

The complaint

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

Mr and Mrs S are unhappy that RSA have declined to reimburse their costs in attending Court.

All references to RSA in this decision include their claims handlers.

What happened

Mr and Mrs S made a claim on their RSA legal expenses insurance policy for cover to help defend a claim against someone who had provided them with childcare services.

RSA accepted the claim. Mr and Mrs S asked if they could instruct their own Solicitor, but RSA instructed their