DRN-3460374

The complaint

Mr K and Miss M complain Royal & Sun Alliance Insurance Limited (RSA) wrongly declined cover under their legal expenses insurance (LEI) policy. And they're unhappy with how RSA handled their claim.

The claim was handled on behalf of RSA by an intermediary. Any reference to RSA in this decision should be read as including the acts or omissions of the intermediary.

What happened

In 2016 a neighbour's contractors caused damaged to Mr K and Miss M's property and belongings. Repairs to the property were carried out through their household insurers. Mr K and Miss M agreed with the contractors they'd do some additional repairs and pay for or replace the damaged belongings. But the contractors failed to honour that agreement. Mr K and Miss M were concerned about the physical impact on them of chemicals the contractors had used in the works and they wanted to know what they were.

In 2019 Mr K and Miss M made a claim on their LEI policy with RSA, through solicitors, for cover to pursue a legal claim against the contractor. RSA declined the claim. Initially they said Mr K and Miss M would need to exhaust other avenues to recover their losses and that the claim wasn't proportionate to pursue. Mr K clarified the circumstances and RSA reconsidered the position.

Mr K dealt with the insurance claim on his and Miss M's behalf. He exchanged correspondence with RSA over several months. In the end RSA accepted there was a valid claim under the policy, but still declined to cover it on grounds of proportionality. They offered to fund the costs of a legal claim against the contractors until they became disproportionate if Mr K undertook to fund the costs to conclude the claim. And RSA said they'd consider a separate claim for personal injuries.

Mr K disagreed with RSA's conclusions about policy cover. And he was unhappy with the undertaking RSA proposed he sign. Mr K had concerns too about the way the claim had been handled. RSA didn't uphold Mr K's complaint, so he brought it to the Financial Ombudsman. Our investigator felt RSA had reasonably declined the claim. Since Mr K and Miss M didn't agree with her view, I reviewed everything afresh.

I recently issued a provisional decision, an extract of which follows:

What I've provisionally 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 parties' arguments about policy coverage are well known to them so I don't set them all out here. No discourtesy is intended; it reflects the informal nature of the service the

Financial Ombudsman provides. And I acknowledge Mr K's strength of feeling about what happened.

Broadly, under the terms of the LEI policy, RSA agreed to provide Mr K and Miss M with the cover set out in the "Insured Events" section of the policy, up to the claim limit, subject to the terms, conditions and exclusions of the policy.

The relevant insured events here are "Consumer Protection", "Home Rights" and "Personal Injury". RSA are considering a claim for personal injury separately, so I don't consider cover in relation to that. But I'll comment on it in relation to the handling of the claim.

The ***Consumer Protection*** section of the policy provided cover for:

> *"**Professional fees** incurred in the pursuit or defence of **legal proceedings** as a result of any contractual dispute arising out of a contract entered into by the **beneficiary** where the amount in dispute exceeds £250.00 for:*
>
> 1. *Obtaining services including insurance.*
>
> 2. *The sale, purchase or hire-purchase of any personal goods."*

I'm not persuaded the verbal agreement Mr K and Miss M reached with the contractors fell within the categories of agreement covered by this section of the policy.

The damage to property and belongings happened when the contractors were engaged by Mr K and Miss M's neighbours to do work to their property. They weren't providing services to Mr K and Miss M at the time; the damage didn't happen when the contractors were engaged to repair Mr K and Miss M's property, for example. The agreement Mr K and Miss M reached with the contractors wasn't for services or for the sale, purchase or hire purchase of any personal goods. It was an agreement the contractors would put right or compensate Mr K and Miss M for damage they'd caused when they were doing work for someone else. So, I think RSA were right to say the costs of pursuing a claim under this section of the policy weren't covered.

Even if I'm wrong about that, cover was subject to the terms and conditions of the policy, under which I think RSA fairly declined the claim, as I'll explain.

