

## **The complaint**

Mr S is unhappy RAC Insurance Limited turned down a claim he made on his legal expenses insurance policy.

Although the policy is in joint names as this claim relates to Mr S I'll refer to him in this decision. All references to RAC include its agents and claims handlers.

## **What happened**

In April 2024 Mr S contacted RAC to make a claim on his legal expenses insurance policy. He was seeking to challenge recovery action his employer was taking in relation to overpaid salary. RAC turned down the claim. It said the policy didn't provide cover where the first in a series of incidents which could lead to a claim being made had taken place prior to the policy start date. It thought this applied here as Mr S had received notification from his employer of the overpayment in March 2022 and recovery action had first been taken in July 2022. And his policy with it began in September 2022.

Our investigator didn't think that was an unfair term and agreed it applied to the circumstances of Mr S's claim. He didn't think RAC had done anything wrong in turning it down. Mr S didn't agree. In summary he said:

- In July 2022 his employer had refunded his deducted salary following the dismissal of a tribunal claim and he didn't think further problems would then arise as no further action was taken for nearly a year. He thought it was unfair to say the issues that had taken place prior to the policy being taken out were connected to the subsequent actions of his employer.
- Policy wording which referenced terms such as 'event', 'chain of events', and 'series of events' was vague and granted an insurer excessive discretion to reject a claim. He queried where a chain of events could reasonably be said to start and end. It was unfair of an insurer to exploit vague policy language to deny a valid claim. The fact that use of similar terms might be widespread didn't mean they were fair.
- He thought the first actionable event in this case was his employer's decision to recommence salary deduction which took place in mid 2023 and was what had prompted the 2024 legal claim. He set out why he didn't agree an example our investigator had used in support of his view was relevant to this case. And he explained how he wanted RAC to put things right.

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 RAC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Mr S has challenged the example our investigator gave in his view (which related to a problem with a motor car). But I don't think those points are ones I need to consider in this decision. Ultimately the question I need to determine is whether RAC acted correctly and fairly in declining the actual claim Mr S made on his policy. So that's what I've focussed on.

I've looked first at the terms and conditions of Mr S's policy. This does cover employment disputes and RAC hasn't suggested the issue in this case wouldn't, in principle, fall within the cover the policy provides.

However, the policy says "*We won't cover legal costs where you ought reasonably to have known that an incident leading to a claim was possible before you bought the policy*". And the definition of 'Claim' is "*an incident which we accept as falling within the terms and policy period of this home legal expenses policy and which, in our reasonable opinion, is the incident or first in a series of incidents that could lead to a claim being made*".

Legal expenses policies like the one Mr S took out are meant to cover uncertain risks, not inevitable or existing events. So it's usual for them to exclude cover for claims (or something that could lead to a claim) which a policyholder was aware of prior to cover being taken out.

Mr S has argued that gives too much power of interpretation to an insurer. However, we'd expect an insurer to apply the terms of a policy correctly and fairly and to take into account relevant case law (for example when deciding whether multiple events have the same originating cause) when doing so. We'd also expect an insurer to consider what a consumer knew when taking out a policy. And ultimately if a policyholder is unhappy with the decision an insurer reaches on their claim they have the option of referring the complaint to our service for an independent review as Mr S has done.

Turning to what's happened here I think it's clear the overpayment to Mr S by his employer had taken place prior to him taking out the policy. It's also clear his employer had sought to take recovery action in relation to that; Mr S refers to a salary deduction having been made in July 2022. The claim Mr S then made on his policy related to further recovery action his employer took after the policy start date. Mr S's argument is, in essence, that he thought his existing dispute with his employer had concluded prior to him taking out this policy. So the subsequent recovery action it took was therefore a new issue and not something he would have known was going to happen when he did so.

Where a consumer could reasonably have thought any pre-existing dispute had concluded and the issue that subsequently arose was therefore a new problem we might say it wasn't fair of an insurer to apply the relevant exclusion. The difficulty here is I don't think the other evidence shows that is the case. In particular the 'Particulars of Claim' Mr S submitted as part of his Employment Tribunal claim in April 2024 included a detailed chronology which doesn't indicate the dispute between him and his employer could be regarded as having been resolved.

It says after his employer deducted some of the overpayment from Mr S's salary in June 2022 there were then attempts to resolve the matter with ACAS which were unsuccessful. The matter then proceeded to Employment Tribunal where Mr S says his employer didn't act in good faith. And he subsequently raised a grievance against them "*citing poor communication, procedural errors, and a breach of the implied contractual term of mutual trust and confidence*". None of that suggests to me Mr S could reasonably have regarded this dispute as having been resolved at the point he took out his legal expenses policy even if his employer may not have actually restarted recovery action until March 2023.

Taking all of that into account I don't think it was unreasonable of RAC to conclude the exclusion applied to the claim Mr S made and turn down his claim on that basis. As I haven't

concluded RAC has been at fault here, I don't need to consider the points Mr S made about what he thinks RAC should do to put things right.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mr S to accept or reject my decision before 21 February 2025.

James Park  
**Ombudsman**