

## **The complaint**

Mr and Miss F's complaint is about a claim Miss F made on her Alwyn Insurance Company Limited ('Alwyn') legal expenses insurance policy, which was declined.

Miss F says that Alwyn's decision was unfair.

## **What happened**

In July 2021 Miss F was involved in an incident where she was bitten by a dog during a dog fight in a local park. She was injured and admitted to hospital. Following the incident, the Police charged her with offences under the Dangerous Dogs Act 1991 as they believed her injuries were caused by her own dog, which she refuted. Miss F was subsequently convicted of the crime she was charged with but was successful on overturning the conviction on appeal during which she says her version of events were proven.

Following her appeal, Miss F made a claim on her Alwyn legal expenses insurance policy for cover to bring a claim in personal injury in relation to the injuries she'd suffered as a result of the incident. Alwyn declined the claim. They said the policy required her to report the incident as soon as possible and within the period of insurance. If the insurance is not renewed any claim must be reported within 14 days of expiry of the period of insurance. Alwyn said Miss F's policy ended in September 2021, but her claim was reported to them 16 months after the policy expired. As such they said she was out of time to bring the claim and declined to consider it further.

Miss F feels this unfair. She's cited several reasons why she didn't bring the claim sooner, including that she didn't feel she was able to pursue a civil claim for personal injury until the criminal conviction against her had been overturned. Alwyn doesn't accept this and as such Miss F referred her complaint to the Financial Ombudsman Service.

An investigator considered her complaint and determined that it should be upheld. She accepted Miss F's explanation of why the claim hadn't been reported sooner and said the onus was on Alwyn to prove that they'd been prejudiced by the late notification in this case. She also awarded Miss F £200 for the trouble and upset caused to her by the declination of the claim. Alwyn doesn't agree so the matter has been passed to me to decide.

## **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 uphold Miss F's complaint for broadly the same reasons set out by the investigator.

The starting point is the policy terms. They set out that the:

*"(ii) the insured incident is reported to us as soon as possible and within the period of insurance (if this insurance is not renewed, any claim must be reported within 14 days of the*

*expiry of the period of insurance).*”

There's no doubt that Miss F didn't report her claim to Alwyn either as soon as possible after the incident took place or within the policy period. But I take the view that she had legitimate reasons why. She cites an initial period of hospitalisation, followed by being charged and then prosecuted for a crime that would very much have had an impact on the outcome of any personal injury claim she might have sought to make against the owner of the other dog. After all, if matters proceeded to and remained at her being convicted of offences under the Dangerous Dogs Act 1991 on the basis that her own dog injured her, she wouldn't have had the basis for any claim at all against another. For this reason, I don't follow Alwyn's suggestion that the criminal burden of proof was different to the civil one and this wouldn't necessarily have had a bearing on her claim. The criminal burden of proof is higher than the civil burden of proof so it's evident that a conviction would have entirely coloured her ability to bring a personal injury claim at all.

I do however accept what Alwyn say that Miss F was only required to report her claim but not pursue it to be covered by the policy. I understand that but doing so would've meant Miss F required the benefit of foresight. She wasn't to know what the outcome of the criminal proceedings were going to be against her. And if the conviction stood, there would have been little point in reporting a claim at all to her insurers. Given her circumstances and the vulnerabilities she's described, as well as her state of health, I can well see why she wouldn't have reported her claim to Alwyn during the period of insurance. It was a difficult time for her, and I accept that reporting a matter that might have no prospect of getting off the ground might have felt entirely pointless. Indeed, at that point she couldn't be sure she had a claim at all.

As the investigator said, having found that a reasonable explanation exists for why the claim was reported late, the onus is on Alwyn to demonstrate that they would be prejudiced by now accepting the claim under the remaining policy terms. Alwyn haven't done that. None of their submissions address this issue at all. So, I think it's fair that in the particular circumstances of this case Alwyn should accept the claim, setting aside the policy requirement relating to when it should have been notified and consider it under the remaining policy terms.

I also agree that Alwyn's decision to turn down cover caused Miss F both distress and inconvenience given her personal circumstances, following an already stressful 18-month period that followed the incident itself. As such Alwyn should pay her and Mr F £200 for the distress and inconvenience this caused.

### **Putting things right**

Alwyn should:

- accept the claim, setting aside the policy requirement relating to when it should have been notified and consider it under the remaining policy terms, and
- pay Mr and Miss F £200 for the distress and inconvenience they caused by turning down cover.

### **My final decision**

For the reasons set out above, I uphold Mr and Miss F's complaint against Alwyn Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Miss F to

accept or reject my decision before 9 November 2023.

Lale Hussein-Venn  
**Ombudsman**