DRN-5197029

## The complaint

Mr B's complaint is about the handling of a claim under the legal expenses section of his home insurance policy with Royal & Sun Alliance Insurance Limited ("RSA").

RSA is the underwriter of this policy, *i.e*. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints 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

Mr B made a claim under his policy with RSA for the costs of legal action with his neighbour.

RSA appointed one of its panel of pre-approved solicitors to assess the claim and deal with the matter. A barrister's advice was obtained, which supported the claim. The panel solicitors therefore wrote a 'letter before action' to the neighbour in September 2023 but then advised that no further action was required, following the response from the other party.

In February 2024, Mr B asked for a review of his claim and provided details of his own solicitor. Mr B was not happy with the advice of the panel solicitors, as he found out that the fee earner that had written the letter before action and was acting on his behalf had left the firm and joined the firm that was representing his neighbour. Mr B therefore said there was a conflict of interest. Mr B also said the letter before action the first panel solicitors had sent was not fit for purpose, as it was factually incorrect. Mr B also said he was aware his neighbour was planning to extend his property, which would infringe his property rights.

RSA said it would agree to fund a review about whether the letter before action could be relied on and if not what needed to be done, given the issues Mr B had raised about the first panel firm. RSA contacted Mr B's solicitors to try and agree terms of business but they did not respond. It was therefore agreed that RSA would instruct another one of its panel solicitor firms to do the review. RSA agreed that they could also comment on the extension issue, although it said that at present there was no claim to meet as no rights had yet been infringed.

The second panel firm asked Mr B for some more information and having carried out a review, provided a letter of advice in May 2024. The solicitors said that while the barrister had confirmed there were reasonable prospects of a noise nuisance and harassment claim succeeding, it couldn't confirm how that opinion on the merits had been reached but, in any case, they considered any such claim would be disproportionate to pursue and that Mr B would be at risk of the court making a costs order against him if it were pursued. This was because they thought any action could risk a claim against Mr B for hindering the neighbours' sale of their property. The second panel solicitors therefore said that the letter before action already sent could not be relied on but that redrafting and sending the letter before action to the neighbour would not be appropriate.

Mr B was not happy with the opinion of the second panel solicitors and complained to RSA. He says they did not understand the claim and were running up time on the case to make

money from him; they had already incurred around £2,000 and needed more time to conduct a proper review. Mr B said a barrister could have undertaken the same work for less. He also said that the opinion of his barrister should carry more weight.

RSA considered the complaint but said while the barrister has said there were merits, he had not commented on the risk of adverse costs and proportionality, so it proposed that the second panel solicitor's questions be referred to the barrister to ask him to comment.

Mr B said the barrister was not prepared to provide another written opinion and asked for RSA to cover the cost of a telephone conference instead. RSA said that instead it would get another more senior barrister to advise. Mr B was unhappy with this and does not want the second panel firm involved at all, including in sending instructions to the barrister.

RSA said none of its other panel firms would do it so asked Mr B to nominate a solicitor firm himself to instruct a barrister to consider: 1. Whether or not the claim has reasonable prospects of success of 51% or more and why; 2. whether they consider further action on the claim necessary and proportionate; and 3. whether there is any adverse cost risk in engaging in further correspondence with the other side.

Mr B nominated a solicitor to act but said that they did not think another barrister's opinion was needed. RSA said it was needed to confirm cover under the policy. I understand that terms were then agreed with Mr B's solicitors and that instruction is going ahead.

Mr B remains unhappy with the way the claim has been handled and made a formal complaint to RSA, part of which is that the second panel solicitors should not be paid for the work they did reviewing the case; and that the fee earner that advised from the second panel solicitor firm was a paralegal and his opinion should not have outweighed the opinion of the barrister.

RSA says it was entitled to confirmation the claim is covered under the policy and that it meets the terms regarding prospects and proportionality. The fee earner that advised was appropriately supervised but in any event it is entitled to answers to the queries raised when the barrister's advice did not set out that the claim meets these criteria. RSA also said that it cannot refuse to pay the costs incurred by the second panel solicitors which were reasonably incurred. RSA accepted it might have discussed alternative solicitors with Mr B sooner than it did but overall said it had not done anything wrong.

Mr B does not accept RSA's response to his complaint and referred the complaint to us. He has made a number of points in support of his complaint. I have considered everything he has said but have summarised the main points below:

- he wants the amount paid to the second panel solicitors without his consent returned, or charged to the first panel solicitors as the second opinion was only needed because of them.
- He was treated as a "*pseudo-client*" with his opinion on how to proceed ignored.
- RSA tried to take the opinion of a paralegal from the second panel solicitors, not even a qualified solicitor over the opinion of his barrister.
- His barrister has said he has over 51% chance of success and would have taken proportionality and risk of adverse costs into account in that assessment.
- RSA would not accept that and instead wanted to spend more of his funding to the second panel firm to instruct one of their selected barristers.
- The concerns about the letter before action had already been addressed by the first panel firm for fee, which confirmed it could not be relied on.

- The barrister refused to answer the comments raised by the second panel firm because they were not told they'd been endorsed by a solicitor. If RSA had asked a solicitor to endorse the paralegal's opinion he is sure the barrister would have answered their criticisms but it didn't.
- The policy says that if a barrister says there is over 51% chance of success then the claim should be covered
- His policy entitles him to qualified legal advice but the fee earner at the second panel solicitors was not professionally qualified.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he thought that RSA had acted fairly and reasonably and in line with the policy terms.

Mr B does not accept the Investigator's assessment.

As the Investigator has not been able to resolve the complaint, it has been passed to me.

