

The complaint

Ms P's complaint is about a claim she made on her RAC Insurance Limited ('RAC') legal expenses insurance policy.

Ms P says that RAC treated her unfairly.

What happened

Ms P made a claim on her RAC legal expenses insurance policy for cover to bring an employment claim for discrimination.

RAC arranged for a panel firm of Solicitors (firm A) to consider her claim. Firm A concluded the claim didn't have reasonable prospects of success as required by the policy and as such RAC declined to fund Ms P's claim. Ms P says that firm A didn't understand her claim and that it took them three attempts to assess it and that they didn't believe her evidence.

Ms P says she spoke to another RAC panel Solicitor who she felt disregarded her interests. Following this Ms P obtained her own legal opinion which put the merits of her claim at over 51%. Ms P then wanted to use her own Solicitor to pursue her claim but RAC confirmed they would only pay the hourly rate set out within their policy terms, namely £120 per hour.

Ms P says her own Solicitor is unprepared to work at that rate. Ms P wants RAC to make reasonable adjustments for her given her disabilities and pay her Solicitor's costs at an increased hourly rate or propose the name of another suitably qualified experienced panel Solicitor.

RAC considered Ms P's claim and didn't think they'd done anything wrong. They said they'd offered Ms P a panel firm and given her the option to use her own Solicitor but top up the rate offered by them which is stipulated in their policy terms. Unhappy, Ms P complained to the Financial Ombudsman Service.

Our investigator considered Ms P's complaint and concluded it should not be upheld. He said that RAC had acted in accordance with their policy terms and that she had been offered a choice of three panel firms to choose from. Overall, the investigator didn't think that RAC had prevented Ms P from having freedom of choice of Solicitor.

Following the investigator's view Ms P reiterated that she would be amenable to being provided with the name of another individual Solicitor she might be prepared to instruct or that RAC increase the hourly rate payable and pay her own choice of Solicitor. Our investigator sought to resolve the matter by putting the former option to RAC again. RAC said they were prepared to offer a different panel firm than that previously proposed. They also said they were prepared to meet Ms P's requirement for a dedicated Solicitor to be appointed by this firm to handle her matter consistently in line with her request.

Ms P was unhappy about this as she wanted to agree the identity of the Solicitor and to determine whether she thought they were suitably qualified. She was also concerned that one of the previous panel firms RAC had offered were no longer available. She thought this

could mean a Solicitor appointed by RAC on her behalf could change during the course of her claim, which would break continuity in representation for her.

In response the investigator concluded that RAC had acted fairly and referred Ms P's complaint to me to determine.

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.

Having done so, I don't uphold Ms P's complaint. Before I explain why, I wish to acknowledge the volume of submissions she's made and evidence she's supplied. Whilst I've read everything Ms P has said, I won't be addressing it all. That's not intended to be disrespectful, rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll stick to the crux of this complaint, namely whether RAC treated Ms P fairly.

The starting point is the policy terms. They say:

“Although we must appoint the legal representative, you may choose your own if it becomes necessary to start court proceedings, or if there is a conflict of interest. If you want to do this, please tell us their name and address so we can consider your request. Your suggested legal representative must agree to our standard terms of appointment, which you can request a copy of. You will have to pay any legal costs above the rate we would normally pay our preferred legal representative, which is £120 per hour.”

It's common for legal expenses insurance policies to contain such a term and it's consistent with the relevant laws applicable to freedom of choice. Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 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)”

The phrase “any inquiry or proceedings” means when it becomes necessary to issue court proceedings, or proceedings in another formal place of inquiry, such as a tribunal.

At the point at which Ms P sought the appointment of her own Solicitor, her claim had yet to be litigated. That means proceedings have never been issued. So, she was not yet at a point where the appointment of her own Solicitor was an option. Equally I have seen no compelling reasons why Ms P would have been entitled to her own choice of Solicitor at this point. In reaching this conclusion I've taken into account what Ms P says about the complexity of her case. I've reviewed the legal opinion she provided to support the merits of her claim, but I'm not satisfied that the legal issues within it are such that they would be considered to be so unusual or complex that they couldn't be dealt with a specialist employment lawyer with experience in disability discrimination cases. As such I don't think RSA did anything wrong at this point by offering to pay either their own panel Solicitors who were able to act on such claims or by giving her the choice of using her own Solicitor with the option to top up the rate of £120 per hour herself. That said, I understand Ms P has since issued a claim herself in the Employment Tribunal and now requires assistance.

