

## **The complaint**

Mr S's complaint is about the handling of claim under his legal expenses insurance cover with Royal & Sun Alliance Insurance Limited ("RSA").

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 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 May 2023, Mr S contacted RSA to make a claim under his policy as he wanted cover for claims for unfair dismissal, discrimination and victimisation, against his former employer. RSA appointed one of its panel of pre-approved solicitors to assess the claim

The panel solicitors did not consider that the claims, Mr S wanted to make had reasonable prospects of success, which is a pre-requisite of cover under the policy. RSA said it was entitled to rely on the panel solicitor's assessment and as there were no reasonable prospects of success, it refused the claim under the policy. Mr S provided some further information but the solicitors maintained their advice.

Mr S continued his legal claim himself and in February 2024, he provided the panel solicitors with the bundle of documents produced for the tribunal. The solicitors asked for funding from RSA to review the bundle and reassess the claim. RSA agreed but the solicitors advised again that they did not consider Mr S's claim had reasonable prospects of success.

Mr S says the claim was settled in his favour in July 2024. Mr S subsequently complained to RSA, as he is very unhappy with its handling of his claim. He says the panel solicitors assessment was flawed and meant he was unfairly denied the legal insurance cover he was entitled to and this impacted the outcome of his employment claim.

RSA does not consider it has done anything wrong. It says the claim was handled in accordance with the policy terms and it was entitled to rely on the panel solicitor's advice.

Mr S remained unhappy with RSA's response, so he referred his complaint to us. He wants a review of RSA's decision on his claim and compensation for its unfair refusal of his claim. Mr S says he suffered significant stress and anxiety facing the legal process unrepresented and it also impacted the settlement he received. Mr S asks for compensation of the difference between the settlement he received and what he believes he would have achieved with proper representation.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he thought RSA had handled the claim fairly and reasonably overall and was entitled to rely on the panel solicitor's advice.

Mr C does not accept the Investigator's assessment. He says the Investigator has not fully considered the complaint. Mr S has made a number of points in response to the Investigator. I have considered everything he has said but have summarised his main points below:

- The assessment by the panel solicitors was fundamentally flawed, as they based their conclusions on his former employer's account without considering the key aspects of his case.
- They failed to consider adequately the issues of discrimination and false accusations he was subjected to.
- He repeatedly tried to make the panel solicitors aware they were not considering the full picture of his case.
- The application of the reasonable prospects standard should not have been so narrowly focused on his employer's narrative and RSA should have also considered the strength of his case beyond the courtroom, given that most cases settle without a trial. The fact his case settled means it had sufficient merit to warrant a resolution.
- It was unfair for RSA to rely on one legal opinion, without proper consideration of all the circumstances, including the potential impact on him.
- The burden should not have been on him to prove the panel solicitor's assessment was incorrect.
- RSA's decision to decline his claim was based on an incomplete and biased legal opinion, and he is entitled to compensation for the financial shortfall he suffered due to the lack of legal representation.

As the Investigator has been 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.

Mr S's policy, like all other legal expenses insurance policies, requires that all claims have reasonable prospects of success. This is generally interpreted to mean that the legal claim must have a more than 51% chance of succeeding.

As with all insurance claims, it is for the claimant to establish that they have a valid claim under the policy. This means that strictly, Mr S has to establish that he has a legal case, within one of the sections of cover in the policy, with a reasonable chance of achieving a successful outcome, in order for RSA to be required to fund it. However, in practice most legal expenses insurers will pay for an assessment of the legal merits of the case, as they are in a better position to do so. RSA did just that, instructing one of its panel solicitors.

Mr S says that any such assessment should also consider the chances of obtaining a settlement, rather than of succeeding at trial. I do not agree that this is a reasonable interpretation. Our approach is that it is reasonable that the prospects of success assessment be based on the likely outcome if the issue were considered by the appropriate court or tribunal. This is because, while it is true that parties will often settle cases for commercial and other reasons rather than defend them to trial, it is not reasonable to expect policies such as this, to fund speculative legal claims. I am satisfied that the correct test is whether a claim would succeed if tested properly at trial, albeit with the intention and hope that it is resolved without the need of a trial.

We do not assess the merits of the legal claim – that is not within our expertise. Our remit is

to assess complaints about regulated activities – such as carrying out an insurance contract. Therefore, in a case such as this, we can only assess whether the insurance claim has been dealt with fairly. That does not require an assessment of the legal case, but we do weigh up all the available evidence, including any legal opinion. So long as an insurer has obtained independent legal advice on prospects from suitably qualified lawyers, we will not generally question their reliance on that advice, unless we think it was obviously erroneous or based on factual mistakes. I have seen nothing in this case to justify such a finding. The panel solicitors were suitably qualified and experienced to advise on employment law.

Mr S has criticised the solicitors and said they did not fully consider the circumstances of his case, in particular the many false allegations made against him by his employer.

The solicitors provided three written assessments of the merits of the employment claims Mr S wanted to bring against his former employer. Their initial assessment in June 2023, gave detailed reasons why they did not think the claims had sufficient merit to be funded under the policy. Mr S then provided some further information and they reassessed the claim in July 2023 but still did not think it had reasonable prospects of success. RSA agreed to the solicitors reviewing the bundle of documents provided by Mr S in February 2024 and they provided another written assessment.

Mr S says that the false allegations against him were not considered properly in the solicitor's assessments and, if they had been, then the outcome would have been different. However, each assessment gave detailed reasoning as to why the solicitors did not think Mr S would succeed in his claims. I can see that the solicitors advised that many of the allegations Mr S wanted to bring against his employer were out of time. They did, however, consider a number of the false allegations Mr S says were made against him but did not think that Mr S would have a reasonable chance of proving these were the result of discrimination.

I am not therefore persuaded that there was any obvious lack of consideration of the circumstances presented by Mr S by the solicitors. I appreciate that Mr S doesn't agree with the legal assessment carried out on his claim, but his own views on this matter cannot reasonably outweigh the assessment of qualified legal professionals such as solicitors. I do not agree that they failed to provide a proper legal opinion. Given this, I am not persuaded it is unreasonable for RSA to rely on the panel solicitor's advice and refuse to fund the legal case.

Mr S says RSA should not have relied on just one legal opinion and the burden should not be on him to prove the solicitors were incorrect. RSA paid for the solicitors to review Mr S's claim three times. I think it acted reasonably in doing so and in agreeing to a further assessment when more information was available. I do not consider RSA needed to pay for an assessment by other lawyers just because Mr S did not accept what the panel solicitors advised. As the Investigator has explained, in these circumstances we would consider it reasonable that the policyholder provide a contrary legal opinion, if they disagree with the assessment obtained by RSA. I have not seen any legal opinion that would demonstrate that the panel solicitor's assessments of the claims Mr S wanted to make were incorrect.

Mr S also says that the fact he obtained a settlement from his former employer shows his case had merits. However, I am not persuaded this in itself establishes that the panel solicitor's assessments were incorrect. I say this because parties might settle a legal claim for many reasons but in any event, the panel solicitors did not state that Mr S had no chance of succeeding, only that there was not enough chance to entitle him to funding for the cost of bringing the claim under the policy.

Having considered everything very carefully, it is my opinion that RSA acted fairly and reasonably and in line with the policy terms in rejecting Mr S's claim. I therefore do not consider it is responsible for any consequences of Mr S being unrepresented, including any loss of settlement (even if this were proven, which it is not) or stress this caused Mr S.

**My final decision**

I do not 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 28 April 2025.

Harriet McCarthy  
**Ombudsman**