

The complaint

Mr M complains that Allianz Insurance Plc withdrew cover for a claim on his legal expenses insurance policy.

What happened

Mr M obtained planning permission for an extension to his house and started work on this in 2021. His neighbours objected and they obstructed his access over land behind his property, which meant he couldn't get materials delivered for the work.

He made a claim on his policy. Allianz accepted the claim and instructed panel solicitors to assess the merits of his case.

In April 2022 Mr M's solicitors said there was an encroachment by the neighbours who had placed objects on a piece of land Mr M owned, which would be a trespass.

Allianz offered to fund one third of his legal costs to pursue this on basis there were three aspects to his case; it would cover the trespass aspect but not the other two, which were about establishing property rights. Allianz said the policy didn't cover him to establish property rights.

Mr M complained to this Service about the way Allianz had dealt with the claim. One of our ombudsmen considered the complaint and issued a final decision. They said:

- The panel solicitors said it could be argued Mr M was making a claim for adverse possession as a mechanism in order to show there had been a trespass. He had reasonable prospects of showing adverse possession and if that succeeded, there were reasonable prospects of showing trespass.
- Mr M's solicitors said the same – he had reasonable prospects of success for a trespass claim.
- The complaint involved a claim for trespass and nuisance over land where ownership is in question. Mr M had provided evidence that satisfied the panel solicitors he had a reasonable chance of successfully claiming adverse possession over the disputed land. And if successful in that, he'd likely be able to establish trespass over that land.
- Allianz should treat the claim as if it had been accepted in January 2022; meet any legal costs incurred since then; and deal with the claim in line with the policy terms going forward, appointing a panel firm of solicitors until such time as proceedings became necessary at which point Mr M could choose his own solicitors.
- If Mr M had been prevented from pursuing a claim for adverse possession by the failure to provide cover, counsel should be instructed to advise on what he would have recovered, if he had been given cover to pursue that in January 2022.

Following this decision Allianz put cover in place and agreed to Mr M instructing his own solicitors. In April 2023, the solicitors said they were instructing counsel to advise on the case.

Mr M's father (who was dealing with things on his behalf) wanted to apply for an injunction but his solicitors didn't agree this was appropriate. The relationship between them broke down. Another firm of panel solicitors was then appointed.

In July 2023 Allianz withdrew cover because:

- Counsel's advice was that an injunction had to be based on a cause of action; it couldn't be free standing. Counsel didn't think a claim in respect of a boundary agreement or estoppel would have reasonable prospects of success, so an injunction based on these causes of action would not have prospects. Mr M's solicitor also advised an injunction application didn't have prospects.
- Mr M informed his solicitor that the neighbours had erected a fence on the disputed boundary line in November 2022, effectively evicting him from the land. The solicitor advised he was fully aware this meant the claim for adverse possession was now out of time so he couldn't proceed with a claim down this route.
- Counsel's opinion was that Mr M might be able to successfully pursue a claim for adverse possession, but he was unaware the fence had been erected in November 2022 when he gave this advice.
- Based on this legal advice, none of his proposed claims had reasonable prospects and an adverse possession claim was now out of time.
- But if Mr M provided his own legal advice to the contrary, from a barrister of similar standing, it would reconsider.

Mr M complained again but Allianz didn't change its position.

When he referred the matter to this Service, our investigator said:

- When Allianz saw the advice from the panel firm and from counsel, it withdrew cover.
- Counsel's advice was that a claim based on a boundary agreement did not have a 51% chance of success but an adverse possession claim was not out of time – it was likely to succeed and should be pursued through an application to the Land Registry.
- As Mr M was able to proceed with a claim for adverse possession, there was no need for counsel to advise on what he had lost out on. He could have continued with that claim.
- Mr M's father had told the solicitors that the neighbours put up a new fence. It wasn't clear why his solicitors did not proceed with the adverse possession claim.
- Allianz wasn't told about the fence. It was reasonable for Allianz to rely on the legal advice and withdraw cover. It wasn't Allianz that caused the adverse possession claim to be out of time. And it agreed to review the claim if any further legal advice was provided, which was fair.

Mr M disagreed and his father provided some further comments. The investigator considered these but didn't change his view. He said the legal position appeared to be that an adverse possession claim had to be made within six months and it was reasonable for Allianz to rely on the legal advice given. If Mr M thought the claim was still in time and had legal advice confirming that, he could provide it to Allianz to consider.

Mr M has been represented in the complaint by his father. His father has provided detailed comments on his behalf throughout the course of this complaint. I won't set out in full everything he has said but the key points include:

- The solicitors gave the wrong information to counsel – he has new solicitors who have confirmed this and wish to instruct counsel again but Allianz won't cover this and he has run out of funds so can't pay further costs himself.
- He told the solicitors the neighbours had added to the fence and he wanted to apply for an injunction to get the new fence removed. The solicitor confirmed passing the information to counsel, who was the panel counsel for Allianz, so he can't see how it could not have known.
- The adverse possession claim isn't out of time anyway as he has two years to pursue it, not six months.

