

The complaint

Mr C's complaint is about a claim made under his landlord's legal expenses insurance cover with certain underwriters at Society of Lloyd's.

What happened

In 2019, Mr C made a claim under the policy for possession of his property and to recover rent arrears from his tenant.

The claim was accepted and the underwriters instructed solicitors to act for Mr C. The solicitors made an application to court and the tenant left the property in late 2019. The solicitors also obtained an order for the rent arrears. However, I understand the tenant could not be found to enforce the debt order for some time.

Eventually, in late 2021, having traced where the tenant was living, a variation order was obtained that provided that the tenant pay Mr C £50 per month towards the arrears.

Mr C is very unhappy that the full arrears were not recovered. He says it will take 14 years to clear the debt and wants to get this amount increased. In addition, I understand the tenant has stopped paying.

In 2024, Mr C managed to trace the tenant's whereabouts again and a further court application was made to enforce the order but the monthly amount remained the same.

The solicitors advised that any further claim to enforce the debt was unlikely to succeed, as they couldn't show the tenant could afford more. Mr C was very unhappy with the solicitors' handling of the claim and says they did not obtain the best outcome for him. He says they took pity on the tenant, rather than asking the court to decide if she could pay more and failed to present the evidence he had about the tenant to the court properly. Mr C complained to the underwriters about this and also said that he had been required to pay for a conference with the legal advisers and tracing costs for the tenant, which he wanted reimbursed.

In response to Mr C's complaint about the handling of the claim, the underwriters said that the legal action was dealt with by independent solicitors and it was for them to decide what action to take. The underwriters told Mr C that he could complain to the solicitors direct and then to the Legal Ombudsman if he remained dissatisfied. They also said that if there is further default or new evidence about the tenant's ability to pay, then he could make another claim.

As Mr C remained unhappy, he referred his complaint to us. Mr C says that evidence about the tenant's conduct and fraudulent behaviour (including physically attacking him) and the evidence he provided about the tenant's financial means was not put to the court properly; and he should receive the remainder of the indemnity limit under his policy, which is up to £50,000, to pursue the legal claim until he has recovered the full debt.

Mr C also says that he was never told, and it is not clear in the policy, that there would be an

additional step in any complaints process. He is unhappy with the entire process and says it all needs to be dealt with by the underwriters and they need to contact the relevant Ombudsman if necessary. The underwriters were providing legal cover and the solicitors were their service provider; this is an avoidance tactic and if the underwriters lack legal knowledge, they need to get the correct guidance.

One of our Investigators looked into the matter. He did not recommend it be upheld, as she said we could not look into the conduct of the legal claim by the solicitors. The Investigator said the underwriters had acted fairly and were not responsible for the actions of the solicitors involved and were entitled to rely on their advice.

The Investigator also said that the solicitors had said there were not reasonable prospects of succeeding in applying to have the monthly payment increased; possession of the property had been obtained and an order for payment of the debt, so the matter was at a close.

Mr C did not accept the Investigator's assessment. Mr C says he bought the policy in good faith and on the understanding the debt and his property would be recovered if needed. He says that if the underwriters and the solicitors had acted properly the whole debt would have been recovered, instead he receives £50 per month for 14 years and he cannot afford to keep going back to court every time there is a default.

As the Investigator was unable to resolve the complaint, it was passed to me.

In the meantime, the Investigator asked for some further information about the conference cost (£120) and tracing agent fee (£216) that Mr C had raised. He pointed out to the underwriters that their file showed they had agreed to the conference costs and that the successful tracing agent had allowed the matter to be taken back to the court. The Investigator therefore said these costs should have been reimbursed, as there is no evidence that they were unreasonable steps to take and they would be considered as costs of the claim which was covered and so should have been reasonably covered under the policy.

The underwriters do not agree. They say that Mr C insisted on the conference and he understood he would be responsible for the fees; it is only obliged to pay the necessary costs of the solicitor and counsel it does not have to pay their costs of a conference that only took place because Mr C wanted it. The underwriters also say it looks like Mr C asked for a refund as he thought that counsel had not followed his instructions.

With regard to the tracing fee, the underwriters say that this is outside the scope of this complaint, as they have not been provided with a copy of the invoice or asked to pay it previously. If Mr C provides the invoice, they will consider it, but they also say that it would have been for Mr C to provide evidence that there was a reason for the claim to continue, so this is potentially a cost that Mr C is liable for.

I have checked the papers provided to me and can see that Mr C did ask for reimbursement of the tracing agent fee in October 2024, before Society of Lloyds issued its final response to the complaint at end November 2024. I am therefore satisfied that the request for reimbursement of the tracing agent fee is within the scope of this complaint.

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 can see this has been a long and stressful saga for Mr C. He is owed a substantial amount

of money and has also been assaulted. However, while he has my sympathy for the position he is in, I do not intend to uphold the complaint entirely. I will explain why below.

The relevant part of Mr C's policy is set out below:

"Following an Insured event the insurer will pay your legal costs & expenses up to £50,000 for all claims related by time or originating cause subject to all of the following requirements being met...

3) Your claim

a) always has reasonable prospects of success..."

The policy defines reasonable prospects of success as being: *"a greater than 50% chance of successfully pursuing your claim against another person. If you are seeking damages or compensation, there must also be a greater than 50% chance of enforcing any judgment that might be obtained."*

The policy also says: *"Settlement ... 3) If you refuse to settle the claim following advice to do so from the appointed advisor the insurer reserves the right to refuse to pay further legal costs & expenses."*

It is possible to add rent default cover to this policy, which would mean that if rent arrears cannot be recovered from the tenant, the amount of the debt would be paid to the policyholder by the underwriters. However, I have checked and Mr C did not have this additional cover under his policy.

