

The complaint

Mr and Mrs S are unhappy with what Royal & Sun Alliance Insurance Limited did after they claimed on their legal expenses insurance policy.

All references to RSA include its agents and claims handlers. Although the policy is in joint names, as the complaint has been brought by Mr S, I'll mainly refer to him in this decision.

What happened

In June 2023 Mr S contacted RSA seeking assistance from his legal expenses policy. That related to a claim against a company which carried out work at his property (replacement of doors and windows). RSA said its validation checks didn't show Mr S had legal expenses cover in place. Even if he did the policy didn't provide cover for contract claims relating to common home improvements where planning permission or building regulation approval was required. It thought that was the case here.

Mr S provided a policy schedule showing he did have legal expenses cover. RSA said it still wouldn't provide cover for the claim because of the exclusion it had previously referenced.

In his most recent view our investigator said Mr S had now evidenced planning permission wasn't required for the work carried out at his property. And while he did have to apply for listed building consent that wasn't the same thing and wasn't equivalent to building regulations approval either. So he didn't think RSA could rely on the exclusion it used to decline the claim. And he said it should reconsider this against the remaining terms and conditions of the policy.

I understand RSA has accepted that exclusion doesn't apply. But while Mr S had now shown he had legal expenses cover RSA believed that had been taken out after he would have been aware of problems with the work at his property. So it didn't think the claim was covered in any event. However, it agreed this issue hadn't been addressed in its previous complaint investigation and response.

Mr S didn't agree the date of event was prior to him taking out his legal expenses insurance. He said he only became aware of issues with the installation following a survey report which was produced after he took out cover. And he didn't think it was right RSA should now be allowed to raise this issue in any event. He asked for his complaint to be reviewed by an Ombudsman. 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.

The relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr S's policy. This does provide cover for *"the cost of you pursuing a legal action against another person or organisation as a result of a contract you or any of your family have made, or the cost of defending a legal action brought against you or any of your family over a contract any of them have made, to... buy or rent consumer goods or services..."*.

And that cover extends to contracts relating to common home improvements. But the definition of that excludes improvements which require planning permission or building regulations approval. I think it was reasonable of RSA to initially think that applied here. Information Mr S provided in support of his claim included a letter from the relevant planning authority which said in relation to the works *"Applications for Planning Permission and Listed Building Consent were approved on 1 September 2022"*.

However, as part of our investigation Mr S provided a more recent letter from the planning authority. That said, although a planning application was made which included replacement doors and windows, the work didn't in fact require planning permission and *"only Listed Building Consent was required"*. I agree an application for listed building consent isn't equivalent to building regulations approval and is different to the requirement for planning permission. So I don't think RSA can rely on the exclusion it cited to turn down the claim.

But that doesn't necessarily mean the claim would be covered. For any legal expenses policy there are a number of criteria that need to be met prior to cover being agreed (including that the claim enjoys reasonable prospects of success). So I think our investigator was right to say RSA should reconsider the claim against the remaining policy terms.

RSA has now suggested the events giving rise to the claim started prior to the policy being taken out as it believes the work formed part of a single contract with installation commencing in October 2022. I appreciate Mr S disagrees with that and has argued the work carried out in June 2023 (which a subsequent survey identified issues with) was unconnected to the previous installation.

But that isn't something I can consider in this decision. We can only consider complaints where the respondent business has issued a final response to the complaint or eight weeks have elapsed since the respondent received it. In this case I'm satisfied this issue wasn't raised or addressed as part of RSA's previous response to Mr S's complaint (the issue at that time related to the home improvements exclusion and whether Mr S had legal expenses cover at all).

So RSA will need an opportunity to respond to this issue (and should take into account the points Mr S has made as part of that process). If Mr S remain unhappy once RSA has provided its final response (or eight weeks have passed since it received it) that's something we could then investigate as part of a fresh complaint. It isn't something I'm able to determine in this decision.

Putting things right

RSA will need to reconsider Mr S's claim without relying on the home improvements exclusion it previously cited. Mr S can make a further complaint about any new decision RSA reaches. If he remains unhappy after it's had an opportunity to consider that we can consider that as part of a fresh complaint.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 27 December 2024.

James Park
Ombudsman