The ***Home Rights*** section of the policy provided cover for, amongst other things:

> *"*
>
> 1. ***Professional fees** incurred in the pursuit of L**egal Proceedings** following any event causing loss of or damage to the **home** where the amount in dispute exceeds £250.*
>
> 2. ***Professional Fees** incurred in the pursuit or defence of **Legal Proceedings** as a result of or any cause of action arising out of or relating to alleged infringement of:*
>
>   ***a.** The **beneficiary's** legal rights relating to the **home.***
>
>   ***b.** By the **beneficiary** of the legal rights of another person arising out of or relating to the rightful occupation or ownership by the **beneficiary** of the **home**."*

I think there would have been cover to pursue a claim for the damage to the fabric of Mr K and Miss M's property. But I'm not persuaded the definition of "home" - *"*[Mr K's] *principal, private dwelling house as defined for the purposes of qualifying for exemption from Capital Gains Tax"* - included Mr K and Miss M's belongings. Even if, as RSA accepted, the claim could be considered under this section of the policy, once again, cover was subject to the terms and conditions of the policy.

The "General Exclusions" said no cover would be provided for the *"pursuit, continued pursuit or defence of any claim if* ***we*** *consider it is unlikely a sensible settlement will be obtained or where the likely settlement amount is disproportionate compared with the time and expense incurred."*

The policy conditions included:

*"****Claims Decision***

The decision to accept [Mr K and Miss M's] claim will take into account the advice of the ***authorised representative*** [solicitors] *as well as* ***our*** *own claims handlers…*

[Mr K and Miss M's] *claim will be accepted if all of the following apply:*

1. *The position has not been prejudiced.*
2. ***We*** *have assessed* [Mr K and Miss M's] *claim and deem it to have* ***prospects of success.***
3. *It's likely a sensible settlement will be obtained and is proportionate with the time and* ***costs*** *incurred in dealing with* [Mr K and Miss M's] *claim.*
4. *The* ***event*** *and action required are covered by this insurance…*
5. [Mr K and Miss M] *has kept to the terms and conditions of this policy and none of the exclusions listed under the General Exclusions section apply."*

Based on the exclusion and condition I've mentioned, RSA had discretion to decide whether to decline the claim on grounds it wouldn't be proportionate to pursue a claim. I'd expect them to exercise that discretion fairly and reasonably and consider advice from the solicitors.

Mr K and Miss M's solicitors were concerned the costs of pursuing the claim would outweigh the costs that might be recoverable if the claim succeeded. I'm not aware of anything to suggest the solicitor's advice about that was obviously wrong; it was reasonable for RSA to rely on it. Even though the solicitors thought a settlement might be reached, it was fair for RSA to consider the costs on the basis that might not happen. On balance, I think it was reasonable for RSA to think the claim wouldn't be proportionate to pursue.

Under the policy RSA could limit the costs they paid in pursuing the claim where, amongst other things, the likely settlement was disproportionate to the time and expenses necessary to achieve it. I think RSA fairly offered to fund costs to the point at which they became disproportionate or the policy limit was reached if Mr K undertook to pay costs beyond that point. It gave Mr K and Miss M the chance to make the claim and, potentially, reach a settlement with the third party, before the costs became high. But I can understand Mr K was reluctant to take on responsibility for funding costs himself given the possible financial implications.

RSA had discretion to pay Mr K and Miss M the amount in dispute to settle the claim under the policy where it might cost more to handle the legal claim than the amount in dispute.

But the policy doesn't provide indemnity insurance – that's to say it doesn't cover the damages a policyholder is trying to recover. It only covers the costs of taking legal action. There's no obligation on RSA to pay the amount of the claim. So, I won't ask RSA to pay the sum in dispute.

RSA questioned whether the claim had reasonable prospects of success and their response to Mr K and Miss M's complaint addressed this too. "Prospects of success" were defined in the policy as "*At least a 51% chance of* [Mr K and Miss M] *achieving a favourable outcome*".

The policy allowed RSA to reach their own conclusions about prospects. But I'd expect them to consider the solicitors' advice in reaching a decision. The solicitors said the prospects of a successful outcome were reasonable. They didn't anticipate difficulties in recovering money from the contractors. But they'd only carried out an initial assessment. They required further information and evidence from Mr K and Miss M. RSA noted the contractors disputed the agreement Mr K said he and Miss M had reached with them verbally.