Mr C's claim was accepted as having reasonable prospects of obtaining possession and the rent arrears and proceedings were issued. However, Mr C is unhappy that he has not yet recovered all the rent arrears owed to him. He also said the policy does not state this requirement relied on by the underwriters. However, I think the policy is sufficiently clear (as set out above) that any legal action would need to have a reasonable chance of success in order to be covered. This is in line with all other legal expenses policies I am aware of and we do not consider it inherently unfair or unreasonable for insurers to not want to fund cases that do not have a reasonable chance of a successful outcome.

As the Investigator has explained, we are unable to investigate the conduct of solicitors. Our consideration is strictly confined to whether the insurer has acted fairly and reasonably and in line with the policy terms. I have no power therefore to make any finding about the complaints Mr C has made about the actions or advice of the solicitors. Mr C would need to raise any issues he has about the quality of their legal representation and the service they provided, directly with them and thereafter the Legal Ombudsman.

Having said that, we expect legal expenses insurers to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question. However, it has no duty to oversee how they run the case and they aren't responsible for any action or omission on the solicitor's part. Solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not.

Mr C says this is the underwriters refusing to take responsibility but it has no right to interfere with the running of a legal claim. I am not aware of any persuasive evidence that the underwriters were aware, or should have been aware, that the solicitors acting here were not suitably experienced or qualified for the instructions in question.

The solicitors presented the case to the court in the way they considered appropriate in 2024 (and before) and have advised that any further enforcement action is unlikely to succeed. I do not consider that the underwriters have acted unfairly or unreasonably in relying on that advice and I do not therefore propose to make any award in Mr C's favour for the way the claim was presented to the court, or that any further court action should be covered.

Given all this, and while I appreciate the position Mr C is in and how he feels about the case, overall, I do not think the underwriters have acted unfairly or unreasonably.

However, having said all that, I do consider that the underwriters should have paid for the conference costs and the tracing agent fees. I will explain why.

The underwriters have said recently that the conference only took place because Mr C insisted on it and it was not required that the solicitor or the advocate undertake the conference. They therefore do not agree it is reasonable that it pay the cost of this.

I can see from the papers provided to me that Mr C wanted a conference with the advocate that was going to represent him in the court hearing. The solicitors asked the underwriters for consent to that cost. Initially it appears the underwriters thought the conference was to be between the solicitor and advocate only. The solicitor said it would speak to the advocate anyway to discuss the instructions and would not normally charge for that as a separate matter. The solicitor made clear that Mr C wanted to attend the conference. The solicitor said it was to go through the case and what would happen at the hearing and to instil confidence.

An email from the underwriters to the solicitor said *"given the comments raised by the insured regarding the issues with the advocate at the most recent hearing...I have decided that if the insured is adamant they want to speak to the advocate I would allow it and fund it., However, if the insured is not adamant in this respect, please deal with the advocate as you would normally"*.

There was subsequent communication between the solicitor and the underwriters in which it said it would pay the solicitor's fee for the conference and suggested the additional fee (which the solicitor said was for the advocate) was a duplicate and also mentioned Mr C being added to a call and being able to listen in to the discussion between the solicitor and the advocate.

It does not seem unreasonable to me for Mr C to want to speak to the advocate in advance of the hearing of his case, to understand what was going to happen and to ensure his instructions were understood. It is important for a client to have confidence and trust in their representatives. While the solicitor would have been giving the formal instructions, it is not unusual for the client to be able to discuss the case with the advocate before a court hearing. Even if the conference was only to satisfy Mr C that his instructions were understood and to instil confidence, it seems to me this was a reasonable disbursement in the pursuit of the claim that was covered under the policy.

And it seems to me, given the emails referred to above, that the underwriters had agreed to fund it. I therefore consider that the underwriters should reimburse Mr C for this, together with interest at our usual rate.

With regard to the tracing agent fee, this allowed Mr C's claim for enforcement of the debt to be progressed. It is generally for a claimant to establish they have a valid claim under the policy, which is why the underwriters suggest this would be a cost for Mr C to bear. However, it seems to me that Mr C had already established his claim here, he had a debt order that was not being paid and he wanted cover to enforce payment. I think it is fair and reasonable to consider the tracing agent fee to be a disbursement in the pursuit of that claim.

and therefore covered by the policy. I think the tracing agent fee should therefore be reimbursed. The underwriters are entitled to see the invoice for this, and reasonable proof of payment by Mr C. Again, interest should be added.

Finally, Mr C has also referred to not being aware of a second level the complaints process. As mentioned above, as the solicitors are independent professionals, they are regulated by their own regulatory body. And as the underwriters are providing the cover under the umbrella of Society of Lloyd's, it is required to consider any complaint before it comes to us, as it has a two-tier internal complaints handling process. While I can understand this may have caused frustration, it is part of their permitted procedure. In any event, I cannot consider how a complaint has been handled as it is not a regulated activity in its own right.

My final decision

I uphold the complaint in part and require Society of Lloyd's to reimburse Mr C the £120 he paid for the conference costs and the tracing agents fee of £216 (on production of the invoice and reasonable proof of payment), together with interest at 8% simple per annum from the date he made the payments to the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 November 2025.

Harriet McCarthy
Ombudsman