

The complaint

Mrs L says Alan Boswell Insurance Brokers Limited mis-sold her a Landlord Legal Expenses and Rent Protection policy.

What happened

Mrs L took out a Landlord Legal Expenses and Rent Protection policy through Alan Boswell in May 2020. In September 2022 she claimed on her policy as she wanted assistance to regain possession of her property. The claim was turned down because Mrs L's lease agreement didn't meet the definition of a tenancy her policy contained. Mrs L said Alan Boswell didn't make that clear to her when the policy was sold.

Alan Boswell said Mrs L took the policy out online on a non-advised basis. As its website had subsequently changed it didn't have access to the information Mrs L would have seen at the time. But it did provide her with policy information which contained the relevant information and made clear she needed to read this. However, it accepted the policy hadn't been suitable for Mrs L from the start and said it would refund the premium she paid for this.

Our investigator said it wasn't clear what Mrs L would have seen when taking out the policy. However, she was satisfied she'd been provided with policy documents which contained details of the tenancy agreements covered by the policy. So she didn't uphold the complaint.

Mrs L didn't agree. She believed she had told Alan Boswell about the type of tenancy she had when taking out the policy and queried why it wasn't able to provide a call recording in relation to this. 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.

First, I can see Alan Boswell queried in correspondence with us whether Mrs L had referred this complaint to us within six months of the date of its final response (as required by our rules). I can see that its final response was issued in November 2022 and Mrs L referred the complaint to us in February 2023. So I'm satisfied it has been referred in time which is why I've gone on to consider the merits of it.

I've thought first about whether Alan Boswell recommended this policy to Mrs L. I understand she took the policy out online and its terms of business say "*when purchasing a policy online, we will provide sufficient information for you to make an informed decision (i.e. no advice given)*". I haven't seen evidence to show in this case Alan Boswell did anything different so I think it's likely this was a non-advised sale. That means Alan Boswell didn't have check whether the policy was suitable for Mrs L but it did have to provide her with clear, fair and not misleading information so she could decide whether it was right for her.

The issue in this case is Mrs L had a lease agreement for her property with a local authority who I understand would then sub-let the property. But it's a requirement of her policy that a

tenancy agreement must be in place for the duration of the policy. The policy contains a definition of tenancy agreement and her insurer's view was the lease she had with the local authority didn't fall within that definition.

Mrs L has expressed concern in correspondence with us about the decision to decline cover for her claim. But that isn't something I'm considering. Claims decisions are the responsibility of the insurer of her policy. I appreciate Alan Boswell may have been acting on their behalf in dealing with this, but any complaint about that would need to be considered separately against the insurer.

The issue I'm considering is what happened when the policy was sold. And it's not clear what Mrs L saw at that point because Alan Boswell hasn't been able to provide information about it. But its responsibility under the relevant rules was to provide appropriate information about the policy so a customer could make an informed decision about whether to take it out. And that should include information about the significant benefits, exclusions and limitations of the policy. I think a significant exclusion or limitation is one that would tend to affect the decision of customers generally to buy.

I don't think the policy definition of a tenancy agreement would do so. The definition includes Assured Shorthold Tenancies which I understand are the basis on which around three quarter of privately rented properties in England are let. It also covers other types of tenancy agreement. It's unfortunate it doesn't appear to cover Mrs L's situation but I think hers are relatively specific circumstances and not ones that would affect the decision of customers more generally. So I don't think this is something Alan Boswell did need to draw to her attention. And I can see it provided policy information to Mrs L which contained details of the requirement for a tenancy agreement to be in place and the definition of that.

I appreciate there's been discussion over whether Mrs L had a separate conversation with Alan Boswell as part of the sales process. If she did, and asked specific questions about her circumstances, I'd expect Alan Boswell to have provided clear information in response to those. And I can see Alan Boswell said in its final response that Mrs L had called following problems in completing the online process. But the only call it's provided is from June 2022.

I've listened to that and it follows difficulties with the renewal of the policy. But there's no discussion of the cover itself. Alan Boswell has subsequently confirmed it has no records of a call from when the policy was first sold. So it appears the reference in its final response was an error. And while Mrs L has suggested a call did take place she hasn't provided more information in support of that or any detailed recollections of what happened in that conversation. Given that, and on balance, there isn't enough for me to conclude Mrs L did speak to Alan Boswell at the point the policy was sold.

In any event even if I was satisfied there had been a failing by Alan Boswell at that time, in order to conclude it needed to take action in relation to the claim Mrs L made I'd also need to be satisfied that, but for that failing, Mrs L would have had cover in place for her claim. So there'd need to be information to show that she would have wanted and been able to find cover elsewhere at a price she'd have been prepared to pay. I haven't seen evidence to show she'd have done that.

Finally, for completeness I can see in its response to Mrs L Alan Boswell agreed this policy hadn't been suitable for her from the start and agreed to refund the premiums she'd paid. However, Mrs L says it only refunded the premium for the most recent year. Mrs L made clear in correspondence with us that this wasn't an issue that formed part of this complaint but she can of course raise this with Alan Boswell if she remains unhappy.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 6 December 2023.

James Park
Ombudsman