The complaint

Mr I is unhappy with what Royal & Sun Alliance Insurance Limited (RSA) did after he made a claim on his legal expenses insurance policy.

What happened

Mr I contacted RSA at the end of December 2024 seeking assistance with an employment dispute. RSA asked for further information about the claim including the grounds of resistance from his employer. Mr I said that wasn't required for the claim to be assessed. RSA's 'prospects assessor' said he didn't believe the claim had prospects of success (as required by the policy) based on the evidence provided. RSA then obtained counsel's opinion. Counsel advised at the end of January the claim didn't have prospects.

RSA said it wouldn't be providing funding for the claim (and it wasn't required to provide the name of the counsel who advised). It said if Mr I provided his employer's grounds of resistance it would reconsider matters. Mr I obtained that. That was reviewed by the 'prospects assessor' who said it didn't change his previous assessment. RSA said if Mr I wanted to challenge that assessment he'd need to obtain a legal opinion of his own.

Our investigator said it wasn't clear the initial review by a 'prospects assessor' had been carried out by a qualified legal professional. But RSA then obtained counsel's opinion on the claim. She was satisfied counsel was experienced in the relevant area of law and RSA was entitled to rely on their opinion. And it wasn't obliged to disclose their name to Mr I. She didn't think there had been delay by RSA in progressing the claim and didn't agree it had done anything wrong.

Mr I didn't agree. He didn't accept the assessment had been carried out by a barrister and said there was no lawful reason why their identity shouldn't be disclosed to him. And he had a right to know who his data had been shared with. 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.

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

Mr I's policy covers costs and expenses for "*a dispute relating to your contract of employment or future employment for your work as an employee*". I think it's accepted his claim is one that could, in principle, be covered by his policy. But for cover to be provided reasonable prospects of success must exist for the duration of the claim. The policy says that means "*the prospect that you will recover losses or damages (or obtain any other legal remedy that we have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%".*

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

RSA initially asked Mr I for further information about his claim including his employer's grounds of resistance. I think that was reasonable to ensure the prospects assessment was based on a full picture of the available evidence. However, after Mr I said that wasn't available it appears the claim was considered by a 'prospects assessor'. He concluded the policy terms in relation to prospects weren't met.

I've seen no evidence that person was legally qualified and in a position to carry out that assessment. However, as RSA agreed within a very short timeframe to obtain counsel's opinion on the claim I don't think Mr I lost out as a result of that. And that opinion was also negative on the claim's prospects of success. I've reviewed that opinion and I think it is properly written and reasoned. I've also seen the name of the counsel who produced it and I'm satisfied they are experienced in the relevant area of law and therefore in a position to advise on the claim. I think it was reasonable of RSA to rely on this assessment when concluding the claim didn't have reasonable prospects of success.

I recognise Mr I is unhappy RSA didn't disclose the name of the counsel who had carried out the assessment to him. However, that isn't something he's entitled to under the terms of his policy. And, as I've said, I'm satisfied counsel did have the relevant skills and experience to assess his claims. RSA did provide Mr S with some information about the counsel who carried out the assessment and I don't think it needed to provide their specific name in order for him to be in a position to challenge that assessment if he wanted to.

I also don't think it was unfair of RSA to provide information about the claim to counsel given the requirement in the policy terms for a claim to have prospects of success. And looking at the overall claim journey I don't think there was any significant delay by RSA in progressing matters; an opinion on prospects was obtained within around four weeks of Mr I first contacting RSA about the matter.

After the assessment had been completed Mr I provided further information to RSA including the grounds of resistance from his employer which he'd obtained. That was reviewed by RSA's 'prospects assessor' who concluded it didn't make a difference to the previous opinion he'd reached. But, as I've already said, I've seen no evidence that individual was a suitably qualified lawyer with relevant experience. I'm not satisfied he should have been giving legal advice on the claim's prospects of success.

I think the question he should have been considering was whether further legal advice was required in the light of the additional information Mr I submitted about his claim. In relation to that counsel's opinion was, in summary, that "*the Claimant's allegations are uncorroborated and there is no evidence to support the same*". That was the basis for their conclusion that claim didn't enjoy reasonable prospects of success. And there's nothing in the further evidence Mr I provided that changes the position on that; his employer doesn't accept any of the accusations made against it.
That therefore supports the legal opinion counsel previously reached. I think it would have been reasonable of RSA to conclude as a result that further legal advice on the claim wasn't required. That means Mr I would have been in the same position if RSA had acted as it should. As a result I don't think there's anything it needs to do to put things right here. It remains open to Mr I to obtain a contrary legal opinion on the claim's prospects of success and I'd expect RSA to review matters if he provides that.

My final decision

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask Mr I to accept or reject my decision before 24 September 2025.

James Park
Ombudsman