

## **The complaint**

X's complaint is about a claim he made on his Royal & Sun Alliance Insurance Limited ('RSA') legal expenses insurance policy, which RSA declined.

X says RSA treated him unfairly and wants them to put things right by covering his legal costs.

## **What happened**

X made a claim on his RSA legal expenses insurance policy for cover to appeal the outcome of proceedings he took in a Tribunal.

X said he hadn't incurred any costs at the point he approached RSA for help. RSA considered the claim and turned it down. They said that they wouldn't provide cover for an appeal where they hadn't provided their agreement to the initial claim.

Unhappy, X referred his complaint to the Financial Ombudsman Service. Our investigator considered his complaint and didn't uphold it. X doesn't agree, so the matter has been passed to me to determine.

## **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 done so, I won't be upholding X's complaint for the same reasons set out by the investigator in her view.

Before I explain why, I wish to acknowledge both X's strength of feeling and detailed submissions about his complaint. Whilst I've read and considered everything he's said, I won't be addressing it all. That's not intended to be disrespectful, rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of X's complaint- namely whether it was fair for RSA to turn down his claim in the way that they did.

The starting point is the policy terms. At page 18, they say:

*"If you want to appeal against a court's decision, you must give us your reasons for bringing the appeal. We will give you our agreement if all of the following apply:*

- You must tell us that you want to appeal as soon as your right of appeal arises. This is because strict time limits may apply.*
- The appeal arises from legal proceedings to which we have already given our agreement under the terms of claims settlement condition 2 on page 16.*
- Your appeal meets the requirements of claims settlement condition 2 in the same way as your initial claim for legal expenses."*

"Court" is defined as "A court or other appropriate authority" so it's applicable to the Tribunal proceedings X was involved in.

Claims settlement condition 1 at page 16 says:

*"If anything happens which might lead to a legal expenses claim, you must tell us as soon as possible by filling in a claim form. You must tell us fully and truthfully in writing all of the details about your claim and give us all the information that we may need. Until you have told us about the claim and we have given our written agreement, the insurer will not be responsible for any legal expenses. The insurer will not cover legal expense involved in your representatives handling the claim before the date when we gave our written agreement. You must have told us about the claim within six months of the cause of action arising."*

Claims settlement condition 2 at page 16 says:

- *"We will agree if all of the following apply:*
- *We think you have a reasonable chance of winning your cases and achieving a reasonable outcome.*
- *The proceedings arise from a cause of action which is covered by this insurance. This cause of action must happen within the territorial limits and during the insurance period..."*

So, in order for X's claim to be covered, it would have needed to arise from proceedings that RSA had already given their consent to. Those proceedings would have needed to be assessed as having a reasonable chance of success, and the underlying cause of action needed to be covered by the policy. In addition, X would have needed to tell RSA about the underlying claim as soon as possible after it arose and within six months of this.

In this case none of the policy requirements have been met. RSA weren't involved in or notified of the original proceedings, nor did they have the opportunity to assess the merits of them. And as such they didn't give their consent to the original proceedings being pursued. Because of this, I don't think it was unfair for them to decline X's claim in the way that they did. When reaching this conclusion, I've taken into account that it's not for this Service to dictate what risks and circumstances an insurer wishes to provide cover for. As long as they've applied their terms correctly and fairly, we'd be unlikely to say an insurer did something wrong by turning down a claim where the circumstances were quite obviously not covered, as they have here.

X has said that he didn't incur any costs prior to seeking assistance from RSA and that the reason he's seeking to appeal arose out of the Covid 19 pandemic which impacted on the way in which his underlying claim was dealt with by the Tribunal in his original case. But I don't think these points make any difference to the outcome of this complaint. Whether X required legal assistance with his underlying claim or not is academic. The policy requirement was for RSA to be involved in and consent to the original claim in order for the appeal that followed to be covered. In the absence of that, I can't say the position RSA have taken is unreasonable.

Finally, X has made the point that the policy terms RSA are relying on are unclear and that the insurance is not fit for purpose. He says that the average person wouldn't want to read through the policy document. I'm not persuaded by this. The terms RSA are relying on are common in legal expenses insurance policies and whilst I'm not making any determinations about what information X was presented with when he took the policy out, I think the information contained within that document is clear enough to enable a policyholder to understand the parameters of cover that were applied in this case. And the fact that cover is not available to X in these circumstances doesn't mean it's a policy that's not fit for purpose but rather one that doesn't engage because X was unable to demonstrate he complied with the terms of it.

Whilst my decision will no doubt be disappointing for X, I hope I've provided him with a

thorough explanation of why I'm not upholding his complaint.

### **My final decision**

For the reasons set out above, I don't uphold X's complaint against Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 13 February 2025.

Lale Hussein-Venn  
**Ombudsman**