

The complaint

Mr M is unhappy with what Royal & Sun Alliance Insurance Plc (RSA) did after he made a claim on his motor legal assistance policy.

What happened

Mr M has car insurance with RSA. The policy entitles him to drive (with the owner's permission) a car not belonging to him. It also includes a legal assistance plan which offers cover with legal expenses to assist with the recovery of uninsured losses following a car accident.

In April 2018 Mr M had an accident while driving his mum's car. He told RSA about this and said he'd be pursuing the third party insurer for his losses. In October Mr M got in touch with RSA to say the third party insurer had offered to settle the claim on a 50/50 split liability basis which he was unhappy with. And he asked if he could use his legal assistance policy to pursue matters.

RSA referred the matter to panel solicitors who said in January 2019 a 50/50 split was the best outcome. RSA's notes say Mr M was told if he was unhappy with this he'd need to get an alternative solicitors opinion in support of his position. An alternative firm did then contact RSA and it agreed to contact the panel firm and ask it to pass details of the claim over to it. But it doesn't appear those instructions were received by the panel firm.

In April Mr M had further contact with RSA and decided at that time to pursue a 50/50 settlement through the panel firm. He contacted RSA the following month to say he hadn't heard from the panel firm. It appears RSA missed information it already held on file and referred the matter to its legal helpline

No further action is recorded until October when solicitors for Mr M contacted RSA again and asked for cover to pursue a personal injury claim and other losses. RSA then said the claim wasn't covered because legal expenses cover only applied if Mr M was driving his own car.

Following a complaint to us RSA accepted legal expenses cover was in place and offered to pay Mr M £150 for giving him incorrect information about this and other customer service failings. However, it said the claim wasn't covered because it had been told about it too late. It also said the limited information provided in October 2018 wasn't sufficient to establish whether the claim had reasonable prospects of success. Later it said initial analysis by the panel solicitors had enabled them to conclude it didn't.

Our investigator asked RSA to clarify the reasons for turning the claim down and what term in the policy it was relying on. In response RSA reverted to its original position and said this was because the policy didn't cover Mr M when he was driving someone else's car.

Our investigator didn't agree that's what the policy said. And although she accepted the claim had been notified to RSA late she didn't think it had shown it had been prejudiced as a result. She thought a payment of £150 was fair to reflect the customer service failings that had occurred here. But she thought RSA should consider the claim Mr M was now making against the remaining terms of the policy. If it still didn't think cover should be provided it should explain to Mr M why that was.

In response Mr M provided further information from his current solicitors outlining why they thought the full claim did have prospects of success. RSA didn't respond. 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.

The relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I've thought first about whether Mr M's claim is one that's covered by his policy. RSA's current position is the legal assistance policy doesn't apply where the policyholder is driving someone else's car (though it previously accepted that was the case and offered compensation for providing inaccurate information to Mr M about this).

I've looked at the terms of his legal assistance policy and I can see these say *"in the event of a Motor Accident, we will pay your Legal Expenses provided your Legal Representative is of the view that your claim for Uninsured Losses or the Legal Proceedings have Reasonable Prospects of being recovered from the party who caused the Motor Accident."*

Motor Accident is defined as *"An incident which happens when you are using Your Car during the Period of Insurance and within the British Isles and which gives rise to Uninsured Losses"*.

The main policy term definition of 'your car' includes one *"whose registration number is shown in your Certificate of Motor Insurance and your Schedule"*. So that wouldn't include the situation here where Mr M was driving his mum's car. But the terms of his legal assistance policy have a separate definition of 'your car' which say it applies to this section only. And that includes:

The car stated in the Schedule, any replacement vehicle we arrange for you while your car is being repaired after you have claimed under this Policy, any other vehicle which your Certificate of Motor Insurance allows you to use in the British Isles....."

Mr M's certificate of motor insurance does allow him to drive another car which doesn't belong to him with the owner's permission. I can't see any other term in the legal assistance policy which would exclude cover in this situation (and RSA hasn't suggested there is or quoted anything from the policy in support of its position). So, while I accept it's for Mr M to show he has a valid claim under this policy, I think he's done that.

I've gone on to think about whether RSA can decline the claim on the basis it wasn't told about it in time. His policy says it won't provide cover for *"Legal Expenses if the claim is reported to us more than 180 days after the Motor Accident."*

Mr M told RSA about the accident he'd been involved in in April 2018 but he didn't say he wanted to make a claim under his legal expenses policy until the following October. Looking at the dates involved I'm satisfied that claim was made out of time (by around two weeks).

So Mr M hasn't complied with the terms of his policy. However, I also need to think about whether those terms have been applied fairly. And a key consideration here is whether RSA has been adversely affected (or prejudiced) by the late notification. That might be the case where, for example, significant time had passed since the event in question (meaning there could be difficulties in finding evidence or tracing witnesses) or legal proceedings had been pursued which the insurer had no knowledge of or ability to influence.

RSA hasn't suggested anything like that applies here. It has said allowing the claim might set an unfair precedent allowing non panel solicitors to fail to meet policy terms in future. However, I've explained the approach we take to this situation and I don't think the grounds RSA has cited show it has been prejudiced by what's happened in this case. So, while I accept it was notified of the claim late, I don't think it's fair in the circumstances of this case to apply that term.

I also agree there have been customer service failings by RSA. Mr M expressed particular concern about a call he had with RSA. I've listened to that call and I don't think the adviser was flippant or offhand. But equally I don't think he got to grips with the point Mr M was making. And I think there were also some missed opportunities by RSA to proactively follow up matters with the panel solicitors.

I don't think that significantly delayed the progress of Mr M's claim because I can see RSA advised him in February 2019 that he'd need a supportive opinion on the claim's prospects of success for this to be pursued. And it appears he's only been able to provide that more recently. I appreciate Mr M will have been confused by being given inaccurate information but I think the £150 RSA has now offered does enough to put things right here.

RSA also needs to consider the claim Mr M is now making against the terms and conditions of his policy and can't use the reasons it's previously cited to turn this down. Mr M will nevertheless need to show this claim meets the terms of the policy as they relate to reasonable prospects of success. However, as he's now got a legal opinion from his solicitors which suggests he does RSA should take that into account when considering this.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Plc will need to put things right by paying Mr M £150 and reconsidering his claim against the remaining terms and conditions of his policy (taking into account the legal opinion he's obtained from his solicitors).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 December 2020.

James Park
Ombudsman