

The complaint

Mr C's complaint is about the handling of claim under the legal expenses insurance section of his gun insurance policy provided by Royal & Sun Alliance Insurance Limited ("RSA").

RSA is the underwriters of this policy, *i.e. the insurer*. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As RSA has accepted it is accountable for the actions of the agent, in my decision, any reference to RSA includes the actions of the agents.

What happened

Mr C had applied for a gun ownership certificate which was refused. He had until 28 June 2023 to appeal the refusal. On 8 June 2023, Mr C contacted RSA to request cover under his policy for representation in appealing the decision. RSA passed the matter to one of its panel of pre-approved solicitors to assess the claim. The solicitors determined that it was unlikely that an appeal would succeed and so RSA refused cover of the claim.

Mr C is very unhappy with this and with RSA's handling of the claim. He says delays on RSA's part meant the time allowed to appeal the refusal had expired. As a result, Mr C says he has to wait a year to reapply for a certificate, which will involve additional expenditure for medical and other supporting evidence. Mr C wants compensation from RSA for the impact its delays has had on him, including this additional expense. In addition, he says the insurance has failed him so he should also be refunded.

RSA does not accept that it caused any delay. RSA also says it is entitled to rely on the advice of the solicitors and, as they determined that the claim did not have reasonable prospects of success, it was entitled to refuse the insurance claim.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld as she thought RSA had handled the claim fairly and reasonably overall.

Mr C does not accept the Investigator's assessment. He says it does not take a legal expert to know that if the response from RSA (in respect of a policy that covers gun certificate appeals) was not given within the time limit for the appeal, then it has not provided the service it was meant to. Mr C also says there have been failings in every part of the process and his complaint was ignored.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

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.

Outcome of the claim

Mr C's policy covers:

“INSURED EVENTS

Section 1 – Certificate Appeals

What is Covered?

Professional Fees incurred in an appeal or representation to the relevant statutory or regulatory authority, Court, tribunal or other mandatory body following an act, or omission or alleged act or omission which leads to:-

- a) the suspending, revoking, curtailing, altering the terms of or refusing to renew Your firearm or shotgun certificate licence(s) provided to You in accordance with legislation current at the time of issue; or*
- b) the failure to grant You a firearm or shotgun certificate or the failure to grant a variation to Your firearm or shotgun certificate.”*

However, like virtually all legal expenses policies there is also a requirement that any intended claim has a reasonable prospect of succeeding. Mr C’s policy states:

“GENERAL POLICY EXCLUSIONS

This insurance does not cover: ...

- 4. appeals unless You notify us in writing of Your wish to appeal at six working days before the deadline for giving notice of appeal expires and We consider the appeal to have reasonable prospects of success”.*

Prospects of success is defined in the policy as being: *“At least a 51% chance of the Insured Person(s) achieving a favourable outcome”.*

We do not regard this as inherently unfair: a legal expenses insurer cannot reasonably be expected to fund expensive litigation whose prospects of success are speculative or uncertain.

Where an insurer has rejected a claim for lack of prospects, it isn’t for us to evaluate the merits of the legal case. Instead, we look at whether the insurer has considered the claim fairly. So long as it has obtained independent legal advice on prospects from suitably qualified lawyers, we will not generally question its reliance on that advice, unless we think it was obviously erroneous or based on factual mistakes. For the avoidance of doubt, I’ve seen nothing in this case to justify such a conclusion.

The panel solicitor concluded there was *“very little prospect of success and [Mr C] should not appeal”* and that given the circumstances he should give it more time before applying again to have a chance of obtaining a certificate.

I have not seen any evidence that would suggest that the panel solicitor’s opinion on the prospects of any appeal was wrong and should not have been relied on. I therefore consider RSA was entitled to refuse the claim, as it did not meet the policy requirement of having reasonable prospects of success.

Delays in assessing the claim

Mr C also says that RSA took too long to inform him of the outcome of his claim and because of that he missed his chance to appeal the refusal of his certificate.

RSA was notified of the claim on 8 June 2023. It says it had to verify the policy cover and it then referred the claim to the panel solicitors. The panel solicitors wanted some further information and they informed Mr C of the opinion that the claim did not have prospects of

success on 30 June 2023. I do not think there was any undue delay but I do appreciate RSA and the panel solicitors would have been aware of the tight deadline for any appeal and that Mr C would have wanted an answer sooner.

However, even if the assessment should reasonably have been provided sooner than it was, I do not think it would have changed Mr C's position. I say this because the solicitors considered there was little prospects of Mr C's appeal succeeding and so even if this should have been told to him sooner, RSA would still not have provided cover for the appeal. So Mr C would still have had to wait to reapply at the next opportunity and/or appeal the decision himself unrepresented.

It follows that I do not think that RSA is responsible for any costs or inconvenience incurred in Mr C reapplying for the certificate at the next opportunity to do so. I also do not consider that RSA is required to refund the premiums for the policy.

Complaint-handling

Mr C says that RSA did not respond to his complaint within the eight weeks that it should have done.

Complaint-handling is not a regulated activity in its own right, so I cannot consider RSA's handling of Mr C's complaint. I do, however, acknowledge that a lack of response is frustrating. In this case, Mr C had already referred the matter to this Service, so he was not prevented from progressing the complaint by any delay in RSA providing its formal final response to his complaint.

Having considered everything provided to me. I do not therefore consider that there is any award I can reasonably make against RSA.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 April 2024.

Harriet McCarthy
Ombudsman