

The complaint

Mr and Mrs K complain about what Royal & Sun Alliance Insurance Limited did following a claim Mr K made on their legal expenses insurance policy. Although the policy is in joint names, as the claim relates to Mr K, I'll mainly refer to him in this decision

What happened

Mr K was injured in a car accident which resulted in mental and physical injuries. He instructed solicitors (F) to pursue a personal injury claim. Mr K was successful at court but was awarded significantly less compensation than he anticipated. In April 2023 he sought funding from his legal expenses policy to pursue a professional negligence claim against F. I understand RSA sought further information from Mr K and in June 2023 he provided a link containing F's file on the matter.

RSA asked a firm of solicitors (D) to assess whether the claim was likely to be successful. D said it would need to instruct counsel. RSA agreed to that at the end of July. Counsel advised in early September there appeared to be a valid claim in respect of an undercalculation of future earnings. There were also potentially valid claims in respect of some other matters. He said the file relating to the original claim should be obtained. RSA told Mr K that as prospects of success hadn't been confirmed his claim couldn't be accepted.

Mr K said he'd provided F's file with his previous submissions. RSA discussed this with D which accepted that hadn't been provided to the barrister. A revised opinion was provided in mid-October. That said a further 23 documents had been considered and the advice hadn't changed. Mr K said there were over 14,000 documents in F's file. RSA raised this with D which asked for a paginated file to be provided. Mr K said the information he'd already sent (including a 'topsheet' summary) provided this.

RSA said D would only review a bundle with tabs. However, it agreed to pay for Mr K to obtain his own counsel's opinion. There was further discussion over whether this would fall within the policy indemnity limit. RSA eventually accepted it wouldn't. In April 2024 Mr K's solicitors provided counsel's assessment and said this was positive on the prospects of most of the claim.

In response to Mr K's complaint RSA said it had taken reasonable steps to obtain the prospects assessment. However, it accepted the information D's counsel had considered had nevertheless been incomplete. And Mr K had to take unnecessary steps to demonstrate the costs of the prospects assessment shouldn't fall within his indemnity limit. It agreed to pay £400 in recognition of the impact on him of that.

Our investigator agreed RSA had given Mr K incorrect information about whether the cost of the prospects assessment would be included within his indemnity limit. And while RSA had taken steps to progress the prospects assessment he thought there was more that could have been done here. Mr K had to make numerous phone calls and had provided evidence which showed the ongoing delays with the claim were discussed as part of treatment sessions with a clinical psychologist.

He wasn't satisfied the claim issues were the sole reason those sessions were required but agreed that did show an increased impact on Mr K as a result of what RSA got wrong. He said it should pay him an additional £350 (meaning total compensation of £750). However, an issue over whether the cost of obtaining court transcripts should be covered by Mr K's policy wasn't something that formed part of this complain. If Mr K was unhappy with RSA's stance on this that would need to be raised separately.

RSA accepted his outcome. Mr K didn't agree. In summary:

- He explained his position in relation to the court transcripts and why he'd needed to incur costs in relation to them. He thought that issue should be considered as part of this complaint and it had previously been brought to RSA's attention.
- He drew attention to his vulnerabilities following his initial accident and set out the impact of that on him. He said what RSA got wrong had a much greater impact on him than on someone unaffected by those issues. That led him to seek help (and medication) from his GP. He then needed to return to his psychologist for additional support at the point when the legal assessment was completed without supporting evidence having been properly reviewed. If RSA had acted properly those sessions wouldn't have been required (and nor would further treatment).
- Because RSA hadn't provided a legal assessment he had to arrange for that himself. That should be taken into account when assessing the distress and inconvenience he was caused. He was also extremely worried during this time that limitation for his claim might expire meaning he would be unable to recover the significant sums he was owed.
- He drew attention to issues that had occurred from when he first made his claim in October 2022 and said he was directed to the wrong claims handler. He queried whether these issues had been taken into account as part of this complaint.
- He'd made clear to RSA from the outset it was important the full file from F was shared appropriately which didn't happen and which he found very worrying. And the time taken for the initial legal assessment was significantly in excess of that which had been advised and he wasn't given clear information about revised timeframes.
- On receipt of the initial assessment RSA hadn't realised the full file hadn't been reviewed. And it wrongly said the whole claim didn't have reasonable prospects of success. It then failed to ensure the full file was properly considered when the file was reviewed for a second time.
- He highlighted the actions he'd taken to try and resolve the matter including many phone calls and emails and the time taken in doing so. He also highlighted a case from our website where a significantly higher compensation amount had been awarded. He also thought the delays by RSA could potentially impact the amount of interest he might be awarded if successful in his claim.

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.

I appreciate this has been an extremely difficult experience for Mr K. I recognise the impact his accident has had on him and I don't think there's any dispute that's left him in a vulnerable position. I was sorry to learn how challenging recent years have been for him. And while I haven't referenced every point Mr K has made in this decision I have seen all of his submissions and have taken into account the points he's made.

However, while Mr K has made reference to what happened after he first made his claim (in October 2022) and delay in the matter being referred to the correct claims handler that isn't something I'm considering. I can't consider a complaint unless a respondent business has had an opportunity consider it first. And it doesn't appear Mr K has previously made a complaint about this issue to RSA. It doesn't appear to have been mentioned when he complained in September 2024 and isn't referenced in the final response RSA sent.

