

The complaint

Dr Q and Mrs G's complaint is about a claim Dr Q made on their Royal & Sun Alliance Insurance Limited ('RSA') legal expenses insurance policy.

Dr Q says RSA treated them unfairly.

In this decision all references to RSA include their claims handlers.

What happened

Dr Q made a claim on his and Mrs G's RSA legal expenses insurance policy to consider some problems they had with their neighbours.

RSA asked Dr Q to provide them with further information about the claim and listed the types of information they wanted. One of those items was a surveyor's report. Dr Q supplied RSA with the information requested but told them he didn't have a surveyor's report. In response to this RSA requested the information again, including a surveyor's report. Dr Q says this caused him to feel stressed and consider whether he had to fund a surveyor's report himself. Dr Q has also made submissions about how RSA's actions impacted his existing health conditions. In addition, he asked RSA to fund a report, but RSA refused. Dr Q says RSA should pay for a surveyor's report as this should have been covered by his legal expenses insurance policy.

In response RSA have said they did ask Dr Q for a surveyor's report initially, but this was part of a generic request for information. RSA acknowledge that Dr Q did tell them he didn't have a report, but they continued to ask for this and that they shouldn't have. As such RSA apologised and offered Dr Q compensation of £75 for this. Following this, RSA referred the file of papers to their panel firm of Solicitors who determined that the claim as it stood, didn't have reasonable prospects of success. As such RSA said they wouldn't fund anything further. That's why they said they weren't prepared to fund any expert evidence at that point.

Dr Q remains unhappy. He takes issue with how his complaint has been handled and thinks RSA should also fund the cost of a letter to his neighbours, which was recommended by the panel firm. He also wants RSA to fund an expert's report.

Our investigator considered Dr Q's complaint and concluded it shouldn't be upheld. Dr Q doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I don't uphold Mrs G and Dr Q's complaint. I'll explain why.

It's right that when Dr Q made a claim on his and Mrs G's policy that RSA asked him for information, including a surveyor's report and that after Dr Q provided the information he

could and explained he didn't have a surveyor's report, RSA asked for this again.

When Dr Q complained about this RSA recognised that they'd made a mistake and shouldn't have asked for this information twice. The apologised for this and offered him £75 for the stress this might have caused. Looking at the correspondence between the parties, I don't think that the information RSA asked for on either occasion was absolute. Rather it seemed to comprise of a list of items that might have been available. There was nothing however in those communications that suggested that Dr Q needed to obtain a report at his own expense and supply this to RSA. And if he was confused about whether this was necessary, he could have called RSA and asked for clarity. I appreciate it was unhelpful for RSA to ask for this information again when Dr Q explained he didn't have a report, but after he explained things a second time, RSA accepted the position and arranged for his file to be reviewed by their panel firm of Solicitors.

I appreciate Dr Q felt stressed by RSA's requests for an expert report but for the reasons I've mentioned I don't think the impact of these requests were so considerable or should have been taken to be absolute that the amount they have offered Dr Q to compensate him for this is not adequate. I appreciate that Dr Q had underlying health conditions that might have been exacerbated by two requests for information he didn't have, but I think the offer RSA have made is sufficient to compensate him for the stress he suffered. As such I don't think RSA need to do anything further here. If Dr Q hasn't received this amount, then he can contact RSA directly to request it now.

Turning now to Dr Q's complaint about RSA's decision not to fund either an expert report or letter before action after the panel firm advised on the merits of the claim. The panel firm's advice was that the occasions of parking Dr Q was complaining about by his neighbour would be unlikely to be actionable as the trespass wasn't occurring on a regular basis. He was advised to write to his neighbour making them aware that they should not be parking on his land without permission. Dr Q was also advised to get in touch if his neighbour started parking on his land more frequently. No reference was made to a report being required to determine any trespass here, so I'm unsure why Dr Q has referenced this at all. Indeed, the panel firm accepted the parking of a car on Dr Q's land without his permission did constitute a trespass but was not actionable because of the lack of frequency.

On the issue of bamboo, the panel firm concluded that Dr Q's neighbour was not currently claiming Dr Q's bamboo was trespassing on their land so there was no claim to defend at this stage. It was suggested that Dr Q could obtain expert evidence from an arboriculturist as to the potential for the bamboo to cause property damage if he wanted to. Finally on the question of a claim in harassment, the panel firm thought his wasn't a claim that was likely to be covered by the policy and even if it was, the claim wasn't particularly strong. Overall, it was determined that the claims Dr Q was advancing didn't have reasonable prospects of success as required for cover to continue.

Dr Q has asked for RSA to fund an expert report and a letter before action. The advice he was given was that there was no claim to defend in respect of the bamboo currently. And as such his cover wouldn't engage here. But even if it did, the panel firm determined there are no reasonable prospects of success as things stand so RSA aren't obliged to fund anything further, including a letter before action. Indeed, the panel firm's advice was that Dr Q should write to his neighbour himself, not seek assistance from RSA for a letter to be written on his behalf. Whilst I appreciate Dr Q isn't questioning RSA's reliance on the panel firm's advice or the quality of that advice, it's important for me to make clear that where an insurer turns down a claim based on legal advice that it doesn't have reasonable prospects of success, we don't usually think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either. For that reason, I don't think

it was unreasonable for RSA to turn down Dr Q's further requests for funding of either expert evidence or for legal costs in drafting a letter to his neighbours.

Finally, Dr Q has complained about the way in which his complaint was handled by RSA. As the investigator explained, complaint handling on a standalone basis isn't a regulated activity and therefore isn't one that falls within our jurisdiction to consider.

My final decision

For the reasons set out above, I don't uphold Mrs G and Dr Q's complaint against Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr Q to accept or reject my decision before 3 July 2024.

Lale Hussein-Venn
Ombudsman