

## **The complaint**

V's complaint is about a claim they made on their Royal & Sun Alliance Insurance Limited ('RSA') commercial liability insurance policy.

V says RSA treated it unfairly.

In this decision I've referred to V's submissions as its own rather than made by its representatives for ease of reading. And all references to RSA include their claims handlers.

## **What happened**

In July 2018 V made a claim on its RSA commercial liability insurance policy for cover to defend a claim against it in relation to the installation of cavity wall insulation. The Claimant in that claim alleged that the insulation caused damage to their property.

V informed its broker and insurer of the claim but the matter didn't progress for a significant period of time. RSA did eventually acknowledge the claim but didn't confirm cover under the policy until March 2022.

By that time V had instructed Solicitors to help defend the claim against it at its own cost. When RSA confirmed cover, V was in the process of trying to settle matters with the Claimant. Its Solicitor had negotiated a global offer that was over 50% less than the claim being made against V.

V asked RSA to cover the settlement sum and its own costs. RSA agreed to pay part of the settlement but not all of it on the basis that cover wasn't available for all of the items claimed by the Claimant under V's policy. They did however offer to pay all of the Claimant's costs but not all of V's Solicitor's costs.

The complaint V initially brought to this Service was about the delays in RSA dealing with its claim. It later submitted another complaint about the settlement offer RSA was making, which RSA answered. For the sake of expediency, the parties agreed for this Service to look at both complaints together.

Our investigator considered V's complaint and said that we could look at RSA's actions from 1 April 2019 because that was the time that V, as a small/medium sized enterprise came under our jurisdiction. Having considered V's complaint from that date, he concluded it should be upheld. The investigator determined that the delays caused by RSA in dealing with the claim were unreasonable and because of this V was left to navigate the litigation without assistance and wasn't able settle things with the Claimant at a much earlier stage. Because of this he felt that RSA should cover the settlement sum reached between V and the Claimant in its entirety on a global basis as well as V's own Solicitor's costs in dealing with the claim. He also said RSA should pay V £650 for the inconvenience caused. The investigator didn't however think that RSA needed to pay V's Solicitor's costs in dealing with the claim for cover with RSA or V's broker because that's something that V could have done itself.

RSA didn't accept the investigator's view in its entirety. They said they weren't prepared to make any further payments towards the settlement sum, having already paid £14,000 in respect of this, but they would pay V's Solicitor's costs in their entirety and £650 in compensation to V. They also made the point that no payments had been deducted from the sums paid by them to V on account for the £500 excess applicable to the policy- nor indeed on their offer to settle the claim.

Because the offer fell £8,000 short of the settlement sum V agreed with the Claimant and the investigator remained of the view that it was reasonable for RSA to pay this, 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.

Having done so, I agree with the investigator that V's complaint should be upheld in the way he directed but for one adjustment to the compensation sum which I will address below in further detail.

As the investigator explained, I can only look at RSA's actions from 1 April 2019 because I'm not able to decide complaints made by V before this time as small/medium sized enterprises didn't fall within this Service's jurisdiction at that time.

Given the position of both parties, the issue before me to decide is essentially whether RSA should pay another £8,000 in respect of the settlement sum V agreed with the Claimant. RSA takes the view that this amount is essentially representative of sums that wouldn't have been covered under the policy so they shouldn't have to pay this.

Having considered everything, I don't think it's fair or reasonable for RSA to apply the terms of the policy strictly in this case. RSA has accepted that they did something wrong by failing to consider the claim from 1 April 2019 and explain what V was covered for. So, it falls to me to determine what the consequences of this were. RSA didn't accept the claim until March 2022- so almost three years later. In that time V was left to deal with the claim without the benefit of the policy cover it purchased.

In that time V sought to defend the claim and explored settlement. But I appreciate why V didn't settle the claim sooner- it was after all covered for a big proportion of the loss being claimed for by its RSA policy- so settling the claim without RSA's approval would've potentially meant it would've had to cover that loss itself. Despite this, V's Solicitor's continued with their efforts to agree a reduced settlement, thereby reducing RSA's liability rather than proceeding to trial. And whilst it's true that RSA didn't approve the settlement figure before it was agreed, they were at the very least responding to V at that point to confirm the availability of cover. Indeed, settlement appears to have been reached after V's Solicitor obtained the advice of a Barrister who said that V was likely to be liable for 60% of the claim. Given the circumstances, and V's Solicitor's repeated requests for RSA to confirm its agreement to the settlement reached, I can see why V felt it had no option but to bring matters to conclusion by settling without RSA's approval. The effect of doing so did in any event reduce RSA's liability on both costs and the sums claimed by the Claimant.