**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 B's policy provides cover for various legal disputes, including "*the cost of you taking legal proceedings against another person…as a result of …. A person interfering with your legal rights relating to your home".*

This cover is subject to various terms and conditions. The exclusion terms in Mr B's policy that are relevant to this claim are as follows:

"*What is not covered*

1. *Any claim where there is not a reasonable chance of you winning the case and achieving a reasonable outcome…*

5. *Legal proceedings where a reasonable estimate of your total legal expenses is greater than the amount in dispute… "*

The policy also has a condition that the policyholder must take all reasonable measure to avoid being involved in legal proceedings.

Similar terms are common to all legal expenses policies and we do not consider them unfair.

It is normally for a claimant to establish they have a valid claim under an insurance policy, so this would mean Mr B would have to establish the likelihood of success of his legal case. However, ordinarily legal expenses insurers will ask on of its panel of pre-approved solicitors to advise at its own cost.

Our remit is to assess complaints about regulated activities, such as carrying out an insurance contract. Therefore, in a case such as this, I can only assess whether the insurance claim has been dealt with fairly.

We also do not hold legal expenses insurers responsible for the solicitors they may appoint when handling a claim. The solicitors are not agents of RSA and are not subcontractors as such, even if they are appointed by them. It is not therefore vicariously liable for any acts or omissions on their part. They are independent professionals and the insurer has no right to

interfere or dictate how they conduct the actual legal case. And any complaint about the service provided by the legal professionals involved in this case should be directed to the relevant body - the Legal Ombudsman.

Mr B says the chances of success have already been established by the barrister that advised in 2023.

The barrister's opinion in August 2023 said that the neighbours were planning to move, so proceedings were not likely to actually happen but Mr B wanted to send a letter before action. He said he had not considered witness statements from all parties and could only base his advice on the documents he had but "*it is indeed arguable that … Mr B would have a prospect of success at greater than 51% should, hypothetically, proceedings be issued … either for harassment and/or for an injunction and/or damages relating to the noise nuisance."*

The first panel solicitor wrote the letter before action in late 2023 based on this but later said there were no longer prospects to take any further action.

RSA considered Mr B's concerns about that advice in light of the potential conflict of interest caused by the same fee earner moving to work at the firm representing the neighbour. I think it acted reasonably in agreeing to another legal review of the advice. I do not agree with Mr B that it was obliged to simply agree to fund further action based on the barrister's opinion that was in hand, as matters had moved on since he wrote that advice as the letter had been sent.

The second panel firm appointed a paralegal to review the matter. Mr B says he was not legally qualified, so should not have questioned the barrister's opinion, and he was entitled to a qualified lawyer.

It is common for law firms to have employees with a variety of different levels of qualification and experience. Legal executives, paralegals and legal clerks play an important role in the administration of justice and litigation. And it is for the firm to determine which individual fee earner a case is allocated to. There are normally requirements for supervision of such staff but my understanding is that there does not necessarily need to be supervision of each and every task carried out in the conduct of a case. Any allegations about a failure to properly supervise unqualified staff, is a matter for the Law Society and/or the Legal Ombudsman. However, RSA said the paralegal was supervised appropriately. He was therefore qualified to advise on this matter.

The paralegal queried the proportionality of proceeding and the potential risk of a claim against Mr B if they went ahead and wrote another letter before action. Essentially, he was querying whether in effect it was sensible to take such action.

RSA agreed that the paralegal's legal opinion would not necessary outweigh that of the barrister but the barrister's opinion did not address these points and it believes they are valid concerns. I agree. I do not think this was a case of RSA preferring the paralegal's opinion over that of the barrister; he had raised specific queries that relate to the policy cover and RSA is entitled to evidence that establishes there is a valid claim. As the original barrister would not respond to the concerns, it proposed to get an opinion from a more senior barrister. I think this was reasonable.

I note that Mr B says the barrister would have considered proportionality and the risk of adverse costs when writing his opinion on the case. He may have considered these issues but his written opinion does not state that he has done so. I also note the opinion written by another lawyer in February 2024, which endorses the barrister's opinion. It says that the barrister has 25 years' experience in this area of law, so he sees no reason not to accept his advice. Again, this does not address the policy requirements for cover.

Having considered everything, I am not persuaded that RSA has acted unfairly in not agreeing to fund further action at this stage and in asking for a further review to assess the claim against the policy terms.

I can see that RSA took on board Mr B's concerns about the second panel firm being involved in any future action and I think it has acted reasonably in agreeing terms with alternative solicitors to get a further opinion from a more senior barrister.

Overall, I think RSA has acted fairly and reasonably and in line with the policy terms, as it is entitled to evidence that establishes the claim meets the policy terms.

Mr B also objects to the cost of the second solicitors being taken from his indemnity limit. I can see no evidence that they ran up unnecessary costs but as stated above, any complaint about the actions of the solicitors is not within my remit. I think RSA was entitled to trust that the solicitors acted properly and I do not think RSA could reasonably have asked the second panel solicitors to advise without reviewing all the background evidence. The second panel solicitors carried out necessary work to review the matter and raised questions that I think RSA is entitled to have answered. I am not therefore persuaded that I can reasonably require RSA to reinstate the costs paid to them to Mr B's indemnity limit. And, again, I have no authority over the first panel solicitors, so cannot make any award against them in relation to these costs.

Mr B also says he was treated as a pseudo-client. I can see he was kept up-to-date with all the steps taken and RSA explained its position. While I note he disagreed with the panel solicitors' opinions about what was necessary, for the reasons set out above, I think RSA is entitled to obtain the advice of the senior barrister to establish there is a valid claim under the policy and I do not think Mr B has been treated unfairly.

## My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2025.

Harriet McCarthy
**Ombudsman**