

## **The complaint**

Mrs F complains that RAC Insurance Limited declined a claim on her legal expenses insurance policy.

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

## **What happened**

Mrs F made a claim on her policy to cover the costs of a proposed clinical negligence claim. RAC referred the claim to its panel solicitors to assess whether Mrs F's legal case had reasonable prospects of success. This is a requirement under the policy terms for cover to be provided.

After considering the panel solicitor's assessment, RAC said the claim didn't have a reasonable chance of success, so cover would not be provided. Mrs F complained but RAC didn't change its view.

Our investigator said it wasn't reasonable to rely on the panel solicitor's assessment, which was very brief and didn't provide a clear statement on either the prospects of success or whether the costs were proportionate to the value of the claim. He asked RAC to work with Mrs F to collate evidence needed for a fresh assessment, and arrange for that assessment to be done.

The investigator also recommended that RAC pay compensation of £800 for the distress and inconvenience caused to Mrs F.

RAC didn't accept the investigator's assessment. It said the claim was dealt with promptly and it didn't cause any delays; it was reasonable to rely on the legal assessment, which wasn't based on factual errors or misunderstandings; and the proposed compensation is disproportionately high.

So I need to make a 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 industry rules and guidance say insurers must deal with claims promptly and fairly; support a policyholder to make a claim and consider if someone is in a vulnerable situation when dealing with them; and not unreasonably reject a claim.

The policy terms say cover will be provided if the claim has reasonable prospects of success. This is defined as meaning:

*“Where we consider there is a 51% and above chance of succeeding with your claim and enforcing any award and that it would be reasonable to advise any private paying client in the same circumstances to pursue the claim.”*

The claim must also be proportionate to pursue, which is defined as being where *“the appointed representative expects the likely value of the legal claim to be greater than the costs of pursuing the legal claim.”*

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 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 where the costs are likely to be more than the value of the claim. Insurers will obtain legal advice about the prospects of success and they are generally entitled to rely on that advice unless it's obviously wrong.

It's reasonable for an insurer to rely on the advice it receives, provided it's a properly written and reasoned legal opinion. A properly reasoned legal opinion might, for example, set out the relevant facts, refer to the relevant law and then set out how likely it is that the claim will be successful. Since the policy defines this as a *“51% and above chance of success”*, it would say whether that test has been satisfied. In relation to proportionality, it would say what the value of the claim is and how that compares to the likely costs.

The legal advice doesn't do any of this. It's very short – essentially one sentence saying the pain Mrs F suffered was short lived and therefore not of sufficient value to make the matter commercially viable. It doesn't say what the chances of success are, what the claim is worth or what the likely costs will be. The solicitors don't explain what they mean by *“commercially viable”*.

In these circumstances, I don't think it would be reasonable to rely on that as being a properly reasoned opinion.

The solicitors did send an email with some further comments, though this was done much later (after this Service became involved). They said the claim related to two specific incidents and commented

*“I don't think we can formulate a commercially viable claim from those. I am endeavouring to explore wider issues with her... I am endeavouring to question re earlier symptoms... She is presently not wanting to engage with this.”*

It seems from this the opinion is that the legal claim isn't proportionate to pursue, but it doesn't actually say that, or provide enough detail for RAC to consider it as being appropriately reasoned. It may be the case that the claim does not have reasonable prospects of success and is not proportionate. But there isn't a reasoned legal opinion setting this out.

Mrs F made a claim in September 2024. RAC initially responded quickly and referred it to solicitors for assessment. However, by early November 2024, Mrs F should have been given a clear understanding of whether there were prospects of success and what she was potentially able to recover, but that didn't happen. There was further contact after that date, but she still didn't receive a properly reasoned assessment.

RAC has referred to the sequence of events and says it didn't cause unnecessary delay. In other circumstances, the time taken to deal with things may have been more reasonable. But in view of Mrs F's severe health problems and ongoing vulnerabilities, any delay would

cause her much more distress than another person. And in any event, it declined the claim without having a properly reasoned legal opinion.

Mrs F has said she doesn't think the solicitors have assessed all the relevant evidence for her case. While it's for the solicitors to deal with the assessment, that doesn't mean RAC has no responsibility for supporting Mrs F to submit the evidence she needs to, for her claim to be assessed.

I appreciate the solicitors have said Mrs F doesn't want to engage with questions around why her diagnosis wasn't picked up earlier, but – taking account of Mrs F's vulnerability – I would have expected RAC to discuss this with her and explain the consequences of not pursuing that.

RAC says that when it discussed Mrs F's complaint with her in January 2025, she said it was too stressful and tiring to keep going over what had happened, and that she had already given the details to the solicitors, so it wouldn't have been reasonable to carry on asking her for more information. But that situation only came about due to the earlier failings in the assessment.

Mrs F's illness, and the impact of the events that led to her proposed claim, were not RAC's responsibility. But given her circumstances, there was some onus on RAC to not only deal with the claim promptly, but to provide an appropriate level of support for someone in such a vulnerable situation.

RAC relied on an inadequate assessment and failed to provide Mrs F with the support she needed to ensure the claim was assessed properly. This will have added to the distress she suffered.

I'm satisfied that RAC's actions have had a significant impact on Mrs F during an already extremely difficult time in her life. So, in the particular circumstances of this case, I consider an award of £800 is reasonable.

### **My final decision**

I uphold the complaint and direct RAC Insurance Limited to:

- support Mrs F to provide the evidence needed to assess her claim, explaining what options are available to her in terms of other evidence;
- appoint solicitors to provide a properly written and reasoned legal assessment that clearly explains whether there are reasonable prospects of success of any claim by Mrs F and whether any such claim is proportionate to pursue; and
- pay compensation of £800 to Mrs F.

RAC Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs F accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If RAC Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs F how much it's taken off. It should also give Mrs F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 9 April 2025.

Peter Whiteley  
**Ombudsman**