

## **The complaint**

Mr and Mrs K's complaint is about a claim Mr K made on their Royal & Sun Alliance Insurance Limited ('RSA') legal expenses insurance policy.

Mr K says RSA treated him unfairly.

## **What happened**

Mr K made a claim on his and Mrs K's RSA legal expenses insurance policy to bring a claim in medical negligence against a third party. The claim he wanted to bring was for two specific causes of action; firstly a surgeon's failure to reduce the reoccurrence of cyst forming again and other associated issues with regards to the management of his care following removal and secondly the failure of the surgeon to administer anaesthetic during the procedure which caused him pain and suffering.

RSA accepted Mr K's claim in the first instance and appointed a firm of Solicitors to consider his claims. That firm concluded that the first claim did not have reasonable prospects of success. They also said the surgeon's failure to use anaesthetic was not proportionate to pursue given the third party had already funded past private medical costs relating to the same matter. They went on to add in separate correspondence that the claim for failing to administer anaesthetic would likely amount to between £50-100 in damages and this in itself would be prohibitive in considering the claim any further.

Unhappy Mr K complained to RSA. RSA said Mr K was entitled to obtain his own legal opinion if he wished to do so, but in the absence of that, concluded that they wouldn't fund his claims at all.

Our investigator considered Mr K's complaint and ultimately concluded that it should be upheld. She said that RSA should instruct Solicitors to provide a figure in relation to the value of Mr K's claim for the surgeon's failure to administer anaesthetic and pay Mr K this amount. Neither party agreed to the investigator's view, so the matter was passed to me to determine.

I issued a provisional decision in July 2025 in which I said the following:

*"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 won't be upholding Mr K's complaint. Before I explain why, I wish to acknowledge the volume of submissions made by Mr K throughout this complaint and the reasons he's given to support what he feels is the correct outcome. Whilst I have read everything he's 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. In this decision I will be focussing on the crux of Mr K's complaint, namely whether RSA have done anything wrong in turning down his claim in the way that they did.*

*The starting point is the policy terms. It's a requirement of virtually all legal expenses*

*insurance policies that any intended claim has a reasonable prospect of succeeding. Mr K's policy is no exception. That means his claims needed to have over 51% prospects of succeeding in order for RSA to cover them. The policy provides cover for all reasonable and necessary legal fees, which we interpret as being proportionate in relation to the value of the claim being pursued.*

*We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or that the amount they might recover would be less than the cost of the action itself. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.*

*Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. RSA did this. The Solicitor's advice was that first claim didn't have reasonable prospects of success, and the second claim was disproportionate to pursue.*

*I'm satisfied that the Solicitor was experienced in the area of law Mr K was asking for help with and there's nothing in the advice I've seen which suggests it was obviously wrong.*

*Mr K's concern is that RSA haven't acted in accordance with their policy terms in relation to the claim the Solicitors determined is disproportionate to pursue. In particular, he says the policy entitles him to payment up to and the value of the claim determined to be disproportionate provided there are reasonable prospects of success.*

*It's true that the policy states "Where an award of damages is the only legal remedy to a dispute and the cost of pursuing legal action is likely to be more than any award of damages, the most we will pay in Costs and Expenses is the value of the likely award". But that doesn't to my mind mean that RSA are obliged to pay him up to the value of this claim nor indeed to pay costs and expenses up to the value of the claim. When asked about the value of this claim, the firm of Solicitors said:*

*"We have reviewed Lawtel (Thomson Reuters) case reports and there are no cases of this nature, likely because if they do exist elsewhere, they're considered disproportionate to pursue. Our initial thoughts are that damages would be £50-100 at most. The 'pain and suffering' experienced will have been limited to no more than a few minutes. Bearing in mind that hourly rates are hundreds of pounds per hour plus VAT, a case of this nature cannot be reasonably judged to be proportionate. Costs would run into the thousands. To complete the work required at the funding stage, obtain and review medical records, take a witness statement, obtain independent expert evidence, put allegations to the Defendant, consider their response, consider quantum, and negotiate settlement would likely be between £5,000 and £10,000. We cannot spend and expect to recover those sums in a case worth £50-£100. It is not financially viable to run a case of this nature."*

*As I said the policy only entitles Mr K to cover for all reasonable and necessary legal fees. It's clear from the legal advice that RSA received that obtaining a more exact figure on what is essentially a low value claim for pain and suffering would far outweigh the cost of the claim itself. In those circumstances we wouldn't expect RSA to do anything further. From what RSA have said they have already spent £600 in costs on a claim that has no reasonable prospects of success and is not proportionate to pursue. We wouldn't expect them to spend an amount equivalent to the pain and suffering claim in costs simply because this is the most they will pay in relation to it. And the policy does not entitle Mr K to be paid the value of his claim for this either. The policy terms do set out that RSA can decide to pay him the*

