

The complaint

Mr and Ms B complain that Royal & Sun Alliance Insurance Limited (“RSA”) has unfairly withdrawn its offer to pay an unsatisfied judgment under her contents insurance policy.

What happened

In 2017, Ms B suffered a personal injury whilst receiving a beauty treatment. So she took legal action against the beautician and the salon.

RSA initially said the contents insurance policy would cover this claim under the “liability of others” section if the defendants failed to satisfy an award for damages and legal costs.

Ms B went on to win her case and was awarded damages and costs, but the defendant failed to pay. When she reverted back to RSA, it said it had made a mistake as this claim didn’t meet the requirements of the section of cover. It offered £100 compensation to put things right.

Ms B says RSA has made a negligent misrepresentation, and as a result she’s suffered severe monetary loss. She made a complaint, which she brought to our service – but our investigator didn’t uphold it as she was satisfied RSA’s offer of compensation was fair. Ms B didn’t agree, so the complaint was passed to me and I issued the following provisional decision.

My provisional decision

The terms and conditions of Ms B’s policy says that it will cover the following:

“Liability of others.

We will pay the unpaid amount of any damages and costs awarded to you for compensation for bodily injury or damage to property.

This compensation must have been awarded by a court in the United Kingdom, the Isle of Man or the Channel Islands.

We will pay the amount if:

- a) you have not received full payment within three months of the date of the award; and*
- b) the bodily injury or damage happened in the United Kingdom, the Isle of Man or the Channel Islands; and*
- c) you would have had a valid claim under section 24 of this policy if the award had been made against you; and*
- d) there is not going to be an appeal.”*

When RSA first considered the claim, it confirmed that cover would be available under this section if the defendants failed to pay any award made by the court. But on review, it found that the claim didn’t meet the requirements of point C above.

Section 24 of the policy says:

“Occupier’s and personal liability.

We will pay all amounts you or a member of your family legally have to pay for causing:

- *accidental death or injury; or*
- *accidental loss of or damage to property;*

which is caused by an accident happening during the period of insurance and arising:

- *from your occupation (but not ownership) of the buildings; or*
- *in a private role not connected with owning the buildings.*

What is not covered

Injury or damage arising from...your business, trade, profession or employment.”

RSA say if this claim was reversed and was being pursued against Ms B as the beautician who had injured a customer during a beauty treatment, it wouldn’t be covered under section 24. This is because there isn’t cover for claims arising from Ms B’s business or employment. As such, there is no cover under section 27 (liability of others).

I’m satisfied the claim doesn’t fall within the policy cover. So RSA has made an error when it initially said it was.

I must be clear that we’re not the regulators and it isn’t my role to fine or punish a business. In addition, we’re not the courts but an informal alternative. Where a business has done something wrong or unfair, our role is to ensure the business puts the customer back in the position they would’ve been in had everything been done correctly. And if the wrongdoing has had an impact on the customer, we would expect the business to compensate them.

So to do this, I have to determine what position Ms B would’ve been in had RSA told her from the outset that there was no cover under the policy.

Ms B tells us on her complaint form that RSA informed her that she was covered at the start of her claim when she’d instructed her solicitors. But RSA say it was first notified of the claim in October 2021, by which time the claim was already ongoing in court.

The timing of when this error occurred makes a big difference to this complaint. I say this because if RSA had incorrectly informed Ms B that she was covered before she initiated legal proceedings against the beautician, this may have impacted her decision to proceed with the case and incur costs of the basis that the policy would cover an unsatisfied judgment.

So I’ve carefully looked at the evidence available. But I can’t see any correspondence with RSA regarding this claim until 2021, by which time the legal proceedings were underway. So I can’t fairly say that RSA’s error had any impact on Ms B’s case or her decision to pursue it. So even if RSA had declined the claim correctly at the first opportunity, Ms B would be in the same position she is now.

I do think RSA should compensate Ms B for failing to manage her expectations as there's no doubt she would've been disappointed to find out she wasn't covered for her claim after all. And I think the offer by RSA of £100 is fair in the circumstances.

Responses to my provisional decision

Neither party had any further submissions in response to my provisional decision.

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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

Royal & Sun Alliance Insurance Limited has already made an offer to pay £100 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 £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr B to accept or reject my decision before 28 March 2023.

Sheryl Sibley
Ombudsman