

The complaint

Mr M is unhappy Royal & Sun Alliance Insurance Limited (RSA) declined his claim on his legal expenses policy.

What happened

In 2017 Mr M had a new boiler supplied and installed. In 2018 the boiler stopped working so an engineer was called to fix it. Following this there were multiple call outs as the boiler continued to breakdown between 2018 – 2020.

Unhappy that the supplier and manufacturer wouldn't replace it, Mr M contacted RSA in December 2020 to see if he could claim on his legal expenses cover. RSA passed the case to one of their panel solicitors to further assess. They said the claim didn't enjoy reasonable prospects of success, as required by the policy. As a result, RSA declined the claim.

Mr M complained about this and RSA's handling of the claim. RSA didn't think they had done anything wrong and had declined the claim in line with the terms and conditions of the policy. Their handling of the claim has been dealt with under a separate complaint reference by this service, so I haven't commented on this in the decision.

Our investigator didn't think RSA had done anything wrong so didn't ask them to take any further action. As Mr M remained unhappy 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.

I understand Mr M's strength of feeling in relation to this complaint and the time he's invested into it. Whilst I have considered all the information provided by both parties, I haven't commented on it all. This isn't meant as a discourtesy but reflects the informal nature of our service.

RSA have a responsibility to handle claims promptly and fairly and they shouldn't decline a claim unreasonably.

The terms and conditions of the policy set out what is and isn't covered and form the agreement between Mr M and RSA. The policy explains cover is provided for the cost of taking legal proceedings against another person or organisation as a result of a dispute over a contract for buying, selling or renting goods or services. So, Mr M's concern is covered here.

However, under general exclusions it says:

“Any claim where there is not a reasonable chance of you winning the case and achieving a reasonable outcome.”

“Legal proceedings where a reasonable estimate of your total legal expenses is greater than the amount in dispute.”

Reasonable prospects of success are considered to be where a claim has 51% or more chance of success. RSA referred Mr M's case to a qualified panel solicitor to assess this and they determined that it had less than 50% chance of success and that Mr M wouldn't qualify for legal expenses funding.

This means that if the claim was accepted and RSA pursued either the supplier or manufacturer, in the solicitor's opinion, there was less than 50% chance they'd succeed in winning the case.

I understand Mr M has spoken to several people at RSA in relation to this and many of them agreed with his feeling that the boiler wasn't fit for purpose. However, in line with the policy terms, RSA need to be satisfied the claim has a reasonable chance of success. This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. We wouldn't expect a legal expenses insurer to either.

The legal assessment was undertaken by an independent firm of solicitors and the opinion was both reasoned and didn't appear to be based on any factual mistakes, so it was fair for RSA to rely on it.

Due to the time that's passed RSA have left it open to Mr M to submit further evidence, if he has any that wouldn't have been available at the time of the claim. They also said Mr M could obtain his own legal assessment from an alternate solicitor – but Mr M would be responsible for the cost of this. However, if the new legal assessment was supportive Mr M's claim had 51% or greater chance of success, RSA would then obtain a barrister's opinion which could lead to the claim being covered if the barrister also supported the case. I think this is reasonable and in line with what I'd expect them to do.

Overall, I think RSA have declined the claim fairly and in line with the policy terms and conditions.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 September 2022.

Karin Hutchinson
Ombudsman