

The complaint

Mr M's complaint is about the refusal of a claim made under the legal expenses section of his home insurance policy with RAC Insurance Limited.

What happened

In September 2024, Mr M contacted RAC as he wanted cover in relation to a claim against his union, for failing to take action to support him in an employment matter. Mr M says the union has breached its contract with him.

RAC considered the claim but said Mr M had raised complaints against his union in late 2022 about its lack of support, which was before the policy started in February 2023. RAC says the policy excludes cover for events that first occur before the start of the insurance cover.

Mr M does not accept this is fair, as he says he had no reason to know he would need to take legal action against the union until after the policy started.

RAC did not change its position on his claim, so Mr M referred the matter to us.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that RAC was entitled to treat the previous incidents with the union, in late 2022, as part of a series of events that could potentially lead to a claim.

The Investigator also said that Mr M had referred to having legal expenses cover prior to the start of this policy with RAC and said that if he could show he'd had continuous legal expenses cover, it may impact the outcome.

Mr M does not accept the Investigator's assessment, so the matter has been referred to me.

Mr M has made a number of points in support of his initial complaint and in response to the Investigator. I have considered everything he has said and have summarised his main points below:

- Our published guidance on legal expenses insurance states that it is intended to cover "*uncertain risks, not inevitable or existing events.*" This wording is therefore an implied term of his contract with RAC.
- The Investigator has been silent on this and allowed RAC to ignore this, which has allowed RAC's terms to be given priority over this service's own terms and definitions.
- The Investigator has said that the actions of the union before February 2023, are of sufficient significance that they are considered "*clear signals and signposts of future events leading to prosecution*" such that his insurance has been invalidated when he made his claim 14 months later. He therefore asks that we demonstrate a direct causal link between these events and demonstrate that the actions of the union represented a serious breach and that he knew that this would be in direct conflict with the insurance policy's terms.

- He asks that I complete a 'Scott Schedule' that he has submitted listing his interactions with the union to show this link.
- RAC first said it was the events of 2 November 2022 and then moved the goalposts to say it was events of 15 December 2022 that started the series of events that led to this claim.
- RAC has told him that it has placed a flag on his insurance record that it will automatically reject any future claim about his union. This is unfair and has been ignored by the Investigator.

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 M's policy provides cover for various events that might require legal assistance. This includes employment disputes and consumer disputes. The policy says:

"Cover

We will provide you with cover for your legal costs associated with pursuing or defending a claim that falls within the policy terms of sections A-H below up to a limit of £100,000 provided that the incident occurs within the policy period."

"Claim" is defined as being: "an incident which we accept as falling within the terms and policy period of this home legal expenses policy and which, in our reasonable opinion, is the incident or first in a series of incidents that could lead to a claim being made".

The policy also says:

"We won't cover legal costs where you ought reasonably to have known that an incident leading to a claim was possible before you bought the policy".

This means that RAC is only obliged to indemnify a policyholder for legal expenses that relate to an event which first started during its time on risk. Such terms are common to legal expenses policies and are not unreasonable.

Mr M also says there are implied terms in his policy that legal expenses insurance is meant to cover uncertain risks, not inevitable or existing events and so suggests an insurer should not refuse cover unless a claim is inevitable or about existing events at the time the policy is taken out.

Mr M has taken this wording from our online guidance, which says:

"Legal expenses insurance is meant to cover uncertain risks, not inevitable or existing events.

Most 'before the event' policies will only cover the costs of proceedings when the event or dispute giving rise to the legal action occurred, or came to light, after the policy began.

However, this is not always straightforward in the cases we deal with. When dealing with cases like this we need to:

- *identify the event that gave rise to the legal action*

- *consider whether the policyholder was aware of the event when they took out the policy.*

We'll consider the facts of each particular case when making decisions."

I do not agree that this guidance imposes any implied terms or conditions in any insurance policy. It is intended to provide some understanding about how we consider complaints about the application of terms such as the one in Mr M's policy with RAC.

The terms that apply to this matter are those set out in the policy of insurance and so I have to consider in this case, whether the *"incident or first in a series of incidents that could lead to a claim being made"* was the breach that Mr M says was committed by the union in 2023 (in not provided further legal assistance) or whether the issues and complaints he raised with the union at end of 2022 was the first in the series of incidents that led to the claim being made.

Mr M says that the lack of service from the union in late 2022 does not meet the common definitions of an *"incident"* and that his initial contacts with his union in 2022 are not linked to illegal acts over a year later they were not foreseeable. Mr M also says I need to specify what the union did wrong in 2022, that was sufficient to invalidate his insurance.

In the context of the above terms, I think the word *"incident"* is reasonably considered to mean any happening or event. I am satisfied that a decision about whether to support Mr M with his workplace issues in 2022 would reasonably be considered to be an incident in this context.

Mr M's insurance has not been invalidated, rather RAC has said this claim is not covered as it relates to events that started with the union before he took out the policy.

I have considered carefully whether those events in late 2022 are sufficiently linked to the claim to be considered to be the first in the series of incidents that led to the claim being made. Having done so, I am satisfied that they are and that RAC is therefore entitled to refuse Mr M's claim. I will explain why.

The relevant date for the purposes of the above policy term is not when a legal cause of action arose, or when Mr M considered he had to take legal action, it is the date on which an event that *"could lead to a claim being made"* occurred. I do not therefore consider it needs to be established that the union breached its contract with Mr M in 2022. Therefore it is not required that it would have been foreseeable before taking out the policy that the union would carry out further acts that would mean Mr M wanted to take legal action against it.

Mr M says that RAC changed the goalposts by stating it was events on 2 November 2022, when he spoke to the union about the issue he had raised in his workplace and then changed it to 15 December 2022. I do not think this is changing the goalposts.

Mr M had an underlying grievance with his employer for which he wanted union support and the claim is ultimately about the lack of proper support in that matter. The communications Mr M had with the union in November and December 2022 and January 2023 all related to the same underlying workplace grievance that gave rise to his claim in 2024. I am not persuaded that the communications with the union in late 2022 can be considered to be standalone incidents and am satisfied that the 2022 events are sufficiently linked with the subsequent events, which ultimately led to Mr M wanting to make the claim. It follows that I consider RAC is entitled to refuse Mr M's claim.

Mr M has also said RAC has said any other claim he makes will be automatically rejected. I

have seen no other evidence about his. However, even if RAC has told Mr M this, I cannot make any finding about that issue in this decision. I say this because I can only consider events that have happened. I cannot make any finding about how any future claim, that has not yet been made, should be handled. If RAC reject any future claim and Mr M does not agree that is fair, he can bring a complaint about that at the time.

My final decision

Despite my sympathy for Mr M's position, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 December 2025.

Harriet McCarthy
Ombudsman