

## The complaint

Mr D is unhappy with what Alwyn Insurance Company Limited did after he made a claim on his landlord legal protection insurance policy.

## What happened

Mr D sought assistance from his policy with a repossession claim. The claim was initially considered by panel solicitors who didn't consider it had reasonable prospects of success. Mr D subsequently obtained a positive prospects assessment from his own solicitors. Alwyn accepted that and Mr D's solicitors were appointed to progress the claim. Mr D obtained a court judgement in his favour in May 2024 (a counterclaim for disrepair made by the tenant was dismissed at the same hearing).

Mr D complained Alwyn hadn't reimbursed all the costs he incurred in pursuing the matter. In particular it hadn't paid his share of a joint expert who had advised on disrepair at the property. It hadn't paid the costs of his solicitors in attending the first possession hearing (meaning he'd had to pay them the full amount). And for other costs it had only paid these at a rate of £120 an hour which was less than half the rate his solicitors actually charged. Nor had it paid costs his solicitors incurred when communicating with Alwyn about the claim.

Alwyn said the costs of the joint expert related to a disrepair counterclaim which wasn't something his policy covered. It had paid the proportion of his solicitors costs it was responsible for (based on the hourly rate agreed to in its terms of appointment). And the costs of communicating with those solicitors weren't covered by the policy.

Our investigator agreed solicitor costs in communicating with Alwyn weren't covered. But she thought the cost of the expert report was so entwined with the possession claim it wasn't fair of Alwyn to say it wouldn't cover this. And the policy didn't specify the hourly rate it would pay where a policyholder appointed their own solicitor. Alwyn hadn't evidenced there were non-panel firms which would have progressed a claim like Mr D's for that rate. Taking into account the circumstances of Mr D's claim she thought Alwyn should have agreed an hourly rate of £242 (which was in line with the court guideline rates for a solicitor in his area).

She said it should reimburse costs Mr D had paid which fell within that limit (plus interest) and reconsider the invoice for the first hearing on that basis. And it should pay the cost of the expert report. She also thought there had been delays by Alwyn in responding to correspondence and it should pay £250 in recognition of the impact of that on Mr D.

Mr D agreed with her outcome. Alwyn didn't. In summary it said

- The policy only provided cover to pursue possession proceedings and didn't cover the defence of a counterclaim unless that fell within the scope of cover and was authorised in advance. In this case the counterclaim wasn't disclosed to it until December 2023 and it wasn't told about the expert fee until May 2024. So it hadn't had the opportunity to consider whether this expense was necessary to pursue the possession claim.

- Mr D's solicitors entered into terms of appointment with it which included a fixed hourly rate of £120 an hour and represented a mutually agreed and enforceable contract between them. This was the same rate it used for all non-panel solicitors and to share evidence of other claims where that had been agreed would be a data protection breach.
- It had paid the invoice for attendance at the possession proceedings in line with the agreed terms. If that invoice had subsequently been issued to Mr D and paid in full by him that was an issue he'd need to raise with his solicitors.
- The ability to control hourly rates was required to maintain the affordability and sustainability of legal expenses policies for all policyholders. And it had gone beyond the terms of this policy in agreeing to provide funding for the claim despite an initial negative prospects assessment from a panel firm.

So I need to reach a final decision.

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

I've thought first about whether Alwyn acted fairly in declining to cover the cost of a joint expert instructed to investigate whether there was disrepair at Mr D's property. His policy covers "*Adviser's costs and expenses to pursue your legal rights to gain vacant possession of your insured property from the tenant*". It doesn't include cover for the defence of a disrepair claim.

However, it seems clear from the court papers that, although the joint expert report was relevant to the counterclaim brought against Mr D, it was also directly relevant to whether his possession claim should succeed. The disrepair issue formed part of the tenant's defence to the possession claim and it was only after evidence on that had been obtained the judge was able to reach a decision on that. I accept the expert report was clearly also relevant to the counterclaim but I don't think it's reasonable to detach the cost of obtaining it from the possession claim.