*reasonable value of his claim instead of continuing legal action but that is at their discretion and in this case, RSA have decided not to exercise that. Whilst the investigator thought they should have, I don't think that it is reasonable for them to do so. I say so because they've already obtained a reasoned legal opinion on the merits and the proportionality of Mr K's claims and neither of those opinions lend themselves to RSA having to fund them. On that basis I see no reason why RSA should be obliged to settle the claim for pain and suffering with Mr K directly. And requiring RSA to do so would go far beyond what their policy terms oblige them to do.*

*I note that Mr K has estimated his claim for pain and suffering at £840 based on the Judicial College guidelines. Those guidelines are not equivalent to legal advice and need to be considered in the context in which they are drafted- namely for judicial purposes for decision makers with specialist knowledge of the relevant area of law to consider. They do not amount to a reasoned legal opinion and as such I wouldn't expect RSA to place any reliance on them. If Mr K wants RSA to reconsider funding his claims, then he's entitled to obtain a reasoned legal opinion at his own cost and put that to them. In the absence of this kind of evidence, I wouldn't expect RSA to do anything further."*

I asked both parties to provide me with any further evidence or comments in response to my provisional findings. Both parties have now replied. RSA have accepted by findings but Mr K has not. In summary he says:

- I was wrong to say that neither party agreed to the investigator's view, and it was just RSA that disagreed with the final position the investigator took.
- My conclusions are wrong because I concluded that the claim for the failure to inject anaesthetic did not have merit. That's not correct- it was only disproportionate to pursue. Rather the claim for the reoccurrence of the cyst was judged by the Solicitors not to have merit, which is not part of his complaint.
- He has explained in detail why he still has a claim under the policy which was a view endorsed by the investigator.
- The judicial guidelines should not have been dismissed out of hand as they are relevant to how a judge would use them to inform what would need to be paid in the event of a successful claim.

### **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 remain of the view that Mr K's complaint should not be upheld for the same reasons set out in detail within my provisional decision.

The comments made by Mr K in response to those findings don't alter my view. I'll explain why. Firstly, it's clear that Mr K did not accept the findings of the investigator. In response to her final view, he made submissions about the fact that she had not considered the distress and inconvenience caused to him by RSA's poor claims handling and he wanted RSA to pay him the amount he'd valued his claim at which was £840. At no point did Mr K make clear that he was prepared to accept the findings in the investigator's latest view which did not include such findings. So, I don't think my reference to his position was inaccurate. And in any event, it makes no difference to the outcome of his complaint.

I don't agree that I've failed to understand Mr K's claim. As I explained in the background to my provisional decision under the heading '*What happened*', the panel "*firm concluded that the first claim did not have reasonable prospects of success. They also said the surgeon's failure to use anaesthetic was not proportionate to pursue given the third party had already funded past private medical costs relating to the same matter*". The latter referred to the second claim and I did define the nature of the two claims Mr K made on the policy early on in my decision. I then went on to explain under the heading "*What I've decided – and why*" that "*A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or that the amount they might recover would be less than the cost of the action itself. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.*" As such I referenced our position more generally in respect of what we'd consider is a reasonable approach in respect of both claims by RSA. Mr K says he was not complaining about RSA's decision not to fund his claim for the reoccurrence of the cyst. But my explanation on our general position doesn't alter that. Either way my determination is that it was reasonable for RSA to decline to cover either of his claims, as they did for the reasons I've mentioned. Whether Mr K was content with RSA's position on the claim for a reoccurrence of a cyst makes no difference. Ultimately, it's within my discretion to comment on their conduct in general terms.

I appreciate Mr K feels disappointed by my decision and that his position was to some extent supported by the investigator in her view, but we operate a two stage process. And I've already explained why I don't think her findings were correct and why I don't agree with Mr K's submissions in support of his complaint either so I won't repeat that again.

I understand why Mr K feels I should have placed more weight on the Judicial College Guidelines. But as I said in my provisional decision, those are not equivalent to legal advice and cannot be said to represent the remedy he's likely to obtain should he litigate his claim for the reasons I've already set out. In the absence of a reasoned legal opinion of his own, I would not expect RSA to do anything further.

### **My final decision**

For the reasons set out above and within my provisional decision I don't uphold Mr K's complaint against Royal & Sun Alliance Insurance Limited.

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 5 September 2025.

Lale Hussein-Venn  
**Ombudsman**