

The complaint

Mrs B's complaint is about the handling of a claim under her Landlord and Tenant insurance policy with certain underwriters at Society of Lloyd's.

What happened

In May 2020, Mrs B made a claim for cover to take proceedings against her tenant for possession of her property, damage to the property and recovery of rent arrears. After initially declining the claim, the underwriters later agreed to proceed with the claim and one of their panel of pre-approved solicitors were appointed to act.

The solicitors advised that they thought Mrs B's claims had reasonable prospects of success but warned the tenant might make a counterclaim. The solicitors issued the relevant notices to the tenant and eviction proceedings were issued. The tenant left the property shortly afterwards owing over £15,000 in rent. The tenant did lodge a counterclaim against Mrs B claiming the property was in a state of disrepair.

The underwriters said the policy did not cover the costs of defending a claim and so said the costs of the counterclaim would not be covered. Mrs B was very unhappy with the underwriter's handling of the claim, which she said had caused delays and the refusal to pay the costs of her defending the counterclaim. She brought a complaint to us about this. In June 2022, I issued a decision on that complaint about matters up to the date of the final response letter of February 2021.

I determined that it was not fair or reasonable to refuse to cover the costs of the counterclaim, when this is so entwined with the defence of Mrs B's claim and therefore that the underwriters should reimburse the costs Mrs B had paid towards the counterclaim, with interest, and indemnify the costs of the counterclaim going forward. I also decided the underwriters should pay Mrs B some compensation.

The tenant had left the property in April 2021, so the only claim outstanding was for the rent arrears and the solicitors advised that while there was a good chance of getting a judgment against the tenant, there was not a good chance of successfully recovering any money from the tenant. As a result of this, the underwriters withdrew cover with effect from July 2021.

The underwriters also declined Mrs B's claim for rent indemnity because they said she had not undertaken reference checks on the tenant, as required by the policy. However, it accepted that it should have dealt with this issue sooner, and also told Mrs B that cover was withdrawn sooner and offered £820 compensation for this.

Cover for the claim was subsequently confirmed again and the matter continued. The trial of Mrs B's rent claim and the counterclaim took place in September 2023. I understand Mrs B was awarded her rent arrears but the tenant was awarded damages and costs of around £34,000. Therefore, Mrs B was ordered to pay around £18,000 to the tenant.

Mrs B complained to the underwriters about the handling of the matter since my previous

decision and the refusal of the rent indemnity claim. The underwriters responded by way of a final response letter in December 2023. Mrs B was unhappy with the refusal of the rent indemnity claim, delays and wanted the costs she incurred in attending the court hearings reimbursed.

The underwriters said they have paid the costs of the counterclaim, including the interest required, and the costs awarded in favour of the tenant. The underwriters have also said that they would consider paying the remaining £2,000 of the indemnity limit available under the policy towards an appeal of the court order, provided reasonable prospects exist. The underwriters said they would not pay the rent indemnity, as suitable references had not been taken from the tenant as required by the policy. The underwriters also did not agree that they are liable for Mrs B's personal costs of attending court.

The underwriters did, however, agree to pay Mrs B an additional £600 compensation for delays in reimbursing counterclaim costs and delay in informing her of the decision regarding the rent indemnity and some other delays.

Mrs B remains unhappy with the underwriters' response to her complaint, so referred the matter to us. She has made a number of points in support of her complaint. I have considered everything she has said but have summarised her main points below:

- She would have abandoned the trial if it had not been for the underwriters' delays.
- She incurred significant travel and accommodation costs while attending court hearings, which the underwriters should therefore reimburse.
- If the underwriters had honoured the policy obligation to her in September 2020, when her claim was assessed as having reasonable prospects of success, she would have had no reason to go to court.
- If she'd known that she would not be covered properly by the underwriters, she would have taken her property manager's advice and proceeded with repossession with them. Instead, her s21 notice was allowed to expire and the underwriters authorised and paid for a s8 notice instead, which opened her up to the counterclaim. The tenant issued the counterclaim having received the section 8 notice that the underwriters instructed the solicitors to send.
- She was then told she could not withdraw because of the costs already incurred so she had nothing to lose by claiming her rent arrears, which were then conceded before trial.
- Due to the underwriters' continuous delays the rent arrears kept increasing.
- If the underwriters had accepted her claim for rent indemnity there would have been other options and prevented court actions and costs.
- She tried to settle but the tenant refused, and she could not withdraw.

One of our Investigators looked into the matter. He considered that, while the handling of Mrs B's claim had been poor, the offer of compensation by the underwriters was fair and reasonable. He did not recommend that the underwriters take any further action.

Mrs B does not accept the Investigator's assessment, so the matter has been passed to me.

As the Investigator has already explained, I cannot comment on any issues Mrs B had in obtaining the awards made in my previous decision and I cannot comment on any issues already determined in my previous decision. This means that I cannot consider further Mrs B's allegations that the underwriter's delays meant the tenant remained in the property longer than otherwise would have been the case and that the rent arrears were higher as a result; or that she could have pursued the eviction of the tenant by way of the s21 notice, which would have meant the counterclaim would not have been made against her.

Mrs B is also concerned that there is only £2,000 left of her indemnity limit and that there has been delay in dealing with the possible appeal of the court order. These issues will have to be dealt with separately.

