

The complaint

Mr C complains Royal & Sun Alliance Insurance Limited (RSA) unfairly declined a claim under his legal expenses insurance (LEI) policy and took too long to decide the outcome of his claim - for which he wants compensation.

Any reference to RSA includes the actions of its agent.

What happened

The circumstances of this complaint are known to both parties, so I've summarised what's happened.

- Mr C has an LEI policy which is underwritten by RSA. In February 2020, he made a claim under his policy for legal cover in connection with a dispute he had with his neighbour about a sewage pipe.
- RSA accepted the claim and referred it to its panel firm of solicitors - who I'll refer to as "S".
- As of September 2021, the situation with Mr C's neighbour hadn't progressed and the advice from S (at the time) was that legal assistance was only required if Mr C's neighbour brought proceedings against him to protect the sewer. It added that any further legal action would depend on whether Mr C proceeded with full planning permission and commenced on site works.
- Unhappy with how his claim was being handled by S, Mr C complained to RSA.
- In a final response dated February 2022, RSA said it was satisfied it wasn't required to appoint a non-panel solicitor as legal proceedings hadn't become necessary.
- Mr C remained unhappy and so, brought a complaint to our service about the progress of his claim. An Investigator considered it – under a separate complaint – and didn't uphold it.
- In July 2022, S told RSA that Mr C wanted to progress his legal claim. RSA sought advice from S as to whether the sewer amounted to 'trespass' for the purpose of providing cover under the policy. It also raised that a survey report dated 2009 indicated the issue with the sewer was known prior to the policy starting and so, RSA queried whether the claim ought to be covered.
- S advised the sewer wasn't a 'trespass' as an easement had been granted to allow it to pass through Mr C's land. Based on there not being a trespass – and therefore, no insured event - RSA declined Mr C's claim saying there wasn't cover under the policy. It was also satisfied it hadn't caused avoidable delays.
- Mr C complained to this Service saying it was unfair RSA had taken two years to

decline his claim on the basis that there wasn't a trespass. He also didn't consider the 2009 survey report to be relevant to determining cover as the issue with his neighbour first occurred in 2020 – which was after the policy started.

- An Investigator considered the complaint but didn't think the claim had been declined unfairly. She said RSA was entitled to rely on S' advice and explained Mr C could challenge the decision by obtaining his own legal opinion.
- Mr C disagreed and so, the complaint has been passed to me for an Ombudsman's decision.

I issued a provisional decision which said:

"What I've provisionally 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'm not upholding this complaint. Whilst I agree with the overall outcome our Investigator reached, because their view didn't consider Mr C's concerns about how long it took RSA to decline his claim, I'm issuing a provisional decision to allow both parties the opportunity to provide further comment before I reach a final decision.

The Insurance Conduct of Business Sourcebook (ICOBs) states an insurer must handle claims promptly and fairly and must not unreasonably reject a claim. So, I've considered what this means for Mr C's complaint.

RSA's decision to decline the claim

Insurers aren't legal experts and so, it's standard practice for them to rely on a legal expert's advice to determine whether a policyholder has a valid claim under the terms of the policy. Here, S advised RSA a trespass hadn't occurred due to the existence of an easement which allowed the sewer to pass through Mr C's land. So, it said there wasn't cover under the policy. RSA, having also referred the matter to its underwriting team, relied on S' advice to decline Mr C's claim as there wasn't an insured event.

I've looked at the relevant policy section – which here is about residential disputes. Under 'what is covered' it says:

"The cost of you taking legal proceedings against another person or organisation as a result of:

a. a person or organisation interfering with your legal rights relating to your home [...]

The cost of defending legal action brought against you as a result of:

a. you allegedly interfering with another person's legal rights in connection with you owning or living in your home."

Mr C has said the policy wording is ambiguous because "trespass" isn't explicitly mentioned, But I'm satisfied a lay person would reasonably understand that "a person or organisation interfering with your legal rights relating to your home" includes an act of trespass. And so, I'm not persuaded by this argument.

