

## The complaint

Mr C complains about the handing of a claim under his legal expenses insurance policy by Royal & Sun Alliance Insurance Limited (“RSA”).

Where I refer to RSA, this includes its agents and claims handlers.

## What happened

In approximately 2019, Mr C made a claim on his legal expenses insurance policy to pursue a plumbing company who had carried out work in his home. RSA accepted the claim and appointed a panel firm of solicitors.

Mr C has raised previous complaints about the way RSA has handled this claim, but I’m only looking at what’s happened since August 2021. So I’ll only summarise the key events from this point onwards.

In August 2021, Mr C asked RSA if he could use a different solicitor to the panel firm appointed. I understand that at this time, Mr C was acting as a litigant in person with the assistance of the panel solicitor.

In September 2021, RSA said that it was only covering proportionate funding of the claim, which had been valued at £7,500. It said costs incurred to date were £4,895 inclusive of VAT, which only left £2,605 of proportionate indemnity left. It raised concerns that a change of solicitor could increase the costs which would reduce the amount of cover Mr C would benefit from, but it asked him to clarify which solicitor he wanted to use.

In December 2021, Mr C responded that the solicitor he wanted to use was unable to take on his case. He asked that the previous panel solicitor pay his claim due to their ineffectual work but, failing that, he was willing for another panel firm to be instructed. RSA confirmed it would appoint another firm but highlighted to Mr C that the new solicitor would need to undertake their own assessment of the claim in the first instance, which would be paid out of the indemnity. It asked Mr C if he was happy to proceed.

In January 2022, Mr C informed RSA that he’d received an offer from the plumbing company for approximately half the value of the claim. They’d threatened that if he didn’t accept this and failed to beat the offer in court, he would be liable for their legal costs. Mr C asked RSA for legal advice. He followed this up with a call to RSA and was promised a call back, but he didn’t hear anything.

Four working days later, RSA responded to Mr C. It said the new panel solicitors would need to assess the claim before it could do any work on the case, so it suggested Mr C contact the legal helpline attached to his policy for advice given the time constraints. But Mr C responded the same day to say that he’d negotiated a higher offer and settled his claim at just over £4,200.

Mr C complains that due to RSA’s handling of his claim and its failure to respond in a timely manner, he was left without legal guidance and as a result, he was left with no choice but to

settle his claim for less than it was worth. In addition, the court fees and expert report costs will need to be deducted from the settlement. He says the best help he's had is the informal advice received from his family solicitor who didn't think the panel firm had handled the claim appropriately.

RSA upheld the complaint. It apologised for failing to return Mr C's call and it offered £50 compensation in recognition of its poor service. In addition, it offered to reimburse the legal costs he'd incurred on receipt of proof of payment and evidence of the settlement but stipulated that this didn't include Mr C's own time spent as a litigant in person. Mr C wasn't happy with this, he wants RSA to pay him the remaining indemnity of £2,605. He brought his complaint to our service.

Our Investigator didn't think RSA needed to do more than it had already offered. He said even if RSA had returned Mr C's call, it had already told him that the solicitors needed to review the claim before any advice could be given so he didn't think the poor service had made an impact. But Mr C doesn't agree. He says our Investigator hasn't considered the consequences of failing to return his call. Furthermore, it has offered to reimburse his legal costs, but he didn't incur any as he was acting for himself.

As Mr C didn't accept our Investigator's findings, the complaint 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.

The terms and conditions of Mr C's insurance policy says that it will cover "*legal expenses*" defined as:

*"Your representative's fees, costs and disbursements which we have agreed or the costs of any other people involved in the legal proceedings if you have to pay those costs. This includes costs following an 'out-of-court' settlement to which we have agreed. This does not include any damages, fines or penalties that you have to pay."*

The policy has the following exclusion:

*"What is not covered...legal proceedings where a reasonable estimate of your total legal expenses is greater than the amount in dispute".*

I understand that Mr C's claim was valued at £7,500. As such, funding under the policy was limited to proportionate costs of no more than this amount.

A proportionality clause is common in legal expenses insurance policies, and I don't consider it to be unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised they will recover less than the amount they'd pay in legal fees. And I wouldn't expect a legal expenses insurer to either.

So it follows that I don't think RSA has acted unfairly in putting limited funding in place for the claim.

When Mr C asked to change solicitors, RSA reminded Mr C that it would only pay proportionate costs and there was only £2,605 left of proportionate funding. Mr C says it "*basically told [him] that the money left would only allow for [the new solicitor] to read into the case but would not stretch to them advising him*". But I don't agree. I think it was reasonable

for RSA to make Mr C aware of the cost implications of changing solicitors and I haven't seen anything to suggest that it implied the costs wouldn't extend beyond an assessment – nor have I seen that Mr C asked if it would.

Whilst there may not have been enough funding to see this case through to conclusion at court, there was enough for Mr C to see further benefit of the policy cover. The offer to instruct the alternative solicitors was on the table from September 2021, but I can't see that Mr C accepted this offer.

When Mr C returned to RSA in January 2022, an offer from the plumbing company was on the table with a deadline and a threat of costs. Mr C wanted RSA to give him legal advice but there was no solicitor instructed for him under the policy at this time and RSA is not a legal advisor – it's an insurer. So it's not reasonable to expect it to be able to guide Mr C on what to do.

I agree that RSA's failure to return Mr C's call was below the level of service I'd expect an insurer to provide. But I also agree with our Investigator that the impact of this was minimal as RSA wouldn't have been able to give advice. It's likely any conversation would've been along the same lines of their email response sent four working days later.

I'm satisfied that referring Mr C to the legal helpline was the right thing to do here. I'm also aware that he was in receipt of legal advice from his family solicitor. And whilst they were unable to act for him, it seems that they'd been able to answer Mr C's previous questions and comment on the panel firms handling of the claim, so I think it's likely they would've been able to answer Mr C's question of whether what the plumbing company had threatened was correct.

RSA upheld this complaint and offered to pay Mr C's legal expenses. I appreciate Mr C feels this was a disingenuous offer as he'd carried out the work himself. But I can see he's incurred court fees and the cost of an expert report, which has been deducted from his settlement. These disbursements fall within the definition of legal expenses under the policy, so I think this was a reasonable offer for RSA to make.

I appreciate Mr C wants to be paid the remaining limit of indemnity, but this isn't how the policy works. It only covers legal expenses not the claim itself. And whilst Mr C believes he could've obtained a settlement of £7,500 had RSA provided better service, he made the decision to negotiate a settlement with the plumbing company outside of the policy cover. And there is nothing to show me that he would've beaten this amount in court or that he would've been awarded the full amount he'd claimed.

Taking this into account, I'm satisfied the offer of £50 compensation plus Mr C's legal expenses up to £2,605 inclusive of VAT (subject to proof of payment) is fair in all the circumstances of the complaint.

### **My final decision**

Royal & Sun Alliance Insurance Limited has already made an offer to pay £50 compensation plus Mr C's legal expenses to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Royal & Sun Alliance Insurance Limited should pay £50 plus the legal expenses incurred on this claim subject to proof of payment being provided directly to the business.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 21 February 2023.

Sheryl Sibley  
**Ombudsman**