

The complaint

Mrs S's complaint is about the refusal of a claim under a landlord's 'rent and legal protection' insurance policy with Markel International Insurance Company Limited.

Mrs S is represented by her sibling in this complaint but for ease I will refer to Mrs S throughout.

What happened

Mrs S held the policy with Markel for a property she let out. It provided cover for costs of eviction or rental arrears and was recommended and arranged for her by her letting agent. In mid-2023 the tenancy agreement was due for renewal but the tenant did not engage in any discussions about this. The letting agents advised Mrs S she should consider serving a s21 notice on the tenant to ensure he left the property at the end of the tenancy period. The s21 notice was served in September 2023 and Mrs S says the letting agents assured her that there would be cover under the policy in the event of any rent arrears. The tenant did not pay any rent from early September 2023.

Mrs S made a claim for the legal costs involved in evicting the tenant and for the rent arrears to Markel.

Markel accepted the claim for the legal costs of eviction and passed the matter to one of its panel of pre-approved solicitors but the tenant left the property in January 2024, owing over £4,000, before terms of agreement were signed with the solicitors.

Markel did not accept the claim for rent arrears. Markel says the policy excludes cover for rent arrears if the s21 notice is served before any arrears are accrued, unless it is advised as the best course of action by an appropriately qualified representative and the letting agents do not meet this definition. Markel also said the policy requires that Mrs S had moved back into the property, which she had not; and that a claim for rent arrears would only be met if there had been a claim for eviction made and accepted. As the solicitors had not signed terms of agreement with Mrs S, Markel said that no claim for eviction had been accepted, so the claim for rent arrears failed for this reason also.

Mrs S is very unhappy with this. She says the letting agents do meet the definition of a "*representative*" in the policy being another "*appropriately qualified person appointed to act for you and which agrees to comply with the terms of this policy.*" She had no reason to think they were not appropriately qualified to advise on and serve the s21 notice.

One of our Investigators looked into the matter. Initially she did not recommend the complaint be upheld, as she was satisfied that Markel was entitled to reject the claim for the reasons it had. The Investigator agreed that a letting agent would not be fairly considered to be an appropriately qualified person who'd been appointed to act for Mrs S. And while Mrs S thought the agents would come under the definition of representative in the policy and their actions led her to believe that they were appropriately qualified, they did not meet the policy conditions.

However, after further consideration the Investigator said it was unfair to consider that the claim for eviction had not been accepted, given the claim had been approved and the solicitors had been ready to act. She also asked Markel to explain what prejudice had been caused to them by the letting agents serving the s21 notice. The Investigator indicated to Markel that she intended to uphold the complaint.

Markel did not agree to change its position. It said a solicitor would have ensured that the notices were validly served and the required prescribed information under the Housing Act 2004 was in place. Markel also said a solicitor was best placed to advise on which notice should be served, such as a section 8 or section 21 notice, and there were other legal requirements that determined when a section 21 notice could and couldn't be used, which only a solicitor could properly advise on.

As the Investigator was not able to resolve the complaint, it was passed to me. I issued a provisional decision on the matter in December 2024. I agreed with the Investigator that the complaint should be upheld, as I did not consider it was fair in all the circumstances of the case to reject Mrs S's claim. I have set out the main parts of my provisional decision below:

"Mrs S's policy with Markel provides cover for rent protection as follows:

"PART 2 RENT PROTECTION

We will pay rent which you have not received and was due under the tenancy agreement, until you have obtained vacant possession of the property

Provided that:

- a) A claim has been made and accepted... under Section 1 Part 1 - Eviction to evict the tenant in respect of the rent arrears (unless your representative says eviction proceedings are unnecessary due to abandonment)..."*

Markel says that as no claim was actually made for eviction, this means there is no cover for rent arrears anyway. I do not agree, as a claim was accepted by Markel to cover eviction proceedings. The claim had been accepted as being covered under the policy by Markel and the solicitors had assessed that it had reasonable prospects of succeeding. The solicitors were ready to begin acting but the tenant left before any legal action was necessary. I do not think this can fairly be deemed to mean there was no claim made and accepted under the policy for eviction. I do not therefore consider that Markel can fairly rely on this term to refuse cover for the rent arrears.

Markel also seeks to rely on the following exclusion:

"What is not insured?

LANDLORD RENT PROTECTION ...

Loss of rent if a Section 21 notice was issued to the tenant(s) and the tenant(s) was not in arrears at the time it was issued unless:

- You can prove that you have reoccupied the property to live in as your primary accommodation*
- The notice was issued by your representative as they advised that this is the best course of action in your particular circumstances "*

Markel suggests that both these conditions need to have been met before the exemption to the exclusion for rent arrears accrued after service of the s21 notice to apply (i.e. that Mrs S needed to have reoccupied the property as her primary

residence *and* have been advised that serving the notice was the best course of action in her particular circumstances).

I do not agree that this is clearly the intention of the policy. There is no conjunction between the two bullet points. It does not say that it is either condition or both conditions that have to be met. Given the absence of clarity, I consider it reasonable to interpret the above term as meaning that either condition being met would trigger the exemption to apply.

Mrs S did not reoccupy the property but she does state that she was advised by her representative that serving the s21 notice was her best course of action in the particular circumstances.

“Representative” is defined in the policy as being:

“A solicitor, barrister, accountant or other appropriately qualified person appointed to act for you and who agrees to comply with the terms of this policy. The chosen representative may not be a person employed by you”.

