

The complaint

Mr W complains that Royal & Sun Alliance Insurance Limited ("RSA") didn't cover his legal costs after he made a claim on his legal expenses insurance.

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

What happened

Mr W made a claim on his policy to cover the legal costs of pursuing a claim in the employment tribunal. Following a previous complaint to this Service, RSA obtained a barrister's advice which confirmed his case had reasonable prospects of success. Cover was put in place and solicitors appointed to act for Mr W.

When his relationship with the solicitors broke down, Mr W said he wanted to appoint another firm. RSA said he would need to pay for a new legal assessment, which would mean reviewing the whole file. Mr W said he couldn't afford this so he had to represent herself.

RSA later agreed to cover the cost of a new assessment, but the barrister Mr W had used previously wasn't available. A different barrister provided an advice saying the case was not likely to be successful and cover was withdrawn.

Mr W says he provided a further prospects assessment, which was favourable, but RSA refused to reinstate cover, so he had to pay legal costs himself and accept a settlement rather than continue with the case. He complained that RSA would not agree to reimburse his legal costs.

In its final response to Mr W's complaint, RSA said:

- It's a requirement of the policy that a case has prospects of success throughout. Cover was withdrawn after legal advice that his case no longer had prospects.
- After he provided another legal opinion, it requested further information about the claim, including costs and proportionality, but he didn't provide that.

When Mr W referred the complaint to this Service, our investigator said:

- Although Mr W settled his case at the tribunal, that doesn't mean it was successful. So RSA isn't obliged to reimburse his costs.
- When he told RSA he wanted to change solicitors, it said the policy wouldn't cover the costs of new solicitors familiarising themselves with the case or providing their assessment of prospects. It was his decision to change solicitors, and all they needed to do was complete RSA's claim form giving their view on prospects.
- He had provided an email from RSA to another law firm asking for details of their charging rate and an estimate of the costs for drafting instructions to counsel to provide an updated opinion on the merits of the claim. This indicates that RSA had agreed to pay for the assessment.

- Any delay didn't mean RSA had prejudiced his case; it was waiting to hear from him with details of his new solicitors.

Mr W disagrees and has requested an ombudsman's decision. He says:

- It took a year to find a solicitor was because he was initially told he would have to pay for all costs of reviewing the case but RSA later agreed to pay the costs.
- The previous complaint that he wasn't represented in 2019 involved a breach of contract by RSA and that wasn't addressed.
- He doesn't agree the fact his original choice of barrister wasn't available to represent him was not due to RSA's actions.

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.

In his reply to the investigator's view, Mr W has referred to his previous complaint to this Service. As a final decision was issued on that complaint, I can't comment on it further. I'm only considering the issues raised in this complaint about more recent events.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim.

The policy terms say cover will not be provided if the policyholder does not have a reasonable chance of winning the case and achieving a reasonable outcome, or where a reasonable estimate of the total legal expenses is greater than the amount in dispute.

It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful and the costs are proportionate. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed, or if the costs will be more than the value of the claim. Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. They are entitled to keep this under review as a case progresses.

It was reasonable to withdraw cover on receiving legal advice that the claim didn't have reasonable prospects of success. It was then for Mr W to provide legal advice showing prospects if he wanted cover reinstated.

Although Mr W later provided legal advice that there were prospects, RSA asked for information about costs and proportionality, and he didn't provide that. It was reasonable to request this, and – in the absence of receiving it – not to provide cover.

However, the policy terms also say:

“If you decide to commence or continue legal proceedings for which we have denied support under this Claims Settlement Condition and are successful, we will pay legal expenses as if we had given our consent in the first instance.”

I've considered whether, in the circumstances of Mr W's case, it would be fair for RSA to pay Mr W's costs.

Mr W says the settlement he achieved means he was successful. He may have obtained a settlement, but that doesn't necessarily mean he was successful.

There was no finding in his favour. Legal disputes may settle for different reasons – a party may make a commercial decision to settle rather than take the risk, and incur the costs, of proceeding to trial. Mr W hasn't provided evidence to confirm this was a successful outcome. If, for example, he achieved most of what he was seeking and the legal advice was that this was a good settlement, which they regarded as a successful outcome, that might be persuasive. But there's no such advice.

Indeed, Mr W says he could have achieved a higher settlement if he'd been represented throughout, but accepted a low settlement on the advice of his barrister about the risks of continuing with the trial. The amount Mr W recovered was much less than the value he says he would have been seeking. RSA has also pointed out that it was much lower than the costs it had already paid, so it would not have been proportionate to pursue the case.

Mr W also says he was given incorrect advice by RSA, which prejudiced his case. When he asked to change solicitors, he was told he would have to pay for a new firm to provide a prospects assessment. He challenged this and RSA later agreed to appoint a new firm, but by then the original barrister wasn't available so he had to use a different barrister. They didn't think his case had reasonable prospects of success, so funding was withdrawn.

It was reasonable for RSA to withdraw cover when it received a negative legal opinion. It wouldn't generally be fair to expect an insurer to pay legal costs for work that had already been carried out by previous solicitors. A new firm would be asked to complete a case analysis form with their estimate of the prospects of success. I appreciate Mr W says it was difficult to find another solicitor, but he did have the option of using RSA's panel solicitors. And there's correspondence showing it did agree to pay the costs of obtaining an assessment. While Mr W would have preferred to have used the same barrister, it wasn't RSA's fault that they weren't available. I don't think RSA's actions prejudiced his case.

Mr W's employment dispute, and his related legal expenses claim, went on for some years. He explained the difficulties he faced dealing with both and I appreciate how difficult it was for him. But, taking everything into account, I'm satisfied that overall the way RSA dealt with his claim was fair.

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 W to accept or reject my decision before 4 April 2025.

Peter Whiteley
Ombudsman