

## **The complaint**

Mr U and Mrs U complain Alwyn Insurance Company Limited (“Alwyn”) have unfairly declined a claim they made on a legal expenses insurance policy.

Mr U has dealt with the claim so for ease I will mainly refer to him below.

## **What happened**

Mr U and Mrs U own a property which they rent out. They have a landlord legal expenses policy provided by Alwyn. The policy also provides a legal advice helpline provided by a firm of solicitors. The same telephone number is used for claims notifications and in those circumstances the solicitors pass the calls onto the claims team for Alwyn.

The tenant fell behind with the rent, so Mr U called the telephone number provided on the policy. He was asked by the agent if his policy only provided advice or if it was a full insurance policy, which he confirmed that it was. Mr U explained what had been happening with the property and the tenant and, he asked what his next steps were. He was clear he wanted to evict the tenant and recover any outstanding rent payments and was seeking assistance with this. Mr U left the call with the impression that he had to take action to get possession of the property himself and then approach Alwyn to consider a rent recovery claim and to reimburse his costs.

Once Mr U had secured vacant possession of the property through the court process, he contacted Alwyn to pursue a rent recovery claim and to request his legal costs for the repossession process be reimbursed. Alwyn declined the claim as it said the policy term requiring claims to be notified within 60 days had not been met. It said Mr U taking court action himself had prejudiced its position to control the legal costs and rent arrears that were incurred.

Mr U was unhappy about this and complained, he referred to what he was told when he telephoned, however Alwyn didn't change its position.

An Investigator considered the complaint and said she didn't think Alwyn had done anything wrong. She said that Mr U left the telephone conversation knowing he had not made a claim under the policy. She said she thought he'd been given the correct information about what aspects of the repossession process is covered by the policy and the fact he misunderstood this was not Alwyn's fault. As Mr U had continued with the repossession using his own chosen firm of solicitors, she agreed Alwyn's position had been prejudiced. She said he had not made a claim in line with the timescale set out in the policy.

Mr U disagreed and asked for an ombudsman to consider the complaint. He said he felt he was misled on the telephone about the actions he should take. He thinks Alwyn should have done more to make sure he understood how the policy worked and when he should have returned to it for it to take over proceedings.

## **My provisional findings**

I issued my provisional findings on this complaint on 6 February 2026 I said I intended to uphold the complaint, for the following reasons:

*“The policy Mr U and Mrs U has, set outs that it provides cover for both repossession and rent recovery. These are set out in the policy as separate insured incidents.*

*In terms of claims notification, the policy says:*

*“You must report your claim to us on [telephone number] ..... as soon as you become aware of any circumstances which could give rise to a claim, under this insurance. **Any claim for unpaid rent must be reported to us within 60 days of the rent becoming due and payable**”.*

*Claim notification.*

*I think the above term is clear that a claim, or circumstance that could give rise to a claim is to be reported by telephone. I’ve double checked the telephone number provided and it is the same number that is provided for the legal helpline. Mr U called that number and set out the circumstances he was experiencing with his tenant and that he wanted assistance from the policy with repossession and rent recovery. So, I’m satisfied that he met the criteria for reporting ‘any circumstance which could give rise to a claim’ in the way the policy sets out.*

*Alwyn has said a claim isn’t notified until a completed claim form is received, however this doesn’t reflect the instructions that are set out in the policy documentation.*

*I will therefore move on to consider the insured events of possession and rent recovery separately.*

*Repossession*

*I have listened to the call that Mr U had with the agent and what happened when he was put on hold and the matter was discussed between the agent and the claims department. Overall, I am satisfied that it was correctly explained to Mr U that court proceedings relating to repossessing the property would be covered by the policy but not the initial notice of eviction. This he would have to arrange to be served. This is also clearly set out in the policy document.*

*I realise Mr U misunderstood what the agent was trying to explain and focussed more on what was explained regarding the process for rent recovery, but this was his error.*

*Alwyn has said that it has been prejudiced by the fact Mr U used his own firm of solicitors to pursue the repossession of the property. It said it was unable to influence the proceedings or mitigate any potential costs that were incurred.*

*What should have happened is once Mr U had arranged for the correct notice to be provided to the tenant, he should have let Alwyn know for it to consider taking the matter forward in line with the terms and conditions of the policy. As Mr U did not do so, I agree Alwyn’s position was prejudiced. The policy makes it clear that costs for legal representation will not be covered before the insurer has accepted the claim or if they are incurred without the insurers’ permission. So, I think Mr U and Mrs U’s claim for reimbursement of legal costs under the insured incident of repossession has been fairly declined in this instance.*

*Rent Recovery*

*The policy is clear that claims for rent recovery should be reported within 60 days of the rent*

becoming due and payable. Mr U explained rent was due on the 6<sup>th</sup> of the month. By the time he called on 25 October 2022 only half of the rent had been paid in August and September and no payment had been made for October.

During that call the agent contacted the claims department for clarification regarding making a rent recovery claim. The agent clearly identified to the claims team that Mr U wanted to make a claim for Rent Recovery. Alwyn has said Mr U declined to have his details passed to the claims team, however this is incorrect he did agree for them to be passed over, "if they can add anything". The claims team then emailed Mr U in November 2022 confirming why a claim couldn't move forward at that time, So again, I am satisfied at the point of the call, Alwyn was aware of the claim.