The reference to *“solicitor, barrister or accountant”* is clear and easily understood but the policy does not define what would be considered to be another *“appropriately qualified person”*.

Markel says it should be someone qualified to deal with legal proceedings as they would need to be legally expert enough to be able to assess whether notices were properly served.

Its responses to the Investigator all refer solely to a solicitor being required. However, the policy also allows for an accountant to be authorised to serve the s21 notice. The fact that an accountant is included is not explained. Being an accountant does not require legal knowledge or training in property law.

Given this, I think it is reasonable to consider that other *“appropriately qualified”* persons could include persons not necessarily legally qualified, or working in a law firm, but who have relevant experience and knowledge of tenancy issues.

The letting agents have argued that they are appropriately qualified persons, given experience in lettings and tenancies, and having also sold this policy and been involved in training from the underwriters that previously provided the cover before Markel took over.

Having considered everything very carefully, and in the absence of any further clarity in the policy on what would amount to an *“appropriately qualified person”*, I think it is a reasonable interpretation that the letting agents that advised Mrs S on her tenancy generally and in serving the s21, and who also confirmed they agree to comply with the terms of the policy, are appropriately qualified persons. I do not therefore consider Markel can reasonably rely on this exclusion to refuse cover either. Markel has said that there is a risk with anyone not legally qualified not serving a s21 notice properly. However, there is no evidence as far as I am aware that it was not served properly in this instance and the tenant left the property in any event.

I therefore consider Markel should meet the claim for rent arrears, subject to any remaining terms of the policy. It should also pay interest on the settlement amount at our usual rate. I consider it would be fair for this to be paid from end January 2024, which is when the total arrears were known. Either party can make further

representations about the date interest should run from in response to this provisional decision.

I also consider that Markel should pay some additional compensation for the trouble caused by its handling of the claim. I have noted what Mrs S has said about what she was experiencing in her personal life at the relevant time and accept this would have added to the stress she was under. I consider the sum of £150 to be appropriate.

My provisional decision

I intend to uphold this complaint against Markel International Insurance Company Limited and require it to do the following:

1. Meet the claim for rent arrears, subject to any remaining terms of the policy, together with interest on the settlement amount due at 8% simple per annum from 31 January 2024 to the date of reimbursement.
2. Pay Mrs S the sum of £150 compensation for the distress and inconvenience caused by its handling of the claim."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

Mrs S has responded and confirmed that she accepts my provisional decision.

Markel does not accept my provisional decision. It says that the policy provides cover for claims relating to "*tax protection*" which would include representation before the HMRC, in which case a lawyer would not be needed but the appropriate representative would be an accountant, VAT specialist or "*research and development*" expert. Given the broad cover provided under the policy the definition of a "*representative*" is also wide and allows for accountants and other appropriately qualified persons but in this case, as Mrs S's claim involves a legal process it does not accept that the definition would extend to a letting agent, or other persons not necessarily legally qualified.

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 provisionally decided that Markel could not reject the claim for loss of rent on the basis that no claim for eviction had also been made. I provisionally determined that a claim had been made and accepted under the policy for eviction. As neither party has made any further submissions on this point, I see no reason to change my mind on this.

I also provisionally determined that the policy terms could not fairly be interpreted as meaning that Mrs S had to reoccupy the property in order to be able to claim for loss of rent. Markel has not responded to this point either, so again I see no reason to change my provisional findings on this point.

I also considered the definition of "*representative*" in the policy. I noted that the policy definition said this would be "*A solicitor, barrister, accountant or other appropriately qualified person*". I noted that an accountant would not be legally qualified. Markel has explained that the inclusion of accountant in this definition is because the policy also covers tax disputes. I accept what it has said but I still consider it was not fair or reasonable to reject Mrs S's claim

for rent arrears on the basis that her letting agent issued the s21 notice. I will explain why.

The policy definition of representative still says that a representative could be another appropriately qualified person, not just a solicitor or barrister, which is not defined in the policy. Having considered everything again, I still think it is a reasonable interpretation that the letting agents that advised Mrs S on her tenancy generally and in serving the s21, and who also confirmed they agree to comply with the terms of the policy, are appropriately qualified persons to serve the notice. I do not therefore consider Markel can reasonably rely on this exclusion to refuse cover either.

However, even if that is not correct, I also considered if there had been any prejudice to Markel as a result of the letting agent serving the notice instead of a solicitor.

Markel said that there is a risk with anyone not legally qualified not serving a s21 notice properly. However, I noted in my provisional decision that there is no evidence that it was not served properly and the tenant did leave the property. Markel has not provided any further evidence in response to this point.

Having considered everything again carefully, in the absence of any further clarity in the policy on what would amount to an “*appropriately qualified person*” and on the basis that there is no evidence the s21 notice was not served properly, I remain of the opinion that Markel should meet the claim for rent arrears with interest, subject to any remaining terms of the policy.

Finally, I also remain of the opinion that Markel should pay Mrs S compensation of £150 for the trouble caused by its handling of the claim.

My final decision

I uphold this complaint against Markel International Insurance Company Limited and require it to do the following:

1. Meet the claim for rent arrears, subject to any remaining terms of the policy, together with interest on the settlement amount due at 8% simple per annum from 31 January 2024 to the date of reimbursement; and
2. pay Mrs S the sum of £150 compensation for the distress and inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 13 February 2025.

Harriet McCarthy

Ombudsman