

The complaint

Mr A and Mrs B's complaint is about a claim they made on their Alwyn Insurance Company Limited ('Alwyn') legal expenses insurance policy.

Mr A and Mrs B say Alwyn treated them unfairly.

What happened

Mr A and Mrs B made a claim on their Alwyn legal expenses insurance policy for cover to pursue a claim in relation to an employment dispute for Mrs B.

Alwyn appointed their panel firm to consider Mrs B's claim who concluded it didn't have reasonable prospects of success, as required by the policy for cover to continue. Unhappy, Mrs B complained about this to the panel firm. The panel firm told Mrs B that if she wanted to appeal their assessment, she would need to obtain her own legal opinion at her own expense and if it was found that the claim had reasonable prospects of success, she'd be reimbursed for her costs.

Mrs B went on to obtain her own legal advice from another panel Solicitor. She then asked Alwyn to cover the costs of the advice she obtained. Mr A and Mrs B say that Alwyn initially declined to cover part of these costs because they didn't accord with the panel Solicitor's hourly rates. They also say Mrs B hadn't sought their agreement before incurring these costs, which was a condition of the policy. However, they later accepted that the invoice presented by Mrs B would be paid by them.

Mr and Mrs B are seeking a shortfall they say is payable in respect of the invoice together with credit card interest they say they incurred on the full amount they paid.

Our investigator considered Mr A and Mrs B's complaint and concluded it shouldn't be upheld. He said that Alwyn did reimburse Mr A and Mrs B for the costs claimed and the shortfall being sought by them is for a mistake their Solicitor made in billing them for which Alwyn are not responsible. He also said that Alwyn aren't responsible for the credit card interest Mr A and Mrs B incurred as the policy doesn't cover these and it's not fair for Alwyn to cover them.

Mr A and Mrs B don't agree. They say Alwyn didn't pay the invoice they presented for 7 weeks despite agreeing to fund their claim going forward. They also say that Alwyn were informed about the interest that was accruing on the payment they'd made but they didn't do things any faster to avoid Mr A and Mrs B incurring them.

As for the shortfall, Mr A and Mrs B say that their Solicitor didn't waive the amount they mistakenly charged them for, so Alwyn should pay this. Because of this the matter has been passed to me to determine.

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.

Having done so I won't be upholding Mr A and Mrs B's complaint. This is why.

The starting point is the policy terms. They say:

"Under no circumstances should an insured person instruct their own lawyer, accountant or legal representative or incur any costs before we have accepted the claim as the insurer will not pay any costs incurred without our agreement".

In this case Mrs B was however told by the panel firm that if she obtained a legal opinion that supported her claim had reasonable prospects of success, she would be reimbursed for this cost. Although Alwyn didn't initially agree to discharge this sum, they did later accept that the information given by their panel firm wasn't clear- particularly on the subject of Mrs B first obtaining Alwyn's consent to incur these costs. So, Alwyn agreed to pay the invoice presented to them. This broadly accords with our approach to reimbursement of costs for positive opinions, following a negative panel firm assessment on merits.

The issue in dispute here is a difference in the invoice amount and the credit card interest Mr A and Mrs B have said they incurred in credit card interest which they say Alwyn should pay.

I've thought about what they've said, but I don't agree that Alwyn need to pay anything further in respect of what appears to be a mistake by the Solicitor Mrs B instructed. As I understand it Mrs B's Solicitor has said they will waive the additional amount (£36.00) because the invoice was paid by credit card. As such it doesn't appear that the Solicitor was looking to charge for this amount. The fact that they have means that Mr A and Mrs B should ask for reimbursement from them directly. And it's not something I think is fair for Alwyn to cover.

As for the credit card interest, I appreciate that the policy doesn't cover costs like this, and that Mr A and Mrs B chose to pay in this way. From what they've said, they had no other means to make this payment. But they also didn't seek Alwyn's agreement to incur the costs they did. So, they took their chances that they'd be reimbursed. I understand that the panel firm led them to think they would receive this sum back, but no assurances were given about how long this would take. The commitment made was to reimburse Solicitor's costs but not credit card interest. And 7 weeks isn't an exceptionally long period of time for Alwyn to reimburse them for the amount incurred. As such I don't think Alwyn should be responsible for the interest being claimed here.

My final decision

For the reasons set out above, I don't uphold Mr A and Mrs B's complaint against Alwyn Insurance Company Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs B to accept or reject my decision before 7 December 2023.

Lale Hussein-Venn
Ombudsman