

## **The complaint**

Ms and Mr M complain about how Royal & Sun Alliance Insurance Limited (“RSA”) dealt with a claim they made on a legal expenses insurance policy.

References to RSA are intended to include the actions of any agent working on its behalf.

## **What happened**

Below is only intended to be a summary of the main events which led to the complaint. It doesn’t therefore provide a detailed timeline of every incident or event that took place.

Ms and Mr M were in dispute with a third party about the quality of a fitted kitchen and works that had been undertaken. They contacted RSA to make a claim on their legal expenses insurance policy for assistance with legal costs associated with the contract dispute.

Due to the urgency of the matter, RSA agreed for Ms and Mr M’s chosen solicitor (“B”) to undertake immediate work to protect their legal position. But in line with the policy requirements, it asked that a prospects assessment was provided.

The policy requires that any intended action has at least a 51% chance of being successful before any cover will be provided.

B provided an assessment which said it thought Ms and Mr M had more than 51% chance of defending the claim against them and securing a successful counterclaim. B did however say that further information would be needed to confirm the exact values involved in both confirming the amount being claimed against Ms and Mr M and the total amount involved in the counter claim.

RSA considered the information provided by B and decided to ask its Preferred Law Firm to provide an opinion on prospects based on the information available at the time. The Preferred Law Firm said that it couldn’t confirm prospects existed without knowing the exact sums involved in the claim.

RSA at that point let Ms and Mr M know they needed to obtain a report, at their own cost, which set out that information before cover could be confirmed.

Ms and Mr M were unhappy about this and believed the reports B had reviewed already hadn’t been taken into account. They did however accept a further report was likely to be needed in any event and went onto obtain that report. The Preferred Law Firm then confirmed the claim had prospects of success so RSA told Ms and Mr M the policy would provide cover for their intended action. It also reimbursed the cost of the further report.

Ms and Mr M complained to RSA about how the claim had been handled. They said RSA had gone against the policy in asking for a second opinion. B had done as asked and provided a prospects assessment which met the requirement of the policy by stating the intended action had a more than 51% chance of being successful. Ms and Mr M complained they had been put to unnecessary stress, the Preferred Law Firm’s advice didn’t take into

account all of the available information, there was no requirement in the policy for all evidence to be provided upfront and the progression of the underlying legal claim had potentially been impacted.

RSA considered the complaint but maintained it was entitled to ask its Preferred Law Firm for an opinion on prospects and the policy doesn't cover any costs or expenses incurred before written acceptance of the claim. It explained the initial assessment provided by its Preferred Law Firm didn't take the existing reports into account as these hadn't been sent to it at that time. However, when it was in receipt of them, it asked the Preferred Law Firm to review them. The firm confirmed its position on prospects had not changed and the additional report was still required.

Our investigator looked at the case but explained to Ms and Mr M that he didn't think RSA had acted incorrectly. He said he thought the policy did entitle RSA to ask the opinion of a Preferred Law Firm and therefore it was entitled to decline the claim until a further report was provided which changed that position.

Ms and Mr M disagreed with the investigator's opinion and asked for an ombudsman to review the case. In doing so they reiterated their view that RSA was not entitled to go back to its Preferred Law Firm for a further assessment when B had already provided one. This put their claim at a disadvantage and frustrated it.

The case has been passed to me to decide.

### **My provisional findings**

I issued my provisional findings on 23 May 2024 in which I said I intended to uphold the complaint and direct RSA to pay Ms and Mr M £200 compensation. I gave the following reasons:

- *"RSA said in its response to Ms and Mr M's complaint that it must verify the prospects assessment with a Preferred Law Firm, this isn't strictly correct. I acknowledge the policy terms say that "We or a Preferred Law firm on our behalf, will assess whether there are Reasonable Prospects" but this doesn't mean this must happen in every case or that it always happens in practice. Here Ms and Mr M were asked to obtain a prospects assessment from B due to the urgency of the situation, which I think was a reasonable suggestion. The issue here is that although that prospects assessment was positive RSA chose to seek a second opinion which was then contradictory and, delayed the claim being accepted.*
- *While the policy terms do make it clear that claims require reasonable prospects of success, this doesn't mean that an insurer is entitled to decline every claim that requires expert evidence to support the merits of it or the prospects of recovery, unless this is funded by a policyholder.*
- *Our longstanding approach has been that it's for a policyholder to show that they have a valid claim. Ms and Mr M did that. And they provided a merits assessment which supported the claim had prospects of success. So I'm satisfied that they established there was a claim RSA should have considered, even if further evidence was required to conclusively assess prospects of success.*
- *So it would have been for RSA to fund and instruct suitable experts to assess the workmanship and quantum of the claims. That is part of the evidence gathering process that solicitor firms are instructed to prepare when a policyholder has demonstrated they have a claim. And it's not something Ms and Mr M should have*

*been responsible for obtaining or funding. Although the Preferred Law Firm raised concerns about the merits assessment, B had already, in its advice, acknowledged a further report would be required to confirm the exact figures involved. RSA accepted the claim once this report had been provided, so it supports that the initial assessment from B wasn't obviously wrong.*

- *RSA went on to pay Ms and Mr M the cost they incurred for the report, which had it not done so already, I would have directed it to do.*
- *I'm mindful that the additional report was always going to be required, however RSA's refusal to offer cover earlier would have been worrying for Ms and Mr M. As I have concluded that RSA should have offered cover earlier in the claim journey, I think its delay here caused Ms and Mr M trouble and upset and it should pay them compensation of £200 in total to reflect this. I've seen no other evidence which suggests the underlying legal claim was prejudiced by the delay.*
- *As part of their complaint Ms and Mr M have said they think the fee rates RSA have offered B are too low. However, this isn't a matter I've considered in this decision. RSA and B were still negotiating terms and this matter may have already resolved itself. Ms and Mr M will need to raise a separate complaint with RSA if they still remain unhappy about that. They would then be entitled to bring a new complaint about that matter to this service.*

*For the reasons above, I intend to uphold Ms and Mr M's complaint."*

## **Responses to my provisional findings**

RSA responded saying it had no further comments to make.

Ms and Mr M responded and said they were happy with the provisional 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.

Having considered both responses, I see no reason to depart from my original findings.

So, for the same reasons as set out in my provisional findings above, I uphold this complaint. I think RSA's refusal to offer cover earlier in the claim journey was not fair or reasonable and caused Ms and Mr M trouble and upset. To reflect the impact of its actions, RSA should pay Ms and Mr M a total of £200 compensation.

## **My final decision**

My final decision is that I uphold Ms M and Mr M's complaint against Royal & Sun Alliance Insurance Limited. I direct it to pay Ms M and Mr M a total of £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 4 July 2024.

Alison Gore  
**Ombudsman**