

## **The complaint**

Ms C complains that RAC Insurance Limited has wrongly rejected a claim on her legal expenses insurance policy.

Where I refer to RAC Insurance Limited, this includes its agents and claims handlers acting on its behalf.

## **What happened**

Ms C completed the purchase of her house on 6 February 2019. She took out buildings and contents insurance for the property on 1 February, which included legal expenses insurance. In June 2020 Ms C became aware of a potentially serious issue with the gabion baskets that were being used as a wall between her property and her next door neighbours. She said it was when she noticed another neighbour was having work done to their gabion baskets that she made enquiries about hers.

Ms C instructed an engineer to inspect the baskets. He provided a report that said they were not fit for purpose and potentially unsafe. Ms C took this up with the builder but wasn't able to get any resolution with them. So she made a claim on her legal expenses cover but her claim was rejected.

At the time when Ms C made her claim the underwriters of the legal expenses section had changed and weren't the same underwriters from when she'd first taken out her policy. This led to some confusion as to who should deal with the claim. The original insurers had looked into her complaint. After Ms C complained to this service the correct insurer – RAC – looked into it but also rejected the claim and for the same reason.

RAC says there's no cover because the date of occurrence is before the start of the insurance policy. The policy doesn't cover a claim where the event leading to the claim happened before the policy started.

Our investigator didn't think it was fair to reject the claim. She acknowledged that there's no cover for pre-existing disputes, but said Ms C wasn't aware of the problem when she bought the house and it wouldn't be fair to apply the exclusion in these circumstances.

RAC disagreed and requested an ombudsman's decision.

I issued a provisional decision on the complaint. I agreed with our investigator that the complaint should be upheld, but proposed a slightly different way of resolving it. I set out my reasons as follows:

*The policy doesn't provide cover for a dispute that started before the policy was taken out. That's not unusual – this type of policy is intended to provide cover for future events, not for something that's already happened. But I still need to consider whether it's fair to reject a claim in the circumstances Ms C found herself in.*

*The relevant terms include exclusions for*

- Any incident arising before the start of this policy
- Where the Insured Event had commenced or occurred before the first period of insurance.
- Where at, or prior to, the start of the first period of insurance, in Our reasonable judgement, You should have realised that a claim might occur.

The policy defines an insured event as:

*“the incident or the start date of a transaction or series of incidents which may lead to a claim or claims being made under the terms of cover. For the purpose of the limit, only one insured event will be regarded as having arisen from all causes or actions, incidents or events which are related by cause or time.”*

*So the terms say there’s no cover where the incident that leads to the claim happens before the policy started. RAC says the incident was the defective building work. That did happen before Ms C took out the insurance. But I don’t think it’s fair to say the claim is excluded on that basis.*

*The aim of this term is to avoid cover where there’s already a dispute when the policy is taken out; the policy is intended to cover the risk of something that might happen in the future, not something that’s already happened. And the policy terms also specifically refer to the situation where the policyholder should have been aware when they took out the policy that a claim might happen. In my view, that’s the fair way to approach this.*

*Ms C didn’t know – and couldn’t reasonably have known – there was a problem with the wall when she took out the policy to cover the property she was buying. So at that point she wasn’t in dispute with the builder and wouldn’t have known she might need to make a claim on the policy. That only became apparent some time later. In these circumstances it wouldn’t be fair or reasonable to exclude cover.*

*That doesn’t necessarily mean her claim is covered. As it was rejected on this basis, RAC didn’t go on to assess the claim and there may be other policy terms that apply. So I agree with our investigator that it should not apply the exclusion for pre-existing disputes and should reconsider the policy in line with the remaining policy terms. If the claim is accepted then going forward, her legal costs should be covered in line with the policy terms.*

*In addition, Ms C has had to incur legal costs to pursue the dispute without the benefit of cover. If the claim is accepted then she should be reimbursed for those costs. Otherwise she will be out of pocket due to RAC having incorrectly rejected her claim. And as she’s been deprived of that money interest should be added.*

*The policy requires a claim to have a reasonable chance of success for cover to be provided. The terms say RAC may require Ms C to get a legal opinion on the merits of the case and, if the opinion is in her favour, it will pay the cost of the advice. I understand Ms C has legal advice confirming her claim has a high chance of success. If she provides this advice to RAC it should be taken into account in assessing the claim. And if it is supportive, RAC should reimburse the cost of her obtaining that opinion.*

*Ms C has incurred legal costs so far of around £19,000. These costs have had a significant financial impact on her. She’s had to borrow money from relatives and has been left with financial difficulties having to pay the legal fees. She has also explained that her relationship with her next door neighbours has deteriorated. The neighbours have expressed concern about their safety and have sought their own legal advice on how the defective wall might affect them. The claim has been ongoing since June 2020, with delays caused by her being referred to the wrong insurer. If she had been given the right information at the start it’s*