Nor does Mr K appear to have complained about any decision RSA made relating to the court transcripts costs. He's also queried whether costs incurred by his solicitors in relation to the initial legal assessments should fall within the policy indemnity limit. Again that doesn't appear to be an issue he's raised with RSA to date. So if Mr K does want to pursue these issues it's open to him to raise these as a separate complaint with RSA (which we could potentially consider once it had had an opportunity to look into them). What I'm considering here is what RSA did in response to the claim Mr K made to it in April 2023. The key question is whether RSA was at fault in dealing with that claim and, if it was, what impact those failings had on Mr K.

In relation to that I think it was reasonable RSA initially asked Mr K for more information about his claim. I understand as part of his response he provided a link to F's file on 8 June. And for cover to be provided his policy requires there must be "*a reasonable chance of winning your case and achieving a reasonable outcome*" So I think RSA acted correctly and promptly in asking D to then assess whether that was the case. D responded to RSA on 12 June asking for authorisation to seek counsel's opinion. It's unclear when D provided a quote for that but RSA provided authorisation for it on 24 July. Following that I think RSA was proactive in chasing for progress and explored whether, in the light of counsel's leave, an alternative was available. It was advised by D that wasn't the case.

But the opinion counsel provided in early September was obviously deficient because he clearly hadn't reviewed the full solicitors file Mr K provided. That in itself (and any other actions or inactions of D) aren't something I can consider. 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. "*Carrying out a contract of insurance*" is a regulated activity. That's why I can consider what RSA did here. But while I appreciate Mr K feels RSA should be responsible for the actions of D that isn't something I can look at. When acting in their legal capacity that firm isn't carrying out a regulated activity (and their actions aren't covered by any of the other activities we can consider).

However, I agree on receipt of counsel's opinion RSA was wrong to tell Mr K his claim didn't have prospects of success. Even on the basis of the limited information counsel had reviewed that didn't reflect the conclusion he'd reached. In any event RSA should have realised that opinion couldn't be relied on because it was clear counsel hadn't reviewed F's file. And RSA knew that had been provided to D.

Mr K quickly made clear to RSA that was the case. I accept that put him to some unnecessary effort but it also meant there wasn't a significant delay in RSA instructing D to review matters. And RSA made clear to D it should do that on the basis of the full file Mr K had provided (and specifically referenced the number of documents this contained). It's extremely unfortunate D (and counsel) don't appear to have done that and only accessed

some of the provided documents. But for the reasons I've explained that isn't something RSA is responsible for.

D subsequently told RSA it would further review matters on the provision of a paginated bundle (and didn't accept the information Mr K had provided met its requirements). As Mr K quite reasonably wasn't prepared to do more with the file than he already had I think it was right RSA agreed he could instruct his own solicitors and counsel to provide an assessment. However, there was then a further failing on its part because it told Mr K the costs of this would form part of his indemnity limit. That contradicted what he'd previously been told (and I don't think in the circumstances of this case was reasonable in any case). And Mr K was put to time and effort in resolving that situation with RSA.

Overall, I recognise it took around 12 months following Mr K's April 2023 claim submission for a proper assessment of its prospects of success be obtained. However, the solicitors file contained over 14,000 documents. And following terms of appointment being agreed with Mr K's own solicitors it then took a further five months for an assessment to be produced. So I think that time would have been required regardless. And while it may have taken RSA too long to, for example, authorise the initial counsel's opinion it seems the more significant issues were then caused by D or the counsel it instructed. And for the reasons I've explained that isn't something RSA is responsible for.

So while I don't doubt Mr K found this a particularly distressing time I can't conclude that's because of something RSA is wholly (or even mainly) responsible for. I recognise Mr K in particular needed to seek assistance from his GP and then had further psychological treatment from September 2023 onwards. I appreciate the issues with this claim do appear to have played a part in him needing to do that. But I don't think there's a causal link between what RSA got wrong and Mr K's need to obtain that treatment. I think that would likely have happened without any failings by RSA. As I don't think RSA was responsible for most of the delay to the claim I'm also not persuaded it would be accountable for any loss in interest Mr K might be awarded if successful in his claim (and at this stage it's unclear whether there is in fact any loss here at all).

Nevertheless, I do agree RSA may have caused some delay, could have communicated better with Mr K and on occasions provided him with inaccurate information about his claim (including about what costs would be included in his indemnity limit). I know that will have been difficult for him and I accept that, given his vulnerabilities, that will have had more impact on him. I also recognise that Mr K had to make efforts to move his claim forward (including sending a number of emails and making phone calls). And at least some of that would have been avoided if RSA had acted as it should. I've also taken into account that Mr K was concerned about limitation expiring for what was an extremely high value claim.

But while I note the case example from our website he's highlighted I don't think there's a direct read across from what happened there to his situation. That case involved a banking issue where there was an actual and direct financial loss to the consumer as a result of what the bank got wrong. The timeframes were also different. In any event each case is decided on its own merits and based on its individual circumstances. So it's the impact on Mr K as a result of what RSA (and it alone) got wrong that I need to consider in this decision. For the reasons I've explained I don't think it's responsible for much of the delay in this case or the impact of that on Mr K. Given that I think a total compensation figure of £750 is a fair way of recognising the distress and inconvenience Mr K has been caused by what it did get wrong.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to pay Mr K £750 (inclusive of the £400 it's already agreed to pay).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 16 July 2025.

James Park
Ombudsman