

The complaint

Miss R is unhappy with what Royal & Sun Alliance Insurance Limited did after she made a claim on her legal expenses insurance policy.

What happened

Miss R sought assistance from her policy with a claim she wanted to bring against a solicitor who acted for her. She initially contacted RSA about it in October 2021. The claim didn't progress at that time as information RSA requested from Miss R wasn't received. RSA had further contact from Miss R in 2023 and following validation checks asked a panel firm (T) to assess the claim's prospects of success in October 2023.

T said it wasn't able to do so because of a conflict of interest. RSA approached a different panel firm (J). It said it could act. Miss R asked if its conflict checks had included two other businesses she named. She also said under the relevant regulations she should be able to appoint her own solicitor. RSA queried why checks needed to be carried out on the other businesses as the claim wasn't being pursued against them. And it said Miss R wouldn't have the right to appoint her own solicitor until the claim had reached the point at which proceedings could commence.

In March 2024 Miss R said the claim extended to include other parties so a conflict check should include them. In response to a request from J, RSA asked Miss R for a brief explanation as to the involvement of the other parties. It wasn't satisfied the information Miss R then provided answered that question. And it said that was required in order for the claim to proceed.

Our investigator agreed Miss R hadn't provided the information RSA asked for about the other parties involvement. And it was a requirement of the policy she provide it with all of the information it needed. He thought it was reasonable RSA said it couldn't progress the claim until this was provided. He didn't think there had been significant issues in RSA's handling of the claim.

And while it was clear T did have a conflict of interest he didn't think it would be fair to expect RSA to agree to the appointment of Miss R's own solicitor until after a prospects assessment had been completed. It was reasonable of RSA to say it would use a panel firm to do that. If that was completed and the claim was covered RSA should then allow Miss R to appoint her own solicitor.

RSA said a panel solicitor was available who didn't have a conflict of interest. So it didn't agree Miss R would be entitled to use her own solicitor on receipt of a positive assessment of the claim's prospects.

Miss R said she would be providing further comments by close of business on 17 April 2025. In response to a reminder from our investigator she said on 6 May she would be providing further submissions as soon as possible (and highlighted a neurological issue which impacted her). At the end of May our investigator asked Miss R when she would be providing her comments. Miss R said on 6 June she would do so by close of business that

day. However, no further submissions were received. And our investigator confirmed the review of her case would move forward.

I appreciate Miss R has a condition which means it takes her longer to respond but it's over eight weeks since she told us she would be doing so. And nothing has been received. So I think it's appropriate I now reach a final decision on this complaint.

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 rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Miss R's policy. RSA hasn't disputed the claim Miss R wanted to bring against the solicitor who acted for her is potentially one the policy could assist with. However, the policy doesn't cover claims *"where there is not a reasonable chance of you winning the case and achieving a reasonable outcome"*.

As an insurer doesn't have legal expertise our long standing approach is that assessment should be carried out by a suitably qualified lawyer who has relevant experience. So I think it was right RSA referred Miss R's claim to one of its panel firms so that could be considered. It's unfortunate the firm it approached (T) was conflicted but I think it was right RSA then identified an alternative firm (J) who confirmed they didn't have a conflict.

Miss R said the conflict check should include the names of other businesses which she hadn't previously referenced in her submissions. I don't think it was unreasonable RSA asked her for more information on how they related to her claim. And while Miss R did provide some general commentary about why conflict checks should be carried out on connected third parties she didn't explain how that applied in her case.

Miss R appears to have been worried about disclosing sensitive or confidential information prior to a conflict check being completed. But RSA only asked for a brief explanation as to the involvement of the parties she'd referenced with her claim. I haven't seen evidence to show that's something Miss R wouldn't have been able to provide. And it's a condition of the policy that a policyholder *"must give your representative all the information and help he or she may need. This will include a truthful account of the facts of your case and any paperwork to do with your case. You owe the same obligations to us as to your representative"*.

In this case J specifically requested information about the involvement of the other parties so it could understand whether it was in fact able to act in relation to the matter. Given that I don't think RSA acted unfairly in saying it wouldn't be able to progress the claim until this information was provided; I understand it remains open to Miss R to do so.

In correspondence with RSA Miss R also made a number of references to the Insurance Companies (Legal Expenses Insurance) Regulations 1990. In particular I'm aware regulation 6 says *"Where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)"*. It goes on to explain *"the insured shall also be free to choose a lawyer (or other person having such qualifications as may be necessary) to serve his interests whenever a conflict of interests arises"*

In this case T did have a conflict of interest. As a result I understand why Miss R says she should have been able to choose her own lawyer. But the main reason for carrying out a prospects assessment is so an insurer can be satisfied a claim is more likely than not to be successful and meet the terms for funding to be provided under the policy. So it's primarily carried out for the benefit of the insurer rather than to serve Miss R's interests.

In any event I don't think it would be fair to say Miss R had the right to choose her own representative unless cover was available under her policy in the first place. And that wouldn't be the case unless and until the claim had been shown to have reasonable prospects of success. I don't think it was unfair of RSA to say a panel firm would carry out the prospects assessment in this case.

However, I do agree if that assessment is positive meaning the claim is eligible for funding under the policy (and a lawyer was required to move forward the underlying claim and serve Miss R's interests) she would then be free to choose her own representative. RSA doesn't think that's the case because it has a panel firm available that wasn't conflicted. But the regulations say this provision applies "*whenever*" a conflict of interest arises and don't limit that to circumstances where an insurer doesn't have any non-conflicted panel firms.

I've also considered the overall handling of the claim by RSA. I've not identified significant delay by it in moving matters forward or in responding to Miss R after she got back in touch in August 2023. And I think it did try and address the points she raised in her emails and explain why the information she'd provided didn't address the questions it had asked. If Miss R has concerns about what happened after RSA issued its final response in June 2024 that's something which would need to be considered as part of a separate complaint (and RSA would need an opportunity to consider this before we could look into it).

Putting things right

If Miss R's claim is confirmed to have prospects of success (meaning cover is available for it) and Miss R wants to appoint her own representative to progress the matter that's something RSA should agree to. However, any appointment will be subject to the relevant terms of her policy and any dispute over, for example, the hourly rate to be paid to that representative will need to be raised as part of a separate complaint.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 15 July 2025.

James Park
Ombudsman