

## **The complaint**

Ms M has complained that Royal & Sun Alliance Insurance Limited (“RSA”) unfairly declined a claim she made under her legal expenses insurance cover.

For the sake of clarity when I mention RSA, I mean both the underwriter and any agent acting on its behalf.

## **Background**

Ms M contacted RSA in August 2019 to make a claim under her legal expenses insurance policy as she had been dismissed by her then employer and wanted to bring a case to the Employment Tribunal. The claim was sent to the legal specialists who support RSA to be reviewed. Following that review the claim was declined on the basis that it didn’t have reasonable prospects of success and Ms M would likely lose her case at the Tribunal. RSA explained that if Ms M wanted to appeal the opinion reached by its legal specialists, she could, but she would have to either provide new information or pay for an independent legal expert to review her case and issue an opinion on prospects of success.

Ms M continued with her case at the Employment Tribunal without legal representation as there were strict timescales involved in that process that had to be adhered to. Following the procession of her case against her ex-employer through the Tribunal, which Ms M was trying to navigate without any legal support, she got back in contact with RSA in summer of 2021 to complain about the fact that her claim had been declined. She felt she had been disadvantaged by the lack of legal support and that it was unfair she had been without help despite paying for cover under the policy. It was agreed that Ms M would forward some additional information that would be reviewed by the specialists and they would contact her once that review had been completed.

However, the legal specialist never contacted Ms M as promised and after waiting over a month for a reply, Ms M asked about getting funding to pay for the cost of a second opinion from an independent solicitor. When RSA explained this was something she would need to fund herself in the first instance, and payment would only be provided if that opinion said the claim had prospects of success, Ms M brought her complaint to our service.

Our investigator reviewed Ms M’s complaint and found that the terms and conditions of the policy did allow RSA to decline her claim in 2019 on the grounds that its legal expert said it had a less than 51% likelihood of success.

However, she also found that when Ms M had contacted RSA again in 2021 to make the complaint, she hadn’t received adequate support. RSA had said any new information provided would be reviewed by its legal agent but despite sending this through Ms M had never received a response. This was because RSA had failed to instruct the legal expert to reassume correspondence with Ms M and so her emails went unanswered. At that point in time Ms M’s claim against her ex employer was still ongoing and so our investigator recommended that RSA review the information provided by Ms M in 2021 as a matter of urgency. If that information indicated her case did now have reasonable prospects of success then RSA needed to progress the claim under the policy terms and conditions.

RSA then informed Ms M and our service that the legal agents had reviewed the additional information but that it hadn't changed their mind and they still believed Ms M's case lacked reasonable prospects of success. Ms M asked for a copy of the legal opinion but there were further delays in sending this over, meaning Ms M still didn't have a clear understanding of why her claim wasn't being approved despite providing additional information.

Since the investigator issued her view Ms M lost her case at the Tribunal. RSA has accepted that it failed to provide appropriate support to Ms M in 2021 and that it failed to properly instruct its agents to review the new information that she had sent in at that time. It also agrees that there were unacceptable delays in getting the revised legal opinion sent to Ms M. It made an offer to pay a portion of Ms M's final costings as a gesture of goodwill once her case had come to an end.

I issued a provisional decision on 10 October 2022. In it I found that RSA was entitled to reject Ms M's claim in 2019 on the basis that it had less than 51% likelihood of success. However, I also found that there was a serious failing in regard to RSA's communication with Ms M after she sent it additional information to be reviewed in 2021. I found that while RSA said this information didn't change its opinion in regard to likely success of Ms M's claim, it failed to communicate this with her clearly or explained why. So, I suggested it pay her £300 compensation in recognition of the additional stress and upset it caused during an already extremely upsetting time.

RSA acknowledged that it had received the provisional decision but didn't respond to it.

Ms M responded to the decision, repeating her reasons for feeling let down by RSA and her belief that had she been properly supported her claim would've been successful at the Tribunal.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As no new information has been provided since I issued my provisional decision I remain of the same opinion I did then and for the same reasons. For the sake of clarity I will repeat that rationale here and will be upholding Ms M's complaint in part.

