

The complaint

Mr S complains about Royal & Sun Alliance Insurance Plc's refusal of a claim under the legal expenses insurance section of his home insurance policy.

Royal & Sun Alliance Insurance Plc ("RSA") is the underwriter of this cover, *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

In April 2023, Mr S made a claim under his policy with RSA for the cost of defending an action being brought against him by his bank in relation to service charges for his property. I understand the freeholder collected the service charges from the bank, which is seeking reimbursement from Mr S, but Mr S disputes the amount of the charges and whether they were actually paid.

RSA considered the claim but declined it, as it said the dispute had arisen before the policy had started and as such is excluded from cover. RSA says the policy started at end July 2019 and the documents and information provided by Mr S show that the dispute with the bank had started in 2017.

RSA also says that it considered whether there would have been cover anyway under the property protection and the contract disputes sections of the policy but said that it did not fall within the cover provided in any event.

Mr S was unhappy with this and brought his complaint to us. Mr S says his policy clearly states that any consumer or commercial dispute is covered and he has a contract with his bank which is a "*commercial supplier for services*", so has a valid claim. RSA has taken his premium for the policy but refuses to provide any cover when needed.

One of our Investigators looked into the matter. She did not recommend that Mr S's complaint be upheld, as she was satisfied RSA was entitled to refuse cover for the reasons it had.

Mr S did not accept the Investigator's findings. Accordingly, the matter has been referred to me to review afresh.

Mr S says that he has sought professional advice on this matter "*and it's unequivocal that Royal & Sun Alliance Insurance Limited are legally bound to service my claim as per our contract. Any deviation from this obligation would constitute a breach of contract...*".

Request for discussion

Mr S has asked that I contact him before issuing my decision to confirm the complaint and for copies of everything sent to me by the Investigator.

Deciding ombudsmen don't routinely talk to either party to the complaint, as fairness would usually require that both parties be involved in any discussion at the same time. We may decide it is necessary to do so, if there is information that is unclear or a dispute about the facts of the case that we consider can only be clarified by discussing it with the parties.

Mr S has made his case clearly to the Investigator and I have been provided with all the correspondence and communications between him and RSA. The complaint turns on the interpretation of the policy wording and application of that wording to Mr S's claim. The evidence and positions of both parties about this is sufficiently clear in my opinion and so I don't consider it is necessary to discuss this case with the parties in order to fairly determine the matter.

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.

Mr S's policy with RSA provides cover for various legal disputes that a policyholder might become involved in. I have considered the cover provided under the two sections of the policy that both parties consider might be relevant to Mr S's claim.

Is there cover under the contract disputes section of the policy?

The contract disputes section of the policy says:

"Contract Disputes

We will cover the Costs and Expenses for the following:

- Your legal rights in a contractual dispute arising from an agreement or an alleged agreement which you have entered into for the buying or hiring in of any goods or services, or the selling of any goods.*
- Your legal rights in a contractual dispute or for misrepresentation arising from an agreement or alleged agreement which you have entered into for the buying or selling of your principal home.*

Provided that:

- You have entered into the agreement or alleged agreement during the Insurance Period".*

RSA says the contract between Mr S and his bank is a financial agreement for the purchase of a property, and that provision of a mortgage is not a personal good or service, so there is no cover under this section of the policy. It also says the mortgage was entered into before the start of the policy, so is not covered for that reason as well.

While Mr S has a contract with his bank, I agree that this was not for the "*buying or hiring*" of a good or service. It was a loan agreement and no service or goods were provided by the bank to Mr S under that contract.

In addition, the contract disputes section of cover only provides cover for contracts entered into during the policy period and the mortgage was already entered into before the start of this policy in 2019.

I therefore do not consider there is any cover for Mr S's claim under this section of the policy.

Is there cover under the property protection section of the policy?

The property protection section of the policy says:

"Property Protection

What is Covered?

We will cover the Costs and Expenses for your legal rights in a civil dispute relating to your principal home and holiday home, or personal possessions, that you own or are responsible for, following:

- An event which causes physical damage to such material property, provided that the amount in dispute is more than £100.*
- A legal nuisance (meaning any unlawful interference with your use or enjoyment of your land, or some right over, or in connection with it).*
- A trespass."*

It also specifically excludes *"any claim relating to the following: a contract entered into by you..."*.

The dispute between Mr S and his bank is not in relation to any physical damage, nuisance or trespass. In addition, this section of cover excludes claims relating to a contract entered into by Mr S. So I also agree with RSA that the dispute with the bank does not fall within this section of cover either.

I have also considered the rest of the policy but there are no other sections of the policy that would provide cover for this claim.

Pre-inception exclusion

RSA has also said that, even if there were cover under the policy, the claim would be excluded, as the dispute started before the policy and the policy excludes any pre-existing disputes. The relevant part of the policy says:

"What we do and don't cover

We will pay an Appointed Representative, on your behalf, Costs and Expenses for the insured incidents in this section as long as:

- The Date of Occurrence of the insured incident is during the Insurance Period and happens within the Countries Covered."*

I understand Mr S's bank had previously made a claim for possession of the property and the dispute with the bank goes back to 2017, and the policy with RSA did not start until 2019. Mr S has not provided any evidence to suggest this is incorrect. I am therefore satisfied based on the evidence provided to me that, even if there were cover under the policy in principle for the claim Mr S has made, RSA would also be entitled to refuse the claim on the basis it started before the policy was inception.

Having considered everything carefully, I do not consider there is cover for Mr S's claim for costs in relation to defending the claim made against him by his bank for payment of service charges.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 July 2024.

Harriet McCarthy
Ombudsman