

The complaint

A limited company, that I'll refer to as B, has complained about Allianz Insurance Plc for the rejection of claim for legal expenses. Mr P, as director of B, has brought the complaint on its behalf.

What happened

B is the owner of the freehold of a block of flats. B held a buildings insurance policy with Allianz. The policy included cover for legal protection. One of B's leasehold tenants threatened legal action against B for alleged lack of maintenance, which had resulted in water damage to their flat.

B notified Allianz of the water damage and a claim for the damage and was accepted and underway. B also notified Allianz of the legal threat in September 2021. Allianz appointed one of its panel of solicitors to assess the claim. The solicitors advised they could not deal with the matter until the damage claim had been resolved.

B says the damage claim could not be resolved without the leaseholder's agreement, so it had no choice but to deal with the legal matter himself. The matter was settled through mediation at end January 2023. At that stage, B asked Allianz to pay approximately £42,500 towards its legal costs, as it did not want to seek to recover these from the leaseholder.

Allianz refused to pay any of the fees incurred, as it says the policy only covers reasonable costs "*up to the Guideline Hourly Rates incurred with the prior consent of the Insurer*" and it had not been given the chance to consent to the legal costs involved, as it was not told about them until the legal process had been concluded.

Allianz says that the legal expenses section of the policy covers unrecovered legal expenses and so it cannot assess what losses there were until the property damage had been dealt with. But it says B was aware it and the panel solicitors were "*sitting in the background*" and could have contacted them at any stage about the mediation process changing anything. Had B done so, the panel solicitors could have looked again at the claim and assessed if it could help but it was denied the opportunity to do so.

B is unhappy with this and brought a complaint to us. B has made a number of points in support of the complaint. I have considered everything it has said but have summarised its main points below:

- Allianz refused to get involved in the legal matter until the damage claim was resolved and this was not resolved until after the legal issues were resolved by mediation. It had no choice therefore but to proceed with the legal issues at its own cost.
- Service charges disputes are not covered but the whole issue was about water damage.
- The panel solicitors asked for an update in February 2022 and the management company responded asking the reason for the request but the solicitors did not respond.

- It was never made aware that it should have been in touch with Allianz, or the panel solicitors, if things changed and this was not made clear in the February 2022 correspondence either.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that Allianz was entitled to reject the claim for the reasons it did.

B does not accept the Investigator's assessment, so the matter has been referred to me. B says again that the panel solicitors did not respond to its query in February 2022 and if they had done so, the situation may have been different.

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.

The legal expenses section of B's policy says that there is cover for:

*"a Legal Expenses;
b Awards of Compensation;
c Data Protection Compensation Awards;
d Jury Service Allowance; and
e Witness Attendance Allowance
incurred by the Insured Person in the pursuit or defence of any Claim."*

Legal expenses is defined as being:

"any unrecovered professional fees, expenses or other disbursements reasonably and properly incurred by the Legal Representative on the Standard Basis up to the Guideline Hourly Rates incurred with the prior written consent of the Insurer in respect of any Claim, including costs and expenses of expert witnesses and those incurred by the Insurer in connection with such Claim."

There is also a specific exclusion under the legal protection section of cover for:

"Legal Expenses, Awards of Compensation, Data Protection Compensation Awards, Jury Service Allowance or Witness Attendance Allowance incurred without the Insurer's prior written consent."

These terms, or similar, are common to most if not all legal expenses insurance policies and I do not consider them unfair or unreasonable. It is understandable that Allianz would want a degree of control over costs incurred and any legal action taken, which might expose it to risk. This is a clear policy exclusion: any costs incurred without Allianz's prior consent are simply excluded from cover.

B's claim is for costs incurred without prior consent from Allianz. I am therefore satisfied that the exclusion applies to B's claim.

However, I will go on to consider whether the communications and sequence of events between B and Allianz means the term should not reasonably be relied on in this case.

B notified Allianz of the threat of legal action in September 2021 but it said it could not assess any legal claim until the property damage had been dealt with. On the evidence provided to me, I do not consider this unreasonable. As the Investigator explained, without

knowing what the loss in dispute with the leaseholder was, it would be difficult for the solicitors to be able to assess the claim for prospects and proportionality (which are pre-requisites of cover under the policy). I have not seen any evidence that this was an unreasonable stance to take at that time.

However, the claim was not rejected at that stage, rather left in abeyance pending the resolution of the damage claim. So I think B would have known it could contact Allianz and/or the solicitors if anything changed.

I have also considered if the contact with the panel solicitors in February 2022 means the claim should be considered. Having done so, I do not think this makes any difference. I will explain why.

The letter from the panel solicitors said: *"This matter has come up for review. Please can you confirm the current position in respect of the commercial property claim?"*

I think it is sufficiently clear that the solicitors were asking if the property damage claim had progressed with a view to them being able to consider the legal expenses claim.

B's management company replied: *"Please accept my apologies if I am confused, however I understood from your email attached that you were no longer able to handle the claim and so I would be grateful if could please confirm what information it is that you require?"*

B says the panel solicitors did not reply to this, so again it had no choice but to continue with the legal issues on its own. As a result, there was no further contact between Allianz and B until B submitted the claim for the legal expenses already incurred in 2023.

While I accept it would have been helpful if the panel solicitors had followed this up and I also acknowledge that B says it was not clear about why they had contacted it, I am not persuaded this means Allianz is responsible for all the fees incurred.

There was nothing in the communications from Allianz or the panel solicitors, as far as I can see, that could reasonably be inferred as meaning it would cover costs incurred after the event. B could have contacted Allianz at any stage to notify them that the legal matters had progressed. And B could have followed up the response it says it was expecting from the panel solicitors in February 2022.

If B had done so at any stage between September 2021 and early 2023, Allianz would have been entitled to assess the claim to see if there were reasonable prospects of B's position in the legal case succeeding. Allianz wasn't given the opportunity to assess the claim and agree what action to take, or to set the reasonable fees.

It isn't hard for a legal expenses insurer to establish that they've been prejudiced by not being involved in the claim earlier. And I think Allianz would be able to do so here. But, as stated as these costs are simply excluded under the terms above and Allianz does not have to establish prejudice has been caused.

My final decision

While I have sympathy for B's position, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 20 January 2025.

Harriet McCarthy
Ombudsman