As Ms M's complaint involves two linked, but essentially separate issues, I will address them in chronological order.

### *Initial claim in 2019*

RSA's legal expenses insurance policy's terms and conditions allow it to decline claims for various reasons. The exclusion it relied on to decline Ms M's claim in 2019 states that a claim will only be accepted if:

*'i) It's more probable than not that the outcome of any legal action will be successful to the extent that:*

*a) any remedy sought will be obtained or, where allegations are being defended, that your conduct will be totally exonerated and no damages or other remedy will be awarded against you, and*

*b) in actions where there is provision for the loser to pay the winner's costs, costs of any*

*legal action or incidental to it will be awarded in your favour and these costs will be recovered.'*

This is a standard requirement in the majority of legal expenses insurance policies across the UK and effectively means that unless a policy holder's claim has a more than 51% likelihood of success the claim will be declined by the insurer. This isn't unreasonable in and of itself as it protects underwriters from having to cover the costs of claims that were unlikely to succeed.

When Ms M made her initial claim, she provided information explaining what had happened and why she wanted to bring a case to the Employment Tribunal against her employer for unfair dismissal. RSA sent this information to its legal experts to review and the response it received was that those experts thought it was unlikely Ms M would win her case at the Tribunal. So, RSA declined the claim on that basis.

Having looked at the terms and conditions and the advice provided by the legal agents in 2019, I'm satisfied that RSA was entitled to rely on the advice given and that it didn't act unreasonably when it declined Ms M's claim at that time. So, I'm not intending on upholding that aspect of her complaint.

#### *Additional information in 2021*

Ms M then contacted RSA again in 2021 to complain about the decision made in 2019 and provide more information which she believed showed her claim would be successful at the Tribunal. RSA agreed that Ms M should pass this information onto the legal expert that had reviewed her case in 2019 but she never received a response from that agent.

The reason why Ms M never received a response was because RSA failed to instruct the legal expert to provide one. And while she was waiting for a response that wasn't going to arrive her case continued to progress through the Tribunal to its ultimate completion.

Throughout this time Ms M believed her claim against her employer should succeed and that her lack of understanding of the legal procedures and requirements of the Tribunal was placing her at an enormous disadvantage. It is very clear from her testimony that this was an incredibly stressful and upsetting time for Ms M. She believed RSA had let her down when she needed support the most and that she had been unfairly dismissed from a long-held position and no one would help her fight her case.

RSA did agree to review the information received in 2021 but a second formal opinion wasn't received within the time scales it had been promised. And in any event wasn't received in time to help Ms M decide whether or not she should proceed.

However, RSA did say that the additional information didn't change the overall opinion of its legal agent and it still didn't think the claim had reasonable prospects of success. It did accept that the delays on providing this information were unacceptable and offered to contribute to Ms M's legal costs once they had been finalised by the Tribunal in recognition of these failings.

However, to date no offer has been received from RSA regarding the above and Ms M is now refusing to provide evidence of her final costings as she has lost faith in RSA and believes it has previously misused information she provided to it.

I am unable to make a finding on whether or not any offer to cover costs is reasonable or not because a gesture of good will is not something this service would comment on. Should Ms M wish to take RSA up on this offer I suggest she contact it directly and provide it with the

evidence of her final costings.

However, I do think the poor communication since 2021, and failure to provide clear legal advice explaining why the additional information Ms M provided at that time didn't change the opinion on her case, disadvantaged Ms M during an already extremely stressful and upsetting time.

I can't say for sure that receiving the formal opinion before deciding to continue pursuing her claim through the Tribunal would've changed Ms M's mind or reduced her overall costings. She had been told in 2019 that her case would likely be unsuccessful, and she still decided to continue without any legal representation. But I do know that being left waiting, all the time thinking there was a chance she would get support, added to her overall stress throughout the process and for that I think RSA should pay Ms M compensation.

### **Putting things right**

Royal & Sun Alliance Insurance Limited should pay Ms M £300 compensation for the distress and upset caused by the poor communication and lack of support provided to her in 2021.

### **My final decision**

For the reasons set out above I partially uphold Ms M's complaint against Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 9 December 2022.

Karen Hanlon  
**Ombudsman**