I've also looked at the legal advice given by S to RSA, and in the absence of there being anything so obviously wrong with the legal advice given that RSA ought not to have relied on it, I'm satisfied RSA has declined Mr C's claim fairly on the basis that there isn't an insured event.

Our Investigator has already explained that if Mr C disagrees with RSA's decision, he can challenge S' legal advice by providing a legal opinion of his own which is in his favour. I'll leave it with Mr C to decide what he wants to do next in respect of this.

Whilst the information provided suggests RSA also considered whether there were grounds to decline the claim on the basis that the legal dispute pre-dated the start of the policy, it's since confirmed this doesn't form part of it's reasoning for declining the claim, and so, I don't consider it necessary to comment on this further.

Time taken to decline the claim

Mr C feels strongly that RSA has taken an unreasonable amount of time to decline his claim. RSA has confirmed it only queried the issue of whether there was cover under the policy in 2022. But it's said that having been notified Mr C wanted to continue with his legal claim it took only approximately three weeks to consider the claim and provide an outcome, which it doesn't consider to be an unreasonable amount of time.

When looked at in isolation, I'd be minded to agree with RSA that three weeks isn't an unreasonable amount of time – but I'm not persuaded that's a fair representation of events. I say this because on the face of it, it seems RSA ought to have been able to identify there wasn't a "trespass" and therefore, cover under the policy when the claim was first logged as the circumstances of Mr C's legal dispute hadn't changed. In support of this is the fact RSA has confirmed its decision to query cover with S in July 2022 wasn't prompted by new information coming to light but was instead because Mr C was looking to progress his legal dispute with his neighbour. But what's key – and has remained the same since the start of the claim – is that the dispute was about the sewer and its route through Mr C's land.

So, I've considered whether there's been an impact on Mr C because of this – including whether he would have acted differently had cover been declined earlier on. From what I've seen, it seems the dispute between Mr C and his neighbour was either at an impasse or hadn't escalated between the time the claim was first logged and Mr C's decision to move ahead with the legal dispute in July 2022. And so, even if he'd been told at the outset that he didn't have cover, I've not seen anything to persuade me Mr C would have acted differently or that RSA has prejudiced his position by not identifying earlier on that there wasn't cover.

Understandably, it's disappointing and frustrating for Mr C to have been told a couple of years after submitting his claim that he doesn't have cover to pursue the remedy he wants, but I must balance this with the fact he's had the benefit of legal advice from S – something he wasn't entitled to and would have had to pay for himself had cover been declined at the outset.

I've also kept in mind that legal disputes by their very nature are stressful and so, it wouldn't be fair to attribute distress which is part and parcel of dealing with a legal dispute to RSA. So, without evidence that persuades me RSA's actions caused Mr C distress or inconvenience which went beyond what might be reasonably expected, I'm not currently minded to say compensation is warranted in the circumstances.

My provisional decision

My provisional decision is that I don't intend to uphold this complaint."

Both parties responded to my decision. RSA accepted my findings and said it had nothing further to add.

Mr C replied saying he expected S – when writing to the neighbour's solicitors – to address the issue about which sewer ought to be used, and he provided a copy of a letter he sent S. Mr C says he didn't receive a response to his letter from RSA, and so he says RSA caused a delay.

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'm not departing from the findings of my provisional decision. I've read the letter Mr C has provided but it doesn't change my position. The letter - which is addressed to S – is about the merits of his legal dispute. Mr C has said RSA didn't reply to it, but given it's addressed to S, I'm not persuaded RSA can reasonably be held at fault.

Whilst I agree with Mr C that RSA could have decided his claim wasn't covered earlier on, I've explained in my provisional decision why I'm not persuaded his position has been prejudiced because of this. And as he's benefited from legal advice he otherwise wouldn't have been entitled to, I remain of the opinion that I don't consider it fair or reasonable to ask RSA to pay compensation in the circumstances of this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 August 2023.

Nicola Beakhust
Ombudsman