I think it was fair, on balance, for RSA to have concerns about prospects. In responding to the complaint, RSA offered to consider more information from Mr K and Miss M about that, but they warned Mr K the claim might still be rejected on grounds of proportionality. I think that was fair.

Bearing all of the above in mind, I think RSA fairly declined Mr K and Miss M's claim.

I'll now turn to the handling of the claim. I can understand Mr K was unhappy RSA didn't initially understand all the facts. The solicitor's assessment wasn't clear so I can see how RSA misunderstood the position. Mr K explained things in early October 2019. RSA declined the claim then on grounds it wasn't covered under the policy at all – and that it was disproportionate to pursue. I acknowledge their position about whether an insured event had occurred changed even though Mr K didn't provide any substantively new information. But, despite changes in claims handler, RSA were consistent in saying the cost of pursuing the claim was disproportionate to the sum in dispute, and declining cover on that basis.

RSA didn't initially consider Mr K and Miss M's wish to pursue details of the chemicals used in the works. It wasn't raised by the solicitors in August 2019. Mr K mentioned it in early October 2019. He didn't suggest he and Miss M wished to pursue a claim for personal injury, but I'd expect RSA to have thought about that as he'd mentioned they'd suffered physically. RSA said later they'd consider the claim separately, which was reasonable. But I can understand it caused some distress and inconvenience to Mr K and Miss M that they didn't look at it sooner.

There was a delay of several weeks between November 2019 and January 2020 in RSA responding to Mr K. I'm not aware of any evidence RSA were being deliberately slow or trying to put Mr K off pursuing the claim. They apologised and explained the delay was administrative. And they proposed the undertaking as a way forward. So, I think they were considering how they could assist Mr K and Miss M in line with the policy terms and conditions. But I think the delay will have caused Mr K and Miss M some distress and inconvenience.
RSA addressed correspondence wrongly to "Mrs K". And in responding to the complaint they made some factual errors and overlooked the service issues. I can understand Mr K and Miss M found that frustrating.

In summary, I think it was fair and reasonable for RSA to decline Mr K and Miss M's claim. But they made some mistakes in handling the claim and there were some delays. I think it's fair for RSA to compensate Mr K and Miss M for the impact of those mistakes. To put things right I think RSA should pay Mr K and Miss M £250 for distress and inconvenience.

My provisional decision

I intend to direct RSA to pay Mr K and Miss M compensation of £250 for distress and inconvenience.

Developments

Mr K still had concerns about the policy wording, but he and Miss M accepted my provisional decision.

RSA felt an award of £150 for distress and inconvenience was more appropriate since, as I understand it, my provisional decision to award £250 was mainly based on delays between November 2019 and January 2020 and poor communication during that time.

RSA acknowledged the time taken between November 2019 and January 2020. They explained this was because they were reviewing internally whether they could change their position on policy cover even though Mr K hadn't provided any new information. They said they were consistent in saying the legal claim was disproportionate and it was necessary to propose the undertaking because of that.

RSA acknowledged they could have kept Mr K better informed. But they noted I'd accepted their stance on coverage was correct. And they said since Mr K had challenged their position throughout, he'd contributed to the distress and inconvenience he and Miss M suffered.

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.

Since the parties have accepted my provisional decision about policy coverage, I don't comment further on that.

I've thought carefully about RSA's arguments concerning compensation for distress and inconvenience. I considered the points they've now made in coming to my provisional conclusions. In addition, I took into account RSA's failure to consider all the issues raised in the claim and the mistakes they made in their communications with Mr K and Miss M. Mr K was entitled to raise questions about RSA's position. Considering the impact of RSA's actions on him and Miss M, I am still satisfied my proposed award of compensation for distress and inconvenience is fair.

Putting things right

I think it's fair and reasonable for RSA to pay Mr K and Miss M £250 compensation for distress and inconvenience.

My final decision

I direct Royal & Sun Alliance Insurance Limited to pay Mr K and Miss M compensation of £250 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Miss M to accept or reject my decision before 3 June 2022.

Julia Wilkinson
Ombudsman