

The complaint

Mr B complains that RAC Insurance Limited fail to provide cover for his legal costs when he made a claim on his motor protection legal insurance policy.

What happened

In March 2022 Mr B contacted RAC to make a claim on his policy. He said:

- He'd received a Notice of Proposed Driving Disqualification. The letter had advised that he'd been convicted of driving offences in his absence and the court was considering whether he should be disqualified from driving.
- He had replied to the court and requested a hearing, which was arranged for 19 March 2022. He had attended on 19 March, but the court was closed.
- He'd emailed the court to confirm he had gone to the court and telephoned to be told the court was closed but didn't receive a reply to his email.
- On 22 March 2022, the court had disqualified him from driving for six months but on 23 March the court confirmed the case has been reopened and a hearing would be held on 31 March.
- He had consulted solicitors, who had advised him there were good prospects of success. The solicitors had quoted a fee of £2,000 plus VAT to represent him. He provided contact details for the solicitors.

Mr B says RAC never contacted his solicitors, but said he should instruct them and then claim his costs back. The solicitors represented him at the hearing and the outcome was successful; he wasn't disqualified from driving, but did receive some points on his driving licence and a fine.

RAC instructed its panel solicitors who contacted Mr B after the court hearing had taken place. He says they confirmed his case did have reasonable prospects of success but despite this RAC didn't agree to refund his legal costs, so he complained.

When our investigator considered the complaint their initial view was that RAC hadn't been at fault. But after considering further points made by Mr B they concluded that RAC should reimburse his costs, together with interest. RAC accepted this and agreed to pay compensation of £150 to Mr B. Our investigator thought that was a reasonable way to resolve the complaint but Mr B has asked for RAC to repay the fine he was ordered to pay. He says if the claim had been dealt with correctly, the fine might have been avoided.

The investigator didn't think the fine had arisen as a result of any failing by RAC and remained of the view compensation of £150 was fair.

As no agreement has been reached, I need to make a 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.

The policy provides cover for Mr B's legal costs were he is faced with suspension or disqualification of his driving licence and there are reasonable prospects of avoiding that outcome. It's common in legal expenses insurance for policies only to provide cover if the case has a reasonable chance of success.

At the time when he made his claim, Mr B provided details of solicitors he had consulted, who had advised he did have reasonable prospects of success, in which case he would be entitled to cover for his legal costs. RAC has now accepted this and agreed to repay his costs, together with interest. So that's no longer in dispute. The outstanding issue is whether a further payment of £150 compensation is fair, or whether RAC should reimburse Mr B for the fine he was ordered to pay.

The policy doesn't cover the payment of fines. But Mr B says he only incurred this fine because his claim wasn't dealt with correctly and he shouldn't be out of pocket as a result of this.

Mr B's argument is that because the claim wasn't dealt with properly, he missed the time limit for an appeal – the deadline was 28 days after the hearing in March 2022 and RAC didn't appoint the panel solicitors until June. And he says if he'd been able to appeal, the panel solicitors would have argued that the police had missed the deadline for serving the notice of intended prosecution, so there's evidence he could have achieved a better result. He thinks the solicitors he instructed wanted to argue the case quickly, for the maximum fee and didn't raise the limitation issue, which was only mentioned later on by the panel firm.

I've considered Mr B's argument carefully. While it's possible he might have achieved a better outcome if things had been dealt with differently, I'm not persuaded by the evidence that this is what would have happened. The panel solicitors only mentioned this some time later. I haven't seen any detailed legal argument showing this would have been raised at the time or, if it had, that it would have been successful. The fact that something might have happened doesn't necessarily mean that it would have happened. The solicitors he was using could have raised this argument if they felt it had merit. I can't say why it wasn't pursued or what would have happened if it had been.

For these reasons, I don't think it's fair that RAC should reimburse Mr B in respect of this. But I agree his legal costs should be paid, together with interest. And Mr B was upset by the fact his claim wasn't covered at the time, and was put to some trouble in having to pursue his complaint in order to recover the costs he incurred. So it's fair that he should be compensated for this and I agree the figure of £150 is a fair reflection of the distress and inconvenience caused.

It's not clear to me whether RAC has now reimbursed the legal costs but if it hasn't done so already then they should now be repaid, together with interest.

My final decision

I uphold the complaint and direct RAC Insurance Limited to

- Reimburse the legal costs Mr B incurred together with simple interest at 8% per year from the date Mr B paid those costs to the date of settlement*; and
- pay compensation of £150 for the distress and inconvenience caused to Mr B.

* If RAC Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM

Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 May 2023.

Peter Whiteley
Ombudsman