

## **The complaint**

Mr and Mrs K are unhappy with how Royal & Sun Alliance Insurance Limited progressed a legal expenses claim following a previous complaint to our service.

## **What happened**

Mr and Mrs K sought assistance from RSA with a neighbour issue in September 2022. There was a dispute over whether this claim had reasonable prospects of success (a requirement of the policy). That issue was considered in a previous complaint to our service. Our investigator found (in December 2023) that RSA should have either accepted a positive prospects assessment Mr and Mrs K's own solicitor provided or paid for a barrister's opinion of its own. He said it should pay legal fees they'd incurred to date (plus interest) and cover the claim going forward according to the terms and conditions of the policy. He also recommended a payment for distress and inconvenience.

Further discussion took place between Mr and Mrs K and RSA about the amount it would pay for the costs already incurred. RSA also sent its terms of appointment to their solicitors and said it would pay the policy rate of £130 an hour going forward. Neither that or other aspects of the terms of appointment were acceptable to their solicitors. RSA then said it would pay the court guideline rates for Mr and Mrs K's area of £278 an hour (plus VAT). It also said it would be prepared to pay 50% of costs on a monthly basis rather than making payment at conclusion of the claim. That offer remained unacceptable to Mr and Mrs K's solicitors. So RSA offered to provide a panel solicitor to progress matters.

Our investigator thought it was reasonable RSA asked Mr and Mrs K's solicitors to agree to its terms of appointment and it acted fairly in the offer made in relation to the hourly rate and payment of costs.

Mr and Mrs K didn't agree. They questioned where RSA had agreed to pay 50% of fees on a monthly basis and whether they'd be able to 'top up' the amount RSA had agreed to. They queried whether the amount RSA offered included VAT. And they raised concerns as to how RSA had implemented the agreement to pay costs reached as part of the settlement of their previous complaint. They asked an Ombudsman to review matters. 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.

I appreciate Mr and Mrs K are unhappy with the action RSA has taken to provide the redress agreed as part of the settlement of their previous complaint. However, I've explained in a separate decision why that isn't something I can consider. What I can consider are their concerns about how RSA dealt with their claim under the terms of their policy since the outcome of their previous complaint. And in relation to that the relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

Here the key issue relates to Mr and Mrs K's wish to use their own solicitor to progress the claim. I understand proceedings in relation to the claim have been issued (Mr and Mrs K also refer to a counter claim having been made against them). And the policy terms say *"if the appointed Preferred Law Firm cannot negotiate settlement of your claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest, then you may choose a law firm to act as the Appointed Representative."*

However, the terms go on to say *If you choose a law firm as your Appointed Representative who is not a Preferred Law Firm, we will give your choice of law firm the opportunity to act on the same terms as a Preferred Law Firm. However, if they refuse to act on this basis, the most we will pay is the amount we would have paid if they had agreed to our Standard Terms of Appointment. The amount we will pay a law firm (where acting as the Appointed Representative) is currently £130 per hour. The amount may vary from time to time".* And *"The Appointed Representative must co-operate with us at all times and must keep us up to date with the progress of the claim."*

And I'm aware case law (Brown-Quinn & Anor v Equity Syndicate Management Ltd & Anor [2012] EWCA Civ 1633) established that a legal expenses insurer has the right to restrict what it would pay to a non-panel solicitor, provided the remuneration is not so low as to render the policyholder's freedom of choice meaningless.

In this case RSA sent terms of appointment to Mr and Mrs K's solicitor and, in line with the policy terms, offered an hourly rate of £130 an hour. It then agreed to pay the court guideline rates for a grade A fee earner in their area (£278 an hour – it also made clear that VAT would be paid on top of that).

I think the court guideline rates provide a reasonable starting point when considering whether an insurer has offered a fair hourly rate. And I haven't seen any clear evidence relating to the complexity of Mr and Mrs K's case which suggests a higher rate should be used. But in order to show it had offered a reasonable rate I'd also expect RSA to be able to show it had claims with similar circumstances where non panel firms had acted for that rate without asking the policyholder to pay the difference. I've also seen evidence of that. So, while I appreciate Mr and Mrs K's preferred solicitor weren't prepared to act for that amount, I think RSA has done enough to show it offered a fair rate in this case.

I also think RSA took reasonable steps in response to the other concerns raised by Mr and Mrs K's preferred firm. That firm was unhappy costs would only be paid on conclusion of the claim (which is usual for legal expenses policies). However, RSA nevertheless said in an email on 31 January 2024 *"we would prepared to meet 50% of your costs on a monthly basis which allows us to assess the remainder of costs at case conclusion"*.

The firm also had concerns about the reporting requirements contained in the terms of appointment. But such provisions aren't unusual and I don't think it was unreasonable of RSA to say they would apply in this case given the need for it to have oversight of costs incurred under the policy. And it would only be if their solicitors agreed to those terms Mr and Mrs K would have had the option to 'top up' the hourly rate.

I think it's clear their solicitors weren't prepared to agree to those terms so I think it was appropriate for RSA to then offer the services of a panel firm. I understand that wasn't something Mr and Mrs K wanted to progress but I don't think RSA has been at fault in the actions it took since the outcome of their previous complaint.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 3 October 2024.

James Park  
**Ombudsman**