Taking a strict interpretation of the policy term, the notification was 19 days late. However, I think it's fair to consider whether the business was prejudiced by this late notification. As Alwyn has pointed out, no action for rent recovery could be taken until vacant possession had been achieved, and the loss crystallised, which didn't happen until the court order was granted in June 2024. So, I'm not persuaded Alwyn has demonstrated it has been prejudiced by the delay.

I understand as part of the court proceedings Mr U obtained a financial order for the rent arrears, so all that now remains is the enforcement of that order. I don't think Alwyn need to reimburse Mr U and Mrs U any proportion of the legal costs incurred in obtaining this order as I've set out above those costs were incurred without a claim being accepted and without the insurer's authorisation. It also must be remembered that before an insurer accepts a claim it must be satisfied there are sufficient prospects of success which includes criteria such as the legal action in proportionate to pursue in terms of costs and there are sufficient prospects of recovering the amount concerned. There is no guarantee this claim would have met those criteria.

However, as there is still action that can be taken to recover the amount due, I think Alwyn needs to consider the claim now to see if the policy can provide assistance with that.

Alwyn has said enforcement of the money judgement now is no longer a realistic prospect without trace information or timely follow up action. However, I don't see anything which prevents those steps being taken at this time. So I think it should now do so.

### Compensation

While I acknowledge that Mr U and Mrs U would be treated as commercial customers as they are landlords, I do recognise that pursuing this matter would have caused them inconvenience. As I have found Alwyn incorrectly declined to consider the claim for rent recovery, I think it reasonable it should pay Mr U and Mrs U a total of £100 compensation to reflect the additional inconvenience they have had corresponding about this matter".

### Responses to my provisional findings

Alwyn responded saying that it did not agree with my findings, it stood by its previous position and had nothing further to add.

Mr U and Mrs U said they think Alwyn should be responsible for the actions of the Solicitor firm when operating the helpline. They said that if they met the criteria for reporting circumstances which could give rise to a claim, they don't think Alwyn's position has been prejudiced as it would have been able at any point to influence what happened next. They said they should also have been made aware that the Solicitor firm could act for them on a private basis to issue the required notices to the tenant.

They asked that I reconsider a contribution towards the legal costs incurred for the repossession of the property. They don't think Alwyn did enough to assist them or clarify the process. Mr U and Mrs U also point to a term in the policy which refers to the appointment of a consumer's own choice of lawyer where it is necessary to start legal proceedings – they say this was required and therefore supports why the costs should be covered.

They said they accepted the award for distress and inconvenience.

### **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 have considered the further submissions provided by each party and I recognise the strength of feeling held. However, I need to make my decision on the basis of what I think is fair and reasonable in all the circumstances of this complaint.

While we would say Alwyn are responsible for the actions taken on the helpline regarding the administration of the policy, I still have to be mindful that it is operated by a firm of Solicitors. Alwyn would therefore not be responsible for any advice that was given in respect of the underlying legal claim or whether that firm chose to offer its services on a private basis.

So while I understand the point that Mr U and Mrs U were not made aware the Solicitor firm could possibly act for them on a private basis to issue the notices, this isn't something I can hold Alwyn as an insurer, responsible for.

Even if the Solicitors had of acted for Mr U and Mrs U on a private basis this wouldn't have meant that Alwyn would automatically have picked up the claim for possession afterwards. Mr U and Mrs U would still have needed to make contact with Alwyn themselves. While insurers direct claims to Solicitor firms, as they are the appropriately qualified experts, those Solicitor firms don't 'act' on behalf of the insurer, the consumer is their client. Solicitors are subject to their own codes of conduct and complaints processes. Insurers therefore aren't responsible for the actions of Solicitors, and this Service has no power to look into their actions.

I remain of the opinion Alwyn was prejudiced by Mr U and Mrs U's failure to come back to them after issuing the required notices. Alwyn had no way to influence the later proceedings or control the legal costs incurred. I won't therefore be recommending they make any contribution towards the costs incurred.

I've considered the term that Mr U and Mrs U have referred to however this is intended to cover situations such as where matters have moved quickly and a consumer had no option but to take legal action in the meantime to protect their position, while the insurer considered, and later accepted, the claim. That wasn't the case here, Mr U and Mrs U could have returned to Alwyn to progress the claim after the required notice was issued.

Having reviewed everything, I'm not minded to change the outcome I reached in my provisional decision. So for the same reasons set out in my provisional findings above, I think Alwyn fairly declined the claim for repossession but it acted unfairly in refusing to consider the claim for rent recovery and it caused Mr U and Mrs U trouble and upset in doing so.

## **Putting things right**

To put things right Alwyn should do the following:

- Consider the claim for rent recovery
- Pay Mr U and Mrs U a total of £100 compensation.

## **My final decision**

My final decision is that I uphold Mr U and Mrs U's complaint against Alwyn Insurance Company Limited. I direct it to put things right as I have set out in the section above.

Alwyn Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr U and Mrs U accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U and Mrs U to accept or reject my decision before 26 March 2026.

Alison Gore  
**Ombudsman**