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.

Rent indemnity claim

As well as providing legal expenses cover, Mrs B's policy provides cover for the payment of rent under the "*Tenant Default*" section of cover. This says as follows:

"Following a claim we have accepted for repossession of your property under Insured event A1 [legal expenses] above, the Insurer will pay you any rent owed to you until you gain possession provided that rent first falls into arrears during the period of insurance and while tenant is living at your property."

This is subject to various terms and conditions, including the following:

"You must:

1. Have signed a tenancy agreement with each tenant before you allow occupation of the property

2. Prior to the granting of the tenancy, you must obtain in respect of the tenant:

a. A satisfactory reference from a previous managing agent or a previous landlord, and

b. A satisfactory reference from an employer (or other financial source), and

c. A credit history check (including County Court Judgments, the Enforcement of Judgments Office and bankruptcy)

(Where conditions 2. a) b) and c) cannot be met in full, a guarantor is required in which case only items b) and c) will apply to the guarantor)

3. Not grant the tenancy if you are in any doubt of the integrity or the financial standing of the tenant or their guarantor."

In my opinion, these terms are sufficiently clear. I also do not consider that they are unfair or unreasonable and they are also common to landlord policies such as Mrs B held. However, we do expect insurers to apply such terms fairly. I have therefore considered whether it is fair and reasonable for the underwriters to have rejected this part of Mrs B's claim, in reliance on these policy terms.

In the previous complaint, Mrs B says she had never been asked of the references she obtained and that she would need her tenant's permission to provide such personal information. I commented that in order to progress this part of her claim, she should be able to provide proof that relevant references were obtained without disclosing any personal information about the tenant, by redacting any information that is not necessary for the underwriters to see.

Mrs B has also said that the policy was taken out with the tenant in question already in

occupation as a sitting tenant. She says the underwriters were aware she had a sitting tenant and therefore she doesn't need to show any references taken. I can see evidence that shows the tenant paid for "*administration fee, full reference fees, balance of deposit, rent paid in advance*" allowing the tenancy agreement to be signed and occupation to take place on 10 October 2009. However, as far as I am aware, Mrs B has not provided evidence of any reference checks.

As I understand it the tenant was in arrears regularly throughout the tenancy. The arrears were not enough for Mrs B to take legal action until 2019/2020, which is why the underwriters accepted the eviction claim.

The obtaining of references does not guarantee that rent will be paid but it is a normal feature of the letting market and does help to safeguard against the tenant failing to pay the rent. In this case, Mrs B has not been able to provide evidence that suitable references were taken from the tenant, and there was a history of rent arrears when she took out the policy. Given this, and in the absence of any other evidence, I do not think it is unfair or unreasonable for the underwriters to rely on the policy condition above to reject this part of the claim.

Mrs B is also unhappy about the length of time taken for the underwriters to deal with this part of her claim. I agree that there was some delay in this, which I will address further below, however, I don't think their delay in telling Mrs B this was not covered affected the outcome of the legal claim, or the fact she had to pursue the rent arrears through legal action.

I accept Mrs B would not have taken legal action if the underwriters had paid the rent indemnity, but I am satisfied it was not obliged to do so. Therefore, I do not think that Mrs B knowing this sooner would likely have made any difference. I think it likely she would still have taken legal action to recover the rent arrears.

Mrs B's personal costs for travel and accommodation

Mrs B's policy provides cover for certain legal costs and expenses involved in the recovery of rent arrears. The policy defines "*legal costs and expenses*" as including:

"Your basic wages or salary from your work as an employee while attending court at the request of the appointed advisor where your employer does not pay you for time lost. The maximum the insurer will pay is £100 per day and £1,000 in total."

Mrs B had to travel some distance and pay for accommodation to attend the court hearings, including one cancelled at short notice by the court, as there was no judge available. I can see this was significant expense and inconvenient. However, the policy does not cover personal expenses such as these.

Mrs B also suggests that the hearings might not have been necessary if the underwriters had dealt with her claim differently, so they should reimburse her for this reason. I already determined in my previous decision that the underwriters were not responsible for the way the legal claim was conducted and the delays on its part in handling the claim, did not impact the legal claim. I cannot reconsider this.

Delays and administration

I appreciate this has been a long-running, stressful issue for Mrs B. However, I need to be clear that I am only considering the handling of the claim since the previous complaint.

It is disappointing that there was continued poor claims-handling since then, given the issues Mrs B had already experienced. Mrs B was told cover was being withdrawn more than once and was not kept up-to-date by the underwriters as much as she was entitled to expect. There was also considerable delay in telling Mrs B the rent indemnity claim would not be paid and the reasons why, and a lack of clarity about the counterclaim costs. I have no doubt this caused her considerable upset and worry that she would be liable for costs that were covered by the policy.

Having considered everything carefully, I am satisfied that the £600 already offered for this is fair and reasonable and in line with our awards.

My final decision

I uphold this complaint in part. Society of Lloyds has already made an offer to pay Mrs B £600 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Society of Lloyds should pay Mrs B £600 for the distress and inconvenience caused by its handling of her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 12 May 2025.

Harriet McCarthy
Ombudsman