*unlikely it would have taken so long to reach this point or had such an impact on her. Having to deal with the legal dispute is itself distressing and time consuming, and this has been made worse by the issues with her insurance claim.*

*I agree that a payment of £500 would be fair to reflect the distress and inconvenience caused to Ms C by the way the claim has been handled.*

### **Putting things right**

*To put things right, RAC should not apply the exclusions for pre-existing disputes, and should reconsider the claim in line with the remaining policy terms.*

*If the claim is covered, RAC should:*

- *provide cover for her legal costs going forward in line with the policy terms; and*
- *reimburse Ms C for the legal costs she has incurred to date, together with simple interest at 8% on those costs from the date she paid them to the date she is reimbursed.*

*Whether or not the claim is covered, RAC should also pay to Ms C:*

- *the cost of any legal advice provided by her confirming that the claim has a reasonable chance of success; and*
- *compensation of £500 for the distress and inconvenience caused to her.*

### **Replies to the provisional decision**

RAC has confirmed that it will review the claim in line with the provisional decision and has contacted Ms C about this.

Ms C has confirmed that she accepts the decision, but has raised a number of concerns about what will happen next. I've summarised the key points as follows:

- RAC has requested all her paperwork in order to review the claim. It's not clear how much she should provide, particularly when correspondence with her solicitors is confidential.
- This appears to mean the whole process is starting all over again and it's critical that things are dealt with quickly, bearing in mind all the delays up to now.
- She would like to continue using her own solicitors, as they are familiar with the case.
- RAC's correspondence suggests there will be a long process to review the claim and even if it is covered, it may not pay all her solicitors costs; she might need to pay some costs herself if she continues to use her own solicitors.
- If RAC declines her claim again, it seems the legal costs she has already incurred will be overlooked.
- Her own legal advice is that the claim has an 80 – 85% chance of success, so it should be covered. It wouldn't be right if she only receives the compensation of £500 and nothing more.
- To avoid further disagreement, she has asked if the figure for her costs to date is given.

### **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.

RAC has confirmed that it will arrange for the claim to be reviewed, in line with my provisional decision. Ms C has accepted the provisional decision but has raised a number of

concerns about the process that follows. While there's no reason for me to change my decision, I will address Ms C's concerns so there is clarity about what should happen.

I appreciate Ms C would like her claim accepted and her costs paid promptly – the longer this goes on, the more stressful it will be for her. But it is reasonable for RAC to review her claim again. As I explained in my provisional decision, RAC rejected the claim on the basis this was a pre-existing dispute. So it didn't go on to consider any of the other policy terms. Even though I don't think the claim should be excluded on that basis, that doesn't mean the claim is automatically covered. There are other policy terms that need to be considered, in particular whether the claim has a reasonable chance of success and the costs of pursuing it are proportionate to the value of the claim.

Ms C says her advice is that the claim has a very high chance of success. She's provided a legal opinion on this. But a lot of the document has been redacted. And although it does say the chances of success are very high (around 80%) I note it also says the conclusions are *"Subject to the reviews and information given in response to the questions ..."*

It's reasonable for RAC to satisfy itself the claim does meet the other requirements of the policy. So while I appreciate why Ms C is concerned about further delays, I think it's fair that RAC should be able to review the claim. If Ms C wishes it to take account of her legal advice, she can share that advice, and she would need to provide the full document.

If the claim is accepted, there are other steps RAC would need to take, including appointing solicitors to represent Ms C or agreeing terms of appointment with her solicitors.

Ms C is concerned that if the claim isn't accepted, the costs she has already had to pay won't be reimbursed. If RAC wrongly turned her claim down and she had to pay costs as a result, then she's out of pocket as a result of its error and those costs should be repaid to her. But if the claim doesn't meet the other policy terms, she would never have been entitled to cover for those costs in any event.

I've considered all the points Ms C has raised but it remains my view the fair way to proceed is for RAC to assess the claim again and, if the claim is covered, to agree terms for her legal cover going forward and reimburse the costs she has already had to pay. I know Ms C is concerned about further delay. I can't comment any further, other than to say RAC has a duty to deal with the claim promptly and fairly, and if there are any further issues she can make a fresh complaint.

## **Putting things right**

To put things right, RAC should not apply the exclusions for pre-existing disputes, and should reconsider the claim in line with the remaining policy terms.

If the claim is covered, RAC should:

- provide cover for her legal costs going forward in line with the policy terms; and
- reimburse Ms C for the legal costs she has incurred to date, together with simple interest at 8% on those costs from the date she paid them to the date she is reimbursed.

Whether or not the claim is covered, RAC should also pay to Ms C:

- the cost of any legal advice provided by her confirming that the claim has a reasonable chance of success; and
- compensation of £500 for the distress and inconvenience caused to her.

**My final decision**

I uphold the complaint and direct RAC Insurance Limited to take the action set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 11 May 2022.

Peter Whiteley  
**Ombudsman**