

The complaint

Ms G is unhappy with what RAC Insurance Limited did after she made a claim on her legal expenses insurance policy and in particular with its decision to withdraw funding for her claim in January 2024.

What happened

Ms G has a dispute with her neighbour following work carried out at their property in 2021. She sought assistance with a claim relating to that under her legal expenses insurance. I understand the claim was accepted and initially progressed by panel solicitors (S). However, in March 2023 the solicitor dealing with the claim left which led to it being transferred to a non panel firm (B).

Following receipt of expert opinion B advised in January 2024 the cost of pursuing the matter to court would outweigh the amount now in dispute. So the claim wasn't proportionate to pursue. It advised a settlement offer should be made to the other side. B said Ms G wasn't prepared to accept its advice. She obtained a barrister's opinion which agreed a settlement offer should be made. RAC said it would be withdrawing cover as the claim wasn't proportionate to pursue. But it said it would fund costs associated with the settlement of the claim. I understand Ms G instead continued to pursue the claim.

Our investigator said it was a requirement of Ms G's policy that a claim was proportionate to pursue. B advised in January 2024 that was no longer the case and she thought RAC was entitled to rely on its advice. So she didn't think it did anything wrong in saying it would be withdrawing funding for the claim (but would cover the costs of reaching a settlement). And RAC had paid the costs of the solicitors involved up until that point. Further costs that Ms G had incurred were covered by the separate agreement she'd entered into with B and so weren't something RAC was responsible for. And costs previously awarded against Ms G by the court had been covered by her previous solicitor (as it was as a result of an error on their part these had been incurred).

Ms G didn't agree. She said there were costs incurred prior to January 2024 that RAC hadn't paid and should be responsible for. She said RAC hadn't reimbursed the cost of the barrister's opinion she obtained or provided funding for the settlement of her claim as it had agreed. And she said costs had been awarded against her which she believed should be paid by RAC. She also raised concerns about the actions of both S and B including disagreeing with the legal opinions they'd reached on her case and said their costs included work that they hadn't done. And she provided large volumes of information relating to the background to her legal claim against her neighbours and related court proceedings. 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.

Ms G has provided substantial correspondence which relates to her underlying legal claim and has highlighted points where she believes the solicitors acting for her have wrongly interpreted that evidence. However, I'm not considering the legal claim; that's a matter for the courts to determine if and when the claim is decided by a judge.

Nor am I able to look into the actions of the solicitors involved when carrying out their legal role. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. And "*carrying out a contract of insurance*" is a regulated activity. So I can consider what RAC did here. However, the actions of the solicitors acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules.

So that isn't something we can look at; the solicitors are independent professionals with their own regulator and complaints procedures. Ms G may be able to raise her concerns about their actions with the Legal Ombudsman and I know our investigator has already provided her with their details.

Turning to the actions of RAC the relevant rules and industry guidelines say it has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. In considering how that applies here I've looked first at the terms and conditions of Ms G's policy. As RAC accepted the claim, I don't think it's in dispute this falls within one of the insured events the policy covers. However, in common with other legal expenses policies the policy only provides funding for proportionate costs which it says means "*the value of the claim must be greater than the costs of pursuing the claim*".

And there was clear legal advice from B in January 2024 that, based on the evidence which was by then available, the amount in dispute was significantly less than the costs that would be incurred in pursuing the matter to court. In fact it appears the amount in dispute was exceeded by the sums RAC had already incurred in progressing it to date. Given that I think it was in line with the policy terms and fair of RAC to say it wouldn't fund a court claim but would cover the cost of agreeing a settlement with the other side. And that was supported by the barrister Ms G then consulted who also confirmed the costs position and said he "*wholeheartedly agreed*" with B's recommendation to make a settlement offer.

Ms G says RAC hasn't refunded the cost of (I assume) this barrister's opinion. But I don't think that's something it needs to do. RAC did agree to cover the costs associated with making a settlement offer and I understand would have paid for the barrister to assist with that. And in his advice the barrister says he's content to put together a settlement offer. However, it doesn't appear Ms G ever asked for that to take place. Instead she appears to have progressed court proceedings herself. So I don't think there are costs here that RAC should be expected to cover. If the barrister's opinion had been positive on proportionality it might have been fair to expect RAC to reimburse the costs Ms G incurred in obtaining that. But as the barrister agreed with the advice B had already given that situation hasn't arisen.

Ms G has also suggested RAC should be responsible for a costs order the courts made against her. I understand that resulted from non-attendance at a hearing. And I can see costs orders were made against her in 2023 because of failings by S. But those failings aren't something that RAC would be responsible for.

In any case the information I've seen indicates S has paid the costs awarded against Ms G as it recognised they had come about because of what it got wrong. The further costs awarded against Ms G appear to relate (based on a court order she provided to us) to a hearing in March 2024. That was after cover had been withdrawn for her claim (and B had stopped acting for her). So I don't consider that's an issue for RAC to address.

Turning to the costs incurred by B prior to funding being withdrawn for the claim RAC has said it paid those costs it was responsible for. And while there are further costs which B may have invoiced Ms G for that's because RAC's agreement was to pay the hourly rate it would have paid its panel firm. Ms G entered into a separate agreement to 'top up' that rate (the actual rates charged by B are set out in the initial letter it sent her in March 2023).

However, I understand the only reasons Ms G had to move from S was because the solicitor dealing with her case was leaving and there wasn't an alternative at that firm who could act for her. And it was at the suggestion of the panel firm the claim was moved to B and an alternative panel firm wasn't offered by RAC. As the decision to use a non-panel solicitor didn't come about as a result of a choice made by Ms G I don't think it would be fair for that to put her in a worse position than she would have been if she'd remained with the panel firm or if RAC had provided an alternative.

That might be the case if Ms G wouldn't have had liability for paying 'top up' costs if her claim had remained with the panel firm. I queried this with RAC which said B set up the same arrangement with Ms G as any of its panel firms would have done. And it was common practice for both panel and non-panel firms to issue their standard charging rates as part of their terms as that enabled them to recover them from the other side if the case was successful. However, a policyholder would never be charged the standard rates by either a panel or non-panel firm as long they stuck to the terms of the policy and didn't prejudice the recovery position of the appointed solicitor.

RAC hasn't provided further evidence in support of its position but I've seen an email from S to B from March 2023 which outlined RAC's terms of business. In relation to professional charges it says "*in the usual manner for such insured matters, the retainer provides that the client is liable for the purposes of recovery from the opponent*". And "*RAC cover does not extend to our (or, in this case, [B's]) professional charges*".

RAC has suggested these arrangements are normal under legal expenses insurance policies. That doesn't match with my experience. But it does appear to be how any firm which was funded by Ms G's policy would have operated. So I'm not persuaded, in the particular circumstances of this case, the change from a panel to a non-panel firm has disadvantaged her.

I also note B made clear to Ms G at the point she decided to pursue the case herself (and when she was aware RAC would provide funding for settlement discussions) that the balance of their fees would be payable if she terminated her agreement with them. It was because of her decision to nevertheless pursue matters rather than follow clear legal advice from B that she's had to pay those costs. Taking all of that into account I can't reasonably say these are sums for which RAC should be responsible.

Our investigator asked RAC whether its offer to assist with settlement negotiations was still available (in response to a query from Ms G). RAC said, given the time that had elapsed since that offer was made and the fact it had no understanding of what had happened with the case since then, it was no longer prepared to offer this. That issue wasn't raised as part of Ms G's existing complaint to RAC so if she's unhappy with what it's now said about this that's something which would need to be considered as part of a fresh complaint.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 28 May 2025.

James Park
Ombudsman