely affected its position. But that would more usually be the case where the notification was given late but still within that insurer's period of cover. In this case it took place nearly two years after Lloyds period of insurance had come to an end.

In any event I think Lloyds has shown the late notification did prejudice its position. I appreciate any legal action it might have been able to fund would have been limited by Covid-19 related restrictions. But I don't think that would have prevented it from taking initial steps such as sending pre action letters to the tenant drawing attention to their responsibilities under the tenancy agreement.

Nevertheless, I accept if the notification had been made outside of the 30-day period set out in the policy but soon after restrictions had been lifted it might have been harder for Lloyds to demonstrate what prejudice it had been caused; it's not clear whether pre action correspondence in this case would have been effective.

And while I appreciate the tenant's arrears had increased significantly by the time notification was made this policy doesn't cover the arrears themselves but action to recover those arrears. So I'm not sure that would in itself have made a significant difference to any costs Lloyds might incur.

But I do think it's important that by the time notification was made Mr and Mrs E's tenant had left the property without providing any contact details. I think it's fair to say that will make

pursuing legal action against him more difficult and costly because, at the very least, tracing inquiries would need to be made which wouldn't have been required if the claim had been notified earlier. The delay also means that Lloyds hasn't had any control and oversight over correspondence between Mr and Mrs E and the tenant which could also impact on the underlying legal cases and associated costs.

I appreciate Mr and Mrs E may not have wanted to initially pursue the claim because of the tenant's reported health problems. And I understand why Mrs E's own health issues meant this wasn't initially a priority for them. But I don't think that fully explains the nearly two year delay in any notification of the claim being given. Although the tenant was making some payments during this period the arrears were consistently increasing. And the notification that was made was itself eight months after the tenant had actually left the property). I don't think the issues Mr and Mrs E have highlighted would have prevented them making a claim on their policy earlier.

And, as I've said, this was a claims made policy, the claim wasn't made in the policy period, was made significantly outside of the 30 day period for notification of rent arrears and Lloyds has shown how that's adversely affected it. So while I've had regard to what Mr and Mrs E have said, I don't think Lloyds acted unfairly in turning down their claim. I'm sorry to bring them what I appreciate will be disappointing news.

Responses to my provisional decision

Mr and Mrs E provided comments. In summary:

- They drew attention to the delays they'd experienced when dealing with Lloyds during their claim and complaint. They felt it had been given extended time to respond but the same flexibility hadn't been shown to them.
- They thought the health concerns affecting both of them and the challenges of Covid-19 should be taken into account when considering what a reasonable timeframe was for notification of the claim to have been given to Lloyds.
- They thought action to trace the tenant could cost as little as £60 which was less than they'd paid for the policy during the tenancy period. And given the time that had passed since the tenant left the property it was likely they were now permanently settled and so easier to locate.
- And they thought the policy in this case had auto renewed rather than a new policy having been taken out (and Lloyds cover having ended).

Lloyds also responded. It agreed with my overall outcome but said it did feel that if arrears were left to accrue over a longer period that could make recovery more difficult and potentially increase costs it was responsible for under a legal expenses claim. It said it would obtain further information on this point if required.

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'm satisfied the claim was made outside of Lloyds period of cover. Mr and Mrs E suggest the policy auto renewed but I don't think that is the case. I appreciate the documentation produced by their broker does refer to a renewal but the policy in place from November 2020 has a different name, a different policy document and a new insurer. In any case even if this

was a renewal Mr and Mrs E would still be in breach of the policy condition to notify Lloyds *“within 30 days of rent first becoming overdue if your claim concerns rent arrears”*.

In relation to the notification timeframe Mr and Mrs E have highlighted the health concerns that impacted them as well as the Covid-19 pandemic. I was in particular very sorry to learn Mrs E has suffered further health problems in the last few weeks. However, I had taken their health issues and the difficulties caused by the Covid-19 pandemic into account when reaching my provisional decision.

And my view remains that doesn't fully explain the nearly two year delay in any notification of the claim being given (and that notification in itself being made only made eight months after the tenant had actually left the property). I don't doubt this was a difficult period for Mr and Mrs E but I don't think the issues they've highlighted would have prevented them making a claim on their policy earlier. I don't think any difficulties they experienced when they did then contact Lloyds changes the position in relation to that (and from the information I've seen the initial problem with their claim appears to have resulted from this being referred to the incorrect insurer by their broker).

Mr and Mrs E have also suggested a trace for the tenant could cost as little as £60 and it was likely they were now permanently settled somewhere. But there's no evidence that is the case. And while I appreciate there are companies advertising a tracing service for the amount Mr and Mrs E have quoted I think a comprehensive service (which accesses data not within the public domain) would likely cost significantly more than that. Either way this would be an additional cost to Lloyds caused by the delay in claim notification.

I also highlighted in my provisional decision that Lloyds hadn't had any control or oversight on the correspondence between Mr and Mrs E and their tenant which could also impact the costs of taking proceedings against them (even if they could be found). Lloyds has also said the level of arrears that had accumulated could increase the costs of taking action against the tenant. It's said it could obtain further information in support of its position but I don't think that's necessary because I'm already satisfied the delay in notification has caused prejudice to its position. And so, for the reasons I've explained, I don't think Lloyds acted unfairly in turning down the claim Mr and Mrs E made.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 17 April 2024.

James Park
Ombudsman