

## **The complaint**

Mrs and Mr J are unhappy Royal & Sun Alliance Insurance Limited declined their legal expenses insurance claim.

RSA are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the claims handler. As RSA have accepted they are accountable for the actions of the claims handler, in my decision, any reference to RSA includes the actions of the claims handler.

Mr J is a joint policy holder, however as the claim and complaint were made by Mrs J, for ease I will only refer to her in my decision.

## **What happened**

Mrs J made a claim for assistance to RSA for legal costs to defend a breach of contract claim.

RSA considered the claim and referred it to a panel solicitor to review. The panel solicitor said the claim had prospects of success but raised concerns about the low value of the claim. It said it would cost more to defend the legal action than the amount in dispute. Considering this information RSA then declined Mrs J's claim.

Mrs J was unhappy about this and complained to RSA, but it didn't change its position. She then brought the complaint to this service.

An investigator looked at the complaint and said RSA was entitled to decline the claim in line with the policy terms and conditions, so she didn't think it had done anything wrong.

Mrs J asked for the complaint to be reviewed by an ombudsman. She added that the case against the third party was struck out by the court.

## **My provisional findings**

I issued my provisional findings on 15 March 2023, I said I intended to uphold the complaint for the following reasons:

*"It isn't unusual for legal expenses policies to contain a term which says an insurer will not fund a claim where it would not be proportionate to do so. We don't think this is unfair. Court action can be expensive. A privately paying individual wouldn't usually want to pay more to defend an action than the amount in dispute. We wouldn't expect a legal expenses insurance to fund claims in these circumstances either.*

*However, there is a further term in the policy which says. "Alternatively, where it may cost us more to handle a claim than the amount in dispute we may, at our discretion, pay to the beneficiary the amount in dispute which will represent full and final settlement under this policy providing the beneficiary has complied with all terms and conditions"*

*Having looked at the review by the panel solicitor I can see they commented that as well as*

*the cost of providing legal representation, there would also be an action which could be taken to apply to 'strike out' the claim. And that alone would incur a fee of £275.*

*I think it is important in low value claims like this that consideration is given to what, if any, costs could be covered if they may be useful in achieving the overall aim. Here the money claim had already been submitted, so sending a solicitor's letter for example, may not have made any difference.*

*However here it is clear the panel solicitor thought that Mrs J maybe successful in her application to 'strike out' the claim. But no consideration was given by RSA as to whether the fee for this alone, would be something that could be funded under the policy.*

*Mrs J has said she made an application to strike out the claim, which was granted by the court so here, her actual loss was the court fee. However as set out above, I do think RSA should have considered the policy terms more carefully and considered making a discretionary payment to Mrs J.*

*Because it didn't do so, I think RSA should make a payment of £50 compensation to Mrs J to reflect the impact its error had here. Mrs J would have always needed to have taken action and represented herself in this matter, however she would have done so knowing part of the cost was covered. I also think it would be fair for LV to pay an equivalent amount to Mrs J of what she paid in court fees to make this application".*

### **Responses to my provisional decision**

Mrs J said while she was happy I had upheld the complaint, she didn't think the compensation award sufficiently reflected the stress she went through.

She explained she did not have the money to apply to strike out the claim in advance. She was advised to make the application a few days before the court hearing and then this would be considered first. Mrs J explained had RSA made payment for the court fee then she would have avoided the stress of having to prepare a defence to the main claim, as the matter could have been brought to a conclusion many months earlier.

RSA responded saying it did not agree with my provisional findings. Based on the policy terms it doesn't need to make any payment where a claim is considered disproportionate to pursue. And in this instance, because the matter in dispute was brought about by Mrs J's initial actions, they don't think it would have been reasonable to consider a discretionary payment in any event. It added that it only considers discretionary payments in exceptional circumstances.

### **Further developments**

Based on Mrs J's response, I wrote to both parties saying that I intended to change the redress to be awarded.

I explained that I was still minded to uphold the complaint but as Mrs J didn't pay a court fee in the end, this would not be a payment RSA would need to make.

However, I still think this was a payment RSA should have considered and therefore I intended to award £325 compensation instead to reflect the trouble and upset she was caused.

## **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.

It appears when considering its response, RSA has got confused between the different legal claims that have been raised.

The event relating to this insurance claim concerned a third party effectively attempting to reverse a money claim that had already been settled. And understandably, this was struck out by the court. So, I don't think any prior events have an influence here on whether it was reasonable to consider a discretionary payment on this particular claim.

For the same reasons as set out in my provision decision, I am satisfied it would have been appropriate for RSA to do so in this instance.

I've considered what Mrs J has said and I do recognise she was put to additional stress and inconvenience by having to prepare for the court action. There is now no way of knowing exactly when a court would have considered the strike out application and how far in advance that would have been.

Having reconsidered everything and the additional comments that have been made. I uphold this complaint against RSA, I don't think it dealt with this claim in a fair and reasonable manner. This caused trouble and upset to Mrs J and therefore it should pay her £325 to recognise this.

## **My final decision**

My final decision is that I uphold Mrs J and Mr J's complaint against Royal & Sun Alliance Insurance Limited. I direct it to pay Mrs J £325 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 26 April 2023.

Alison Gore  
**Ombudsman**