- Allianz made its decision on the basis of a phone call with a solicitor – it hadn't seen the file the solicitors had. It's determined not to pay out and has ignored the previous ombudsman's decision.
- The previous decision is legally binding. He didn't want to make a further complaint but wanted help to enforce the decision. He now understands it's for Mr M to enforce it, so he's not clear why we have been investigating further.

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.

Mr M's father has provided detailed comments on the complaint. We were set up to provide an alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached.

He has asked why we have investigated further when he considers this should simply be a question of enforcing the previous ombudsman's decision. If he considers Allianz hasn't complied with that decision, it's correct there is a way to enforce that through the courts.

But what happened here is that, as required by the previous decision, Allianz reinstated cover for the clam. But after considering further information, including legal advice, it later withdrew cover again. So things had moved on from the previous decision and a fresh decision was made. This was not the subject matter of the previous complaint. Mr M's father said he wanted us to investigate these matters and that's what we have done. In this decision I will address the more recent events that were not dealt with in the previous complaint.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy covers Mr M for legal costs relating to certain property disputes, including claims relating to the infringement of the use, enjoyment or rights over his home, and for nuisance or trespass. Cover is subject to any claim having reasonable prospects of success – defined as being a claim where there's a 51% or greater chance that the legal case will be successful. That's a legal matter and so insurers will get legal advice on the chances of success. They're entitled to rely on that legal advice unless it's obviously wrong (meaning it's obvious to someone who is not legally qualified that the advice is wrong).

After cover was reinstated, Allianz agreed to instruct Mr M's choice of solicitors. They in turn instructed counsel to advise on the case. Counsel's advice is reasoned and sets out the relevant issues. He considered the possible legal claims that could be pursued. In summary, counsel said Mr M did not have a reasonable chance of success with claims in respect of a boundary agreement or estoppel, but there was a reasonable chance of successfully pursuing a claim for adverse possession. This was not out of time – it was likely to succeed and should be pursued through an application to the Land Registry.

Mr M's father had told the solicitors that the neighbours put up a new fence. But that information wasn't passed on to counsel. And that changed things, as counsel wasn't aware of the time limit approaching.

Mr M didn't continue with those solicitors and Allianz appointed a panel firm. They explained to Allianz that, because of the fence put up in November 2022, it was now too late to proceed with an adverse possession claim. So there was now no legal claim that had reasonable prospects of success, based on the legal advice at that time. In those circumstances it was reasonable for Allianz to withdraw cover in July 2023.

Allianz made that decision following a phone call with panel solicitors rather than a detailed written advice – but this was simply confirming the adverse possession claim was now out of time. In the circumstances that was reasonable. It had counsel's advice that the other claims were not likely to succeed and the adverse possession was the claim to pursue. And the solicitors now explained they couldn't do that as it was too late.

It was reasonable for Allianz to rely on the legal advice and withdraw cover. It wasn't Allianz that caused the adverse possession claim to be out of time. And it agreed to review the claim if any further legal advice was provided, which was fair.

I know Mr M's father says Allianz must have been aware the fence had been put up, but it wasn't told about the fence. There's correspondence from the solicitors confirming the information about the fence was not passed on to counsel (or Allianz). If Mr M or his father told the solicitors but they didn't tell counsel, that's a matter between them and the solicitors. Allianz wouldn't be responsible for that and it's not something I can comment on.

The previous decision directed Allianz to obtain advice on what Mr M had lost out on – *if* he had been prevented from bringing an adverse possession claim as a result of Allianz's earlier decision to withdraw cover. At the point when cover was reinstated and legal advice sought, he would have been able to pursue the adverse possession claim. He wasn't deprived of that by anything Allianz did. So there was no need for counsel to advise on that point. Mr M's father disagrees but I've seen advice from solicitors he instructed more recently which confirms this.

Mr M's father has also referred to some additional cover his son took out. But that appears to be a different policy, underwritten by a different insurer, so not something that Allianz would be involved with.

As mentioned, if Mr M provides counsel's advice setting out any claims he can pursue and which have reasonable prospects of success, then Allianz can consider that. But, based on the legal advice it had, the decision to withdraw cover was reasonable and it had no reason to seek further advice from counsel.

I appreciate the situation has been extremely difficult for Mr M and his father has explained the impact on him. But I have to consider how Allianz dealt with the claim on the basis of the policy terms and the legal advice it received. Taking those into account, and for the reasons set out above, I'm satisfied it has dealt with the claim fairly and in line with the policy terms

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 May 2024.

Peter Whiteley
Ombudsman