

## **The complaint**

Mr B is unhappy with what Royal & Sun Alliance Insurance Limited did after he made a claim on his legal expenses insurance policy.

Although the policy is in joint names (Mr B and Mr B1) as the complaint solely relates to a claim made by Mr B I'll refer to him in this decision.

## **What happened**

In September 2022 Mr B contacted the legal helpline provided as part of his legal expenses insurance in relation to a potential employment dispute. Following that he was sent an email to claim on his policy as the dispute was too specific for the helpline to assist with. Mr B completed that on receipt (on 28 September). RSA told him on 11 October that its checks showed he didn't have legal expenses cover attached to his policy.

After further discussion with RSA, Mr B provided his policy schedule and on 28 October it confirmed he did have cover in place and referred the matter to panel solicitors for an assessment of whether it had reasonable prospects of success (a requirement for cover to be provided). The panel solicitors contacted Mr B on 4 November but by then he'd sought help from a local firm of solicitors as he needed assistance in responding to allegations his employer had made. And those solicitors had negotiated an exit agreement with his employers. Mr B thought RSA should pay the costs he'd incurred in relation to that.

RSA accepted it incorrectly said Mr B's policy didn't include legal expenses insurance. It paid £75 in recognition of the impact of that on him. But it didn't think it was responsible for the costs he'd incurred in engaging his own solicitors and believed it had made clear their appointment would only be considered when Mr B was ready to issue legal proceedings.

Our investigator agreed there had been delays by RSA. But before cover could be confirmed it would always have needed to establish whether the claim had reasonable prospects of success which would in itself have taken time. She didn't think RSA was responsible for the costs Mr B incurred and thought the £75 it had offered was a reasonable way of recognising the impact on him of the delays it was responsible for.

Mr B didn't agree. He said RSA told him once his claim was validated he would get a call within five working days from a solicitor who could assist him. But because of validation delays he had to obtain his own legal advice at the start of November. He said he was told by RSA he could use his own solicitor. He thought if RSA had acted correctly he could have avoided their costs. And if he'd received legal advice at an earlier stage the termination of his employment might have been avoided. So I need to reach a final 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 relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

RSA has accepted the information it initially provided about whether Mr B had legal expenses insurance included with his policy was wrong. And having reviewed the timeline of events I think there were also other occasions when it could have moved matters forward more quickly. For example, it had completed validation checks on 4 October but information about that wasn't provided to Mr B until a week later.

However, I can see RSA then asked Mr B if he could provide his policy schedule so it could see from that whether he had legal expenses cover in place. Understandably Mr B wasn't able to do that as he was away on holiday but that did cause a further delay which I don't think RSA is responsible for. And I think it progressed matters within a reasonable timeframe once Mr B was able to provide his policy schedule. But, given the identified delays by RSA, I think it's fair to say without those the referral to panel solicitors which took place on 28 October would have been made earlier. So I've gone on to think about the impact on Mr B of that delay.

I appreciate this was a particularly difficult time for him with what appear to have been fast moving developments at his employer. I understand why he needed legal advice and assistance in relation to those matters. But I'm not persuaded that even if RSA had acted as it should he wouldn't have needed to obtain that advice from his own solicitors.

I say that because it's not clear to me he had a claim his policy would have covered at all. It covers legal expenses for "*the cost of you taking legal proceedings against your employer over your contract of employment*" And legal proceedings are defined as "*Legal action in a civil court to protect your rights in a dispute*". So the policy would potentially have covered a claim Mr B wanted to bring in the Employment Tribunal.

But at the point he contacted RSA I understand Mr B's employer was conducting an investigation and he was concerned at a lack of communication and progress with this. He wanted to speak to a solicitor to discuss matters and get advice in case this led to an unfair dismissal claim in future. I absolutely understand why Mr B would want to do that, but I don't think that's something his policy would in itself cover given those proceedings hadn't concluded and no formal claim against his employer had been made.

In any event his policy doesn't cover "*any claim where there is not a reasonable chance of you winning the case and achieving a reasonable outcome*". The policy wouldn't engage with Mr B's claim unless that was the case. And that's the issue RSA asked the panel solicitors to consider. I can see RSA advised in its letter to Mr B the panel firm would need to carry out professional checks and the assessment should then take between 5-10 days. That's not an unreasonable timeframe in my experience. But given the issues Mr B was facing I think it's unlikely a decision would have been reached on that in advance of him needing legal advice to address the problems he was having at work.

Mr B believes after the referral to solicitors had taken place he should have received a call within five working day to provide him with advice about his claim. However, the referral to panel solicitors was so they could establish if the above policy terms were met and so whether Mr B's claim was one for which funding should be provided under those terms. I accept as part of that assessment the panel firm might nevertheless have been able to provide Mr B with some advice. But that wouldn't have been their key focus; that would have been on establishing whether he was likely to win any claim. And Mr B has told us the assistance he received from his own solicitors included raising a timeline of events, assisting in raising a grievance, sending letters to his employer's solicitor and negotiating an agreement to terminate his employment. I don't think that's something the panel solicitors

would have provided without it being established Mr B had a claim that was covered by his policy and which he was likely to win.

So even if RSA had acted as it should I think it likely Mr B would have been in the same position; matters would have advanced more quickly but cover wouldn't have been confirmed before he needed to obtain legal advice (because the prospects of success assessment wouldn't have been completed). And that in itself assumes Mr B could have shown he had a claim that met the terms of his policy.

As a result I think Mr B would always have needed to seek his own legal advice in order to deal with the fast moving situation he was facing at his employer. And having reviewed the correspondence between Mr B and RSA I don't think it did agree he could use his own solicitor. Mr B did raise this issue with RSA on 21 October and in response it told him "*we would only be able to consider a non-panel solicitor once you were ready to issue legal proceedings*". I can't therefore conclude the costs he incurred in using his own solicitor are ones RSA should reimburse him for. And, on balance, I think the compensation RSA has already paid is a fair of recognising the distress and inconvenience he was caused by the delays it was responsible for.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mr B1 to accept or reject my decision before 7 March 2024.

James Park  
**Ombudsman**