When considering the terms on which RSA offered assistance (namely at the rate of £120 irrespective of whether a panel Solicitor is appointed or someone of Ms P's own choice), we

need to be satisfied that the rate is not so low that it fetters freedom of choice of Solicitor when this arises. In determining this is we consider whether there are both panel and non panel firms available to take on cases like Ms P's and whether they have done so before at the rate offered. RSA have offered Ms P the choice of three non-panel Solicitors able to take on her claim at the agreed rate. They have also provided this Service with persuasive evidence that they have worked with non-panel Solicitors in the past on similar claims for the same rate. Because of this I am not satisfied that Ms P's freedom of choice has been fettered here.

I note that Ms P has asked for details of the non-panel Solicitors appointed by RSA on similar matters. RSA have asked that these not be disclosed on the basis that they are commercially sensitive. I can understand that particularly given that RSA do not wish to be seen to be recommending firms that they have funded in the past. Because of this, I don't think it's appropriate for Ms P to be provided with these details and they don't in any event assist her in her pursuit of this complaint in any way. Given the evidence I've seen from RSA, I'm not satisfied that the Solicitor's guidelines for hourly rates Ms P has supplied makes any difference to the outcome of her complaint about the rate being offered by RSA to non-panel firms.

I turn now to Ms P's complaint that RSA failed to make a reasonable adjustment by providing her with the name of a suitably qualified Solicitor who she can trust and who will provide her with continuity of care. Ms P has said that her mental and physical disabilities mean she requires this framework to meet her needs. I've considered what she's said and what has been offered to her by RSA, but I'm not persuaded that their actions amount to wrongdoing, such that RSA have breached their obligations to her. Rather I think RSA have been more than reasonable. They've offered Ms P a choice of three panel firms. At that point it is the matter for the panel firms to determine who they have available to assist Ms P. As long as they are suitably qualified and experienced in the area of law that Ms P is asking for assistance with, we wouldn't say that RSA has done something wrong. RSA have also said that they can provide Ms P with continuity of representation by a named individual at one of those panel firms. Again, Ms P remains unhappy with this because they've not provided her with the name of an individual to allow her to decide whether she's happy with their appointment. I don't think RSA have to do this, nor that such action amounts to a reasonable adjustment. RSA are an insurer providing legal expenses insurance cover not legal services. In doing so their role is to provide access to legal professionals that can act under the policy terms, but they can't dictate how that is conducted. That's a matter for the panel firms to determine themselves. And it isn't for Ms P to determine the identity of the Solicitor to be appointed. That's not the purpose of the cover and not something she's entitled to as part of it. If Ms P does want to appoint someone of her own choice, she can do so but as I've said above, RAC don't need to offer that individual anything more than £120 per hour because they've been able to demonstrate that non panel firms can act for that fee on similar claims. This means that Ms P's freedom of choice is not fettered.

Ms P is also concerned about the fact that one of the panel firms previously offered to her is no longer available and what this might mean for her if RAC appoint a firm whose status as a panel Solicitor changes. Once a retainer has been agreed between an insurer and a firm of Solicitors, that generally remains the case for the life of the matter unless there are exceptional reasons why this wouldn't be the case, like the Solicitor determining that they can no longer act for some professional reason. But that would be the case on any privately funded instruction too. So, I don't think this is a matter Ms P should be overly concerned about. And as I've said it's possible that any firm of Solicitors might find themselves in a position where they can no longer continue acting for a client. Whilst that's not ideal, it's not something RSA can control. As long as they provide the cover they're offering under the policy, namely funding for legal representation subject to the policy terms and conditions being met, we wouldn't generally say they'd done something wrong.

Finally, Ms P has said she wasn't made aware of the terms of the policy before taking it out. That's not something I can consider against RSA because they didn't sell Ms P the policy. And like the investigator I can't see that RSA failed to provide Ms P with policy documents when requested because I haven't seen evidence of such a request being made.

My final decision

For the reasons set out above, I don't uphold Ms P's complaint against RAC Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 4 September 2025.

Lale Hussein-Venn
Ombudsman