

## **The complaint**

Mr C complains that Royal & Sun Alliance Insurance Limited ("RSA") unfairly declined a claim under his legal expenses insurance policy.

Where I refer to RSA, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In 2023, Mr C made a claim on his legal expenses insurance policy to pursue an employment dispute for race discrimination. RSA instructed its panel firm of solicitors to determine whether the claim enjoyed reasonable prospects of success – which is a requirement for cover under the policy.

The panel solicitors were of the opinion that a claim for harassment enjoyed prospects of 45-50%, and a claim for direct discrimination had prospects of 15-20%. As this didn't meet the policy's threshold, RSA declined the claim. It informed Mr C that if he wanted to appeal, he could provide further evidence so that the solicitors could reassess the claim or he could obtain a legal challenge.

Mr C brought a complaint to our Service. But our Investigator was satisfied RSA had acted in line with the policy terms, so it wasn't upheld. The case was closed.

In 2024, Mr C resigned from his employment. He provided further evidence to RSA so that his claim could be reconsidered. And he let it know that he wanted to use a solicitor of his own choice.

RSA obtained a further legal assessment from its panel solicitors. They said a claim for unfair dismissal didn't have prospects because it didn't appear Mr C had applied to amend his claim with the Employment Tribunal to include unfair dismissal following his resignation. But they said if Mr C could show he had applied and that the ET had allowed the amendment, they would reconsider. In regard to the race discrimination claim, the panel solicitors put prospects at 20-35%.

Based on this advice, RSA maintained its original decision to decline the claim.

Mr C is dissatisfied about the legal assessment and RSA's reliance on it. He's also unhappy with the time it took RSA to obtain the assessment because he'd received a settlement offer from his employer and the delay could've caused him to lose the chance to accept it. He raised a new complaint, which he brought to our Service.

Our Investigator was satisfied RSA had declined the claim in accordance with the policy terms and she didn't think it had treated Mr C unfairly. So she didn't uphold the complaint. As Mr C has disagreed, the complaint has been passed to me to decide.

## **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.

To be clear, I'm only looking into Mr C's new complaint which arises from RSA's actions in 2024 when he asked it to reconsider his claim.

I'd like to reassure Mr C that whilst I may have condensed what he's told us in far less detail and in my own words, I've read and considered all his submissions in full. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail he'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

### *Prospects of success*

The terms and conditions of Mr C's legal expenses insurance policy says cover is available provided there is a reasonable chance of winning the case and achieving a reasonable outcome. We'd consider a reasonable chance to mean it's more likely than not the case will win; in percentage terms this means 51% and above.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost of legal action if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, RSA obtained the advice of a panel firm. And they were of the opinion that, based on the information available, the claim doesn't enjoy prospects of at least 51%. So, the policy terms and conditions have not been met.

Having considered the legal assessment, I'm satisfied it's properly written, well-reasoned, and not obviously wrong. And it's been obtained from a suitably qualified lawyer. So I haven't seen anything to persuade me that RSA shouldn't rely on it.

I appreciate Mr C believes the legal assessment is flawed and that the solicitors have taken a narrow interpretation of the relevant laws. He's also concerned they've failed to distinguish between constructive dismissal and unfair dismissal, although the solicitors have clarified that constructive dismissal is a type of unfair dismissal. But this isn't something RSA or our Service can comment on.

Rather it's up to Mr C to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he wants to challenge this further. If such an opinion is supportive then RSA should reconsider the claim. I can see RSA has already provided Mr C with his options to provide further information or a legal challenge. So, I'm satisfied it doesn't need to do anything more.

### *Delays*

I understand Mr C returned to RSA in April 2024 with further information regarding his claim. RSA agreed to arrange a reassessment of prospects and asked Mr C to provide any further evidence he wanted taken into account. This wasn't provided to RSA until five months later on 21 September 2024.

RSA acknowledged receipt of the bundle of documents Mr C had provided on 24 September 2024. And it was referred to the panel solicitors for an assessment on 30 September 2024.

On 7 October 2024, the panel solicitors asked for some missing information that was required to complete their reassessment. And on 21 October 2024, the panel solicitors provided their reassessment which advised they didn't believe the case enjoyed reasonable prospects.

Whilst I appreciate RSA didn't deal with the claim as quickly as Mr C wanted it to, I haven't identified any delays which it is responsible for. RSA has been clear with Mr C that it has a five working day turnaround for all correspondence received and I'm satisfied it's complied with these service standards. The main reason it took so long for RSA to refer the case back to the solicitors for reassessment is because Mr C took five months to provide the information he wanted considered.

Even if I had identified delays – which, to be clear, I haven't – Mr C says these delays put him at risk of losing a settlement offer from his employer. But I haven't seen anything to suggest that he did lose the settlement offer. And he had a solicitor acting for him at that time, who would've been required to handle any offers made and the deadlines associated with them.

It's not our role to fine or punish businesses when things go wrong. Instead, we would expect a business to take action to put things right if something it had done had caused a detrimental impact. As I can't see that Mr C's legal claim or the offer he'd received were impacted by the time RSA took to reconsider the claim – and the time it took wasn't unreasonable – I'm not persuaded RSA need to do anything to put things right.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 April 2025.

Sheryl Sibley  
**Ombudsman**