

The complaint

Mr A and Ms A's complaint is about the rejection of a claim under their legal expenses insurance cover with Royal & Sun Alliance Insurance Limited ("RSA"). Ms A has been the main correspondent on the complaint, so I will refer to her throughout.

RSA is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As RSA has accepted it is accountable for the actions of the agent, in my decision, any reference to RSA includes the actions of the agents.

What happened

In 2021, Mr A and Ms A made a claim under the policy with RSA in relation to claims they wanted to bring against the landlord of their home, as they said the property was not fit for purpose. Ms A sent RSA written details of the issues with the condition of the property and with the landlord. RSA considered the claim (under the consumer protection and residential sections of cover) but in January 2022 told Mr A and Ms A that it was not covered under the policy, as the issues had started before the start of the policy.

Mr A and Ms A were not happy with this and told RSA they had held continuous legal expense cover before this and also asked that a claim for misrepresentation against the letting agent be considered. RSA says it asked for further information and there was some further communication with Ms A after this but the claim did not progress, as the cover was never validated.

In February 2024, Ms A contacted RSA again (having spoken to the legal helpline also provided under the policy) to ask for cover to pursue a personal injury claim against the landlord in relation to injuries suffered by Mr A at the property in March 2021. RSA referred the claim to one of its panel solicitors to assess. The panel solicitors said that, even though at that point they did not have the details of the accident, there was only a month before the limitation date on the personal injury claim was due to expire and, given this, it could not assist with the claim. RSA agreed to ask another panel firm to assess the merits of the claim and asked Mr and Ms A to complete a claim form. RSA also advised Mr A and Ms A they may wish to instruct their own solicitor, given the short time left before the claim would be time-barred.

The second panel firm said there were no reasonable prospects of success (less than 50%), as the limitation date was so close and this had adversely affected the claim.

Ms A was not happy with this and complained. She said she had laid everything out to RSA in 2021 and 2022, in phone calls and in her written claim submission, hoping RSA could help. She was not aware she needed to break down each specific legal claim and break down that they wanted to bring a personal injury claim. Ms A says she was also unwell and under a great deal of stress at the time and since.

RSA said that nothing in the initial claim submissions in 2021 or 2022 referred to Ms A wanting to pursue a personal injury claim and it was only notified of the potential personal injury claim in February 2024. RSA also said that Mr A and Ms A were in breach of policy conditions requiring them to tell RSA as soon as possible of an event that could give rise to a claim; and that there is an exclusion in the policy for claims that it is not told about within six months of the claim event happening, unless any delay has not prejudiced their position or the likelihood of a successful outcome.

As RSA did not change its position, Mr A and Ms A referred their complaint to us. Ms A says she thought the legal expenses policy would give her peace of mind. She was not aware that in seeking legal advice, she would need to know to stipulate that she needed to make two claims, one for the landlord and one for personal injury. This has been extremely stressful and Mr A has had a number of health issues. Ms A says she feels let down and that RSA seems to try and find any exclusion it can to reject the claims she made.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was not persuaded that RSA had done anything wrong.

Ms A does not accept the Investigator's assessment. She says that she spoke to the legal helpline run by the first panel solicitors and other solicitors, who all said she should go back to RSA. Ms A has also given us a lot of information about the difficult circumstances she and Mr A have experienced in recent years.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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.

While I have considered, and will refer to, the original claim in 2021, I am only considering the rejection of the personal injury claim. I am not considering the rejection of the original claim.

Did Ms A previously notify the claim for personal injury in 2021 / 2022?

Ms A says she recalls giving information over the telephone to RSA in 2021/2022. RSA has provided copies of recordings of its calls with Ms A but they do not relate to this claim. RSA says it has no recordings relating to this claim and Ms A is unable to specify when any other calls took place. So the only evidence of what Ms A told RSA about the accident is the written claim submission she made in January 2022.

I have read this written submission. Ms A set out a comprehensive account of all the issues in the condition of the property, which ran to several pages. Ms A did state within that account that Mr A had tripped on a step and injured his face on a radiator *"as he has to go down to a further bathroom in the extension due to bathroom beside this first bedroom not in action"*.

At the end of the submission, Ms A lists the issues against the landlord, which would seem to be a list of issues she wanted to pursue as part of her legal claim. This again was mainly about the condition of the property but it also included the following: *"Disinterest in accident on the premises (involving a step that I believe contravenes current building regulations. . . 50mm away from open doors...should be 400mm. No stair bannister."*

RSA was therefore informed of the accident. However, the submission does not state that Ms A wanted to pursue a claim for damages as a result of the accident. I also don't think it amounts to a query about whether there would be a potential claim for damages for the accident. I say this because while Ms A says the step Mr A tripped on may have contravened regulations, it is the landlord's "*disinterest*" in the accident that she cites as part of her concerns. In the context of the whole written submission, it seems to be relayed as part of the overall complaint about the condition of the property and what Ms A sees as the inadequate response from the landlord.

So, while Ms A did tell RSA in 2022 of the accident and injury Mr A suffered, there is no indication in the submissions that I have seen that she wanted to bring a claim in relation to that injury. I do not think therefore that it is reasonable to conclude that RSA should have been aware Ms A wanted to make a personal injury claim, or that it should have advised her this was a claim she should pursue.

Ms A says she didn't realise she needed to specify the potential legal claims she had. I appreciate that policyholders may not necessarily always be aware of their legal rights and what legal claims they could bring. However, neither would RSA. It's an insurer and does not have legal expertise, although it has experience in legal insurance matters. It would be for the relevant legal advisers to determine what legal rights Ms A may have had in relation to any of the issues she raised.

Having considered everything carefully, I do not consider that RSA could reasonably have been expected to do anything different in 2021 or 2022 in relation to the information it had about the accident Mr A had.

Is the claim covered?

Ms A's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including disputes relating to personal injury. However, as with virtually all legal expenses insurance policies, it is a re-requisite of cover that any claim have reasonable prospects of success. We would consider this to be a 51%, or more, chance of winning the legal case and achieving the remedy sought. It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case.

RSA did just this and asked two panel solicitors to assess the claim.

The first did not assess the actual merits, as they could not take the case on given the short time before limitation was up on the claim. The second panel solicitors said there was a less than 50% chance of the claim succeeding given the time left to run.

I have not seen any evidence that the claim did have reasonable prospects of success when reported to RSA in 2024. Given this, I do not consider that RSA acted unfairly in rejecting the claim. Given this, I do not think I need to make any finding whether there was a breach of policy requirements about reporting claims or whether this falls within the exclusion cited by RSA.

Despite my natural sympathy for Mr A and Ms A, given everything they have been through, I do not consider RSA has acted unfairly or unreasonable and I do not intend to ask it to meet their claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Ms A to accept or reject my decision before 24 April 2025.

Harriet McCarthy
Ombudsman