

The complaint

Mr and Mrs B complain that when Mrs B made a claim on their legal expenses insurance, Royal & Sun Alliance Insurance Limited (“RSA”) only paid costs from 15 June 2023. She says costs should be paid from 1 April 2023.

Where I refer to RSA, this includes its agents and claims handlers acting on its behalf.

Mr B is the policyholder but Mrs B is entitled to claim on the policy, and this complaint is about a claim she made. So I’ll refer to her in my decision.

What happened

Mrs B made a claim on 22 March 2023. She wanted cover for legal costs relating to an employment dispute.

RSA reviewed the claim and on 1 April 2023 and sent an email advising “*Your claim has passed the insurance assessment and is now being passed to our panel solicitor for a full legal assessment.*”

RSA proposed referring the claim to one of its panel solicitors but Mrs B said she would prefer to continue using her own solicitors, who were already acting on the case. So RSA contacted her solicitors and asked them to provide an assessment of the merits of her case.

Mrs B’s solicitors provided their report to RSA on 15 June 2023 and said the case was likely to be successful. RSA then arranged for a full legal assessment by its panel solicitors. On 6 July it advised her solicitors that the panel firm agreed one aspect of her claim had reasonable prospects so it would cover the costs relating to that, but not other costs.

Correspondence followed between RSA and Mrs B’s solicitors about agreeing terms for them to act. RSA later confirmed it would pay their costs at a rate of £130 per hour, as from 15 June 2023. As the rate they charged was higher than that, Mrs B would pay the balance herself.

Mrs B complained that RSA had delayed dealing with her claim. She said it wasn’t fair that the costs would only be paid from 15 June 2023, when it had accepted her claim on 1 April.

In reply to the complaint RSA said

- it had not caused any delay and had replied promptly to correspondence from Mrs B’s solicitors when negotiating the terms for them to act;
- it had agreed to pay the costs from the date when it received a positive assessment from her solicitors; and
- the policy did not cover costs incurred before written acceptance of the claim.

Mrs B remained unhappy and referred the complaint to this Service. Our investigator thought it was fair for RSA to pay costs from 15 June 2023. He said RSA had not caused unnecessary delay and didn’t think RSA should have to pay costs before that date.

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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides cover for employment disputes but, as with all insurance, there are terms and conditions that need to be met for cover to be provided.

The policy only provides cover if the case has reasonable prospects of success. That's a legal question, so insurers will refer that to solicitors to consider, and they are entitled to rely on the legal advice unless it's obviously wrong.

The crux of Mrs B's complaint is that she says she was told on 1 April 2023 her claim had been accepted, so her costs should be paid from then. However, what she was told then was that the claim had been accepted, but this was subject to her case having prospects of success.

In other words, she had shown the dispute was one that the policy would potentially cover but she still had to show the claim had reasonable prospects of success. So RSA needed a legal assessment of the prospects. As she had her own solicitors dealing with the case, RSA asked them to provide an assessment. That was reasonable, and RSA set out in correspondence what was needed.

RSA didn't cause any unnecessary delay during that period. And once prospects of success were confirmed for part of her case, it corresponded with her solicitors about the terms of appointment for them to act. That was in line with normal industry practice. It did take some time to agree terms but once that was done, RSA agreed to backdate the costs to 15 June 2023. That was the point at which Mrs B's solicitors said the case had prospects of success. She wasn't entitled to cover until that had been confirmed.

I appreciate the case was already progressing and Mrs B's solicitors needed to carry out some work on her behalf. But the policy doesn't cover costs that have been incurred before RSA has confirmed its acceptance of the claim. That's in line with standard industry practice and it wouldn't be fair to expect RSA to cover costs before a claim has been accepted. Until 15 June 2023, RSA didn't know if the claim had reasonable prospects of success, so couldn't confirm it would be covered. So it wasn't obliged to cover the earlier costs.

Mrs B says she was misled into thinking her claim had been accepted. I think the correspondence was clear that RSA needed to assess the prospects of success before confirming cover.

If Mrs B needed to take steps in relation to her legal case, that's something she would have needed to do in any event. I don't think these are costs she only incurred because she was led to believe she would not have to pay for them.

When RSA received the report from Mrs B's solicitors in June 2023, it then referred the claim to its panel solicitors to assess. I'm not sure it that was necessary, but in this complaint I'm only considering whether the costs should be backdated to 1 April 2023. For the reasons I have set out, it would not be fair to require RSA to backdate the costs to that date.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 9 December 2024.

Peter Whiteley
Ombudsman