

## The complaint

Mr N complains about Royal & Sun Alliance Insurance Plc's refusal of a claim under the legal expenses insurance section of his home insurance policy.

Royal & Sun Alliance Insurance Plc ("RSA") is the underwriter of this cover, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As RSA has accepted it is accountable for the actions of the agent, in my decision, any reference to RSA includes the actions of the agents.

## What happened

In May 2023, Mr N made a claim under his policy with RSA, as he wanted to take proceedings against his former employer for failure to make reasonable adjustments in respect of a disability, discrimination, victimisation and harassment after he was dismissed from work.

RSA arranged for one of its panel of pre-approved solicitors to assess the claim. The panel solicitors did not consider that any of the claims Mr N wanted to make had reasonable prospects of success, which is a pre-requisite of cover under the policy. RSA said it was entitled to rely on the panel solicitor's assessment and as there were no reasonable prospects of success, it refused the claim under the policy.

Mr N was unhappy with this and said the solicitors had not considered his disability properly and he had evidence, including call recordings, that would support his case that the solicitors had not asked for. RSA arranged for this evidence to be provided to the solicitors so they could reassess the claim. The solicitors did not think this evidence changed their assessment of the chances of the claim succeeding and so RSA maintained its position.

Mr N remains unhappy about this and referred his complaint to us. Mr N says that one of the reasons that the solicitors thought he would be unlikely to succeed in proving disability discrimination was because they said there was no evidence he had told his employers about his disability but he has received internal documents from his employer that record that they knew he did have a disability. Mr N also says that his case is not to do with employment law but the Equality Act and disability law and the panel solicitors are not experienced in this area.

In the meantime, I understand Mr N started the tribunal proceedings himself and was given permission by the tribunal in January 2024 for his claim to proceed and a hearing is set for the summer.

One of our Investigators looked into the matter. He did not recommend that Mr N's complaint be upheld, as he was satisfied RSA did not have to accept the claim, in reliance on the panel solicitor's assessments of the prospects of success.

Mr N did not accept the Investigator's findings. Accordingly, the matter has been referred to me to review afresh.

## 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 N's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including disputes about a contract of employment. However, it is a pre-requisite of cover that:

*"you must be able to show at all times that:*

*i) It's more probable than not that the outcome of any legal action will be successful to the extent that:*

*a) Any remedy sought will be obtained ..."*

We would consider something to be "*more probable than not*" if there is a more than 51% chance of it happening. So in terms of a legal claim, this means there must be a more than 51% chance of winning the case and achieving the remedy sought.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint panel solicitors to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case. RSA therefore instructed their panel solicitors to assess the merits of Mr N's claim.

I must stress that it is not my role to assess the merits or value of Mr N's underlying legal claim but whether RSA has acted fairly and reasonably in handling the insurance claim.

So long as RSA has obtained independent legal advice on prospects from suitably qualified lawyers, we will not generally question its reliance on that advice, unless we think it was obviously erroneous or based on factual mistakes. For the avoidance of doubt, I've seen nothing in this case to justify such a conclusion.

I have read the legal opinion provided by the panel solicitors. It provides a detailed analysis of the various heads of claim Mr N wanted to make and the challenges he would face in successfully bringing them. The panel solicitors did not consider there were reasonable prospects of succeeding in any of the heads of claim Mr N wanted to make against his former employer. In brief, they put the chances of success for a claim for victimisation at 40%, discrimination arising from a disability at 30%, failure to make reasonable adjustments and indirect discrimination at 20% and harassment at 10%.

Mr N says the solicitors were not suitably experienced in the area of law that applies to his claim. I have seen no convincing evidence of this but as independent professionals the solicitors have a duty to refuse the instruction or pass it on to someone else, if they consider the case is one that they cannot properly advise on. On the evidence provided, I am not persuaded that it was an unreasonable instruction or the advice should be disregarded.

Mr N also says the assessment about his disability claims is wrong, as he has evidence that his employer knew he had a disability that would impact his ability to complete training tasks required of him in the way they wanted.

The solicitor's conclusion that the claims for failure to make reasonable adjustments and discrimination based on Mr N's disability were not likely to succeed was in part because they

said that while the employer knew Mr N had a condition, it was not aware what this was and it had asked Mr N for details so it could assess the need for necessary adjustments. The solicitor also referred to records showing the employer wanting to make an occupational health referral to get more details of Mr N's disability.

Mr N has not, as far as I am aware, provided evidence that his employer knew what his disability was. As it stands therefore, I am not persuaded that the assessment cannot be relied on.

Mr N also says that he was given permission to proceed with his claim against the employer by the tribunal when the judge could have dismissed his case, which means his case has prospects. However, the fact he has been permitted to bring his claim to the tribunal does not establish that he has a more than 51% chance of succeeding in that claim, as required by the policy. The panel solicitors have not said there is no chance of any of his claims succeeding, rather that there is not enough chance to entitle him to funding for the cost of bringing the claim under the policy.

Mr N also wanted to speak the panel solicitor and is unhappy that RSA refused to give him their personal details. I do not think it was required to do so. If the solicitors had considered they needed further information or clarification of any information from Mr N, they would have asked for that.

Mr N is also unhappy that he has not been able to use his own solicitor but any right to freedom of choice of legal representative only arises if there is a valid claim and he has not established he has a valid claim under the policy yet.

Whilst the panel solicitor's legal assessment may not have been to Mr N's liking, they supported their findings with detailed explanation and reasoning and I cannot see any convincing evidence that it should not reasonably be relied on. It follows that I think RSA was therefore entitled to refuse cover for this claim.

RSA said Mr N could provide his own legal assessment that shows he does have reasonable prospects it will reconsider the matter. I think this is reasonable.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 May 2024.

Harriet McCarthy  
**Ombudsman**