

The complaint

Mr and Mrs H are unhappy Royal & Sun Alliance Insurance Limited turned down a claim they made on their legal expenses insurance policy.

Although the policy is in joint names as the claim and complaint have been brought by Mrs H I'll mainly refer to her in this decision. All references to RSA include its agents and claims handlers.

What happened

Mrs H had a dispute with her siblings over her mother's will. In April 2022 a settlement agreement was reached. Under its provisions Mrs H withdrew a caveat which was preventing probate and her siblings agreed to transfer their interest in a jointly owned Spanish property and chattels to her. Mrs H agreed to cover professional costs associated with the property transfer and to indemnify her siblings against tax liabilities arising from that up to an agreed limit.

In August 2023 Mrs H contacted RSA. She said her siblings had refused to sign the relevant documents relating to the property transfer. And she wanted her policy to fund a claim for breach of contract. RSA sought further information on the claim from the solicitors acting for Mrs H. There was discussion over whether it would provide payment for this (which RSA declined to do). However, by January 2024 both Mrs H and her solicitors had provided further background to the claim.

After considering the information RSA turned down the claim. It didn't think it fell within one of the insured events the policy contained. The 'Contract Disputes' section did provide cover for a dispute arising from an agreement entered into for the buying or selling of "*your principal home*". But this claim related to the transfer of property into Mrs H's sole name (following a settlement agreement). That wasn't something the policy covered. And the property Mrs H was purchasing wasn't her principal home and wasn't the property listed on the home insurance policy schedule the legal expenses policy attached to.

Our investigator said although the policy didn't define 'principal home' she thought it was reasonable to say that would be the property insured and where the policyholder spent the majority of their time living. That didn't cover the Spanish property. And while she accepted Mrs H had agreed to pay tax liabilities relating to that property she didn't think a dispute over the transfer of the property into her name represented a dispute over the purchase of the property. She thought RSA was correct to say the claim Mrs H was making didn't fall within one of the insured events the policy covered.

Mrs H didn't agree. She provided detailed comments (all of which I've considered) and in summary said:

- Her policy covered the buying of a principal home provided the contract was entered into within the insurance period. And that term wasn't defined in the policy. But the interpretation RSA had put on this made no sense; the policy couldn't only cover the principal home listed in the schedule as a policyholder could only own one principal home at the same time. And it wouldn't be possible to insure a property prior to entering

into a contract to buy it. The policy must therefore include cover for the purchase of a future principal home which was what her claim related to.

- The terms didn't require the current principal home must be sold at the same time as the purchase for cover to be in place. And it was for her to decide whether to sell that property when this transfer had been completed or retain that as a second home. It wouldn't in any case be possible to sell her current home until the property transfer had completed.
- As part of the agreement she'd agreed to release the caveat she'd placed on probate, give up her claim to the estate and make payment relating to tax liability in exchange for the transfer of the Spanish property to her. She thought that constituted a purchase as it was the exchange of an asset for consideration.
- Her agreement with her siblings also included the transfer of chattels in exchange for the consideration provided under the contract. So a claim in relation to these was something the policy should cover in any event.
- She referenced comments her solicitors had made in support of her position and also provided responses to questions she'd posed to an AI chatbot.

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 Mrs H's policy. For cover to be available for her claim it needs to fall within one of the insured incidents it contains. And the onus is on a policyholder to show, on balance, their claim falls within one of those sections. I think it's agreed in this case the only insured event the claim could fall within is 'Contract Disputes' And that includes cover for *"your legal rights in a contractual dispute or for misrepresentation arising from an agreement or alleged agreement which you have entered into for the buying or selling of your principal home."*

It's not disputed Mrs H has entered into a contractual agreement. However, RSA has argued the claim relates to the transfer of the property into her sole name. And a dispute about that isn't something the policy covers. But I'm not sure that's correct in itself; a dispute about a transfer could be covered if it arose out of an agreement entered into for the buying of a property. I think the question here is whether the agreement Mrs H entered into could reasonably be characterised as one for the buying of her principal home.