And I agree with the investigator that the offer agreed with the Claimant was a global one- so it wouldn't be fair to reduce it on the basis that a proportion of it might relate to items that weren't initially covered by the policy. Had V waited for RSA to approve the offer and not settled, I have no doubt that RSA's exposure to both costs and damages would've been considerably more than the £8,000 its refusing to pay V.

RSA say that V settled the claim on the terms it did in the knowledge that RSA wasn't prepared to cover every aspect of the claim. I've already set out why I think it was reasonable for V to settle the claim when it did. The fact that they did so without RSA agreeing every aspect of it some considerable time after they failed to do anything at all, doesn't in my view mean that RSA shouldn't cover the additional £8,000 being claimed by V in respect of the settlement.

Overall, had matters gone as they should, I don't think V would've found itself in the position it did because RSA would've confirmed what was covered under the policy and allowed V's Solicitor's to explore settlement for an amount that reflected that much sooner in the litigation- and certainly not three years into it.

I note that RSA has referenced that fact that no deductions have been made by it for the £500 excess applicable to the policy. I agree that RSA is entitled to deduct that from the claim, but I also take the view that the award of redress the investigator has awarded doesn't go far enough to compensate V for the three years of inconvenience of defending litigation without the benefit of a response on insurance cover that it instructed Solicitors to continue chasing. Because of this I think that an additional award of £500 is appropriate, which would be cancelled out by deduction of the excess in any event. This issue is one I asked the investigator to put to the parties and invite any further comment before I determined it. V has accepted what I've said but RSA hasn't. They take the view that there isn't any evidence of V chasing for a response after making the initial claim beyond a few times. They say contact from V was sporadic and infrequent and when the complaint was made to this Service it was about a different insurer. RSA also questioned what the additional award was for.

I've considered what both parties have said on this point and I'm not satisfied that RSA did enough in the circumstances. The various items of correspondence I've seen from V's Solicitors chasing for a reply on the claim was enough in my view to warrant a response. And even if there were periods where V didn't chase say every month in the three year period, I can understand why. Firstly, no substantive response on cover was being received from anyone who was potentially responsible for their claim and secondly, their focus was very much on dealing with the claim itself whilst seeking cover. And it's true that V thought another insurer was responsible for the claim when they got in touch but that's because of the way in which the policy was set up. RSA is ultimately responsible for the claim its claims handlers' actions in failing to properly deal with the claim. And it's true that the compensation I'm suggesting is higher than that awarded by the investigator but I think it's more appropriate to accounts for almost three years of inconvenience to V in defending litigation without the benefit of a response on insurance cover that it was entitled to.

Finally, I know that V has accepted the investigator's view but for the sake of completeness I agree that V isn't entitled to its own Solicitor's costs in pursuing its insurance claim either with RSA or its broker because there's nothing to suggest that V couldn't have done this itself and without incurring Solicitor's costs as a result.

## **Putting things right**

For the reasons set out above RSA should pay V:

- A total of £22,000 in respect of the settlement offer it reached with the Claimant, but they will be entitled to deduct the sum of £14,000 they've already paid towards this;
- V's Solicitor's costs amounting to £64,278.20 but they will be entitled to deduct £38,247.23 they've already paid towards this;
- £1,150 for the inconvenience it caused in failing to respond substantively to V's claim for three years
- Any interest on sums V has already paid the Claimant or its Solicitors that has yet to be reimbursed by RSA at a rate of 8% per year simple from the time that payment was made, until it's paid. I haven't received any representations that interest is applicable in this case but if it is I'd expect V to evidence what it's paid and when in order to allow RSA to calculate if anything is payable in respect of this.

RSA will be entitled to deduct £500 from the sums it's paying to V to represent the policy excess applicable to this claim.

## **My final decision**

I uphold V's complaint and direct it to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 23 March 2023.

Lale Hussein-Venn  
**Ombudsman**