I appreciate the policy doesn't cover costs incurred "*which we have not authorised in advance*". It doesn't appear Mr D's solicitors did seek authorisation from Alwyn for the cost of the expert report. So I've considered whether its position has been adversely affected because that wasn't done. I don't think it has. The obtaining of this report was ordered by the judge who directed it should be undertaken at rates prescribed by the Legal Aid Agency. For the reasons I've already explained I think this cost is one that is covered by the policy. I've not seen evidence which satisfies me that, if acting fairly, Alwyn would have done other than approve this cost if it had been told about it.

Turning to the hourly rate to be paid the policy says "*Any law firm or suitably qualified representative nominated by you must agree to represent you in accordance with our standard adviser's terms of appointment (which are available on request) and the most the insurer will pay is no more than the amount the insurer would have paid to our own choice of appointed adviser*".

However, the policy doesn't say what that amount is. I understand the point Alwyn has made about the reasons for an hourly rate cap and I'm aware the courts have concluded a legal

expenses insurer has the right to restrict what it would pay to a non-panel solicitor. But that's provided the remuneration is not so low as to render the policyholder's freedom to choose their own solicitor meaningless.

In addition, our long standing approach (which takes into account the relevant rules) is that where an insurer wants to limit this amount it needs to make explicit in the information provided to a policyholder at the outset what it will actually pay. That way there's a clear shared understanding between the parties as to what will happen when a claim is made. Where that isn't the case we don't think it's fair of an insurer to rely on a more general reference to the amount it would pay to a panel firm to restrict cover to that. In that case we'd decide what a fair hourly rate was based on the available evidence.

In considering that here I think it's relevant to use the court guideline hourly rates as a starting point. I understand the solicitor who progressed Mr D's case had over four years experience. This doesn't appear to have been a straightforward possession claim so I don't think that was unreasonable. The guideline hourly rate for a solicitor like that in his area is £242 (plus VAT). And Alwyn hasn't provided anything to show the claim should have been progressed by a less experienced solicitor. It hasn't, for example, been able to evidence that similar claims were progressed by a non-panel solicitor for a lower rate (without a 'top up' being required from the policyholder).

I note the point it's made about data protection but I'm not persuaded by that given other insurers are able to provide suitably redacted evidence on this. Nor am I satisfied Alwyn has already gone beyond the policy terms in providing cover for the claim (as it suggests). While it's clear the claim was initially assessed as not meeting the policy requirements in relation to prospects of success the position on that changed once Mr D provided a positive opinion from his own solicitors. As Alwyn accepted that assessment it was then required to fund the claim in line with the remaining policy terms.

Alwyn has also suggested it considers this matter closed because the £120 hourly rate was included in the contractual terms it agreed with Mr D's solicitors. I don't consider that's a fair position to take. Mr D wasn't a party to that contract and so isn't bound by it. And in any event I don't think it's reasonable to limit payment to the amount set out in those terms when I've concluded Alwyn didn't offer a fair rate in the first place. For the reasons I've already explained I think an hourly rate of £242 should have been offered.

In relation to the invoice for the first possession hearing Alwyn has already paid a proportion of this based on a rate of £120 an hour. So it will need to recalculate that amount based on an hourly rate of £242 and pay the balance to Mr D. If that leaves him out of pocket (because he paid the full amount to his solicitors without the amount already paid by Alwyn being deducted from it) he'll need to raise that with his solicitors.

Finally looking at the overall claims and complaint journey it's clear there were delays by Alwyn in responding to Mr D and his solicitors. I think that will have caused him some avoidable distress and inconvenience. Our investigator recommended Alwyn pay £250 in recognition of the impact of that on him. I don't think that's unreasonable and Alwyn didn't suggest otherwise in its response to her. So it will also need to pay that.

### **Putting things right**

Alwyn will need to reimburse Mr D the amount he paid for the joint expert report plus simple interest at 8% from the date he paid that cost until the date of reimbursement (to reflect the fact he's been deprived of this money).

It will also need to increase the hourly rate paid in relation to this claim to £242 (plus VAT)

and reimburse costs Mr D has paid which fall within that revised limit (including those relating to the first possession hearing). Again Alwyn will need to pay interest at 8% simple on any reimbursed costs from the date Mr D made payment until the date of reimbursement.

It will also need to make a distress and inconvenience payment of £250 to Mr D.

### **My final decision**

I've decided to uphold this complaint. Alwyn Insurance Company Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2026.

James Park  
**Ombudsman**