Taking into account relevant dictionary definitions I think *"buying"* means to acquire an item or service for some form of payment. In this case the agreement Mrs H had with her siblings was for her to acquire full ownership of the Spanish property in exchange for giving up a financial claim on her mother's estate and making payment for her siblings tax liabilities. Her position that constituted *"buying"* was supported by her solicitors who said *"the claim involved a "contract dispute regarding a property that our client is acquiring for consideration, under the terms of a contractual agreement, via a formal conveyancing process"*.

I think Mrs H has done enough, on balance, to show this was a contractual dispute relating to the purchase of a property. However, that's not the only issue here. The policy also requires the contractual dispute relate to the buying of her principal home. RSA says that means the insured property detailed in the policy schedule (and in this case that's Mrs H's current home and not the Spanish property). And it says the policy is designed to provide cover for disputes which are discovered after the purchase of the property has taken place.

However, if the intention was the policy should only cover disputes discovered after a property purchase had taken place I don't think it would have been difficult for RSA to include a clause to that effect. It hasn't done that. In fact the policy doesn't contain any definition of "*principal home*". In the absence of such a definition I agree with Mrs H that, subject to its other terms, the policy could cover a contractual dispute relating to a property being purchased as a policyholder's principal home regardless of whether that's the property named in the schedule.

But for that to be the case I think the policyholder would also need to show that, at the point of entering into the purchase agreement, they had a genuine and realistic intention to live in the new property as their main residence after the sale completed. And in considering what constitutes someone's main residence I'm aware case law has established it's the place "*a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time*". I note the evidence Mrs H has provided includes factors that I also agree would also be relevant to that including "*it typically means the home where you spend the majority of your time and receive official correspondence*".

Applying that to the circumstances of this case I don't think Mrs H has shown the transfer of the Spanish property into her name represented the purchase of her principal home. There's no evidence she's taken any steps to sell or rent her current property. I appreciate she wouldn't necessarily need to do that in order for the Spanish property to be her principal home (she could be intending to retain the current property as a second home). But in the absence of that I think there would need to be other evidence to show the Spanish property was intended to be her principal home.

To do so Mrs H would need to be able to reside in Spain which means (following the UK's withdrawal from European Union) she would need to have obtained the relevant Spanish visa and met the necessary requirements for doing so. I've not seen evidence of her having taken steps to do that at the point she entered into the transfer agreement. I appreciate that could have been something she intended to do at a later date. But the absence of evidence in relation to that doesn't assist her argument that the Spanish property was intended to be her principal home.

And while Mrs H has said that was the case, when her solicitors contacted RSA in January 2024 they said "*we are instructed that in the future when the [Spanish property] has been transferred over to [Mrs H] it is a possibility that it may well be declared as her main residence*". That indicates Mrs H may have been contemplating the use of the Spanish property as her main (or principal) home but it doesn't show she had a clear plan to use it as such at the point she entered into the agreement with her siblings.

Mrs H might be able to provide RSA with further evidence on this point. If she does I'd expect it to review matters. And for the reasons I've explained I don't agree with some of the reasons it gave for declining her claim. But overall I think it has acted correctly and fairly in turning this down on the basis Mrs H hadn't shown an insured event covered by her policy had taken place.

Mrs H also told us she was seeking assistance from RSA to enforce the settlement agreement in relation to chattels it said should be provided to her. I've reviewed the

correspondence between her and RSA and that doesn't appear to have formed part of her claim to it. Mrs H told it she was seeking assistance with "*an agreed contract for me to take ownership of a property*". And I've not seen any clear reference to an issues with chattels in other correspondence between her and RSA. So if there is an issue in dispute here which Mrs H feels her policy should cover she'll need to raise that with RSA separately.

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 H and Mrs H to accept or reject my decision before 30 April 2025.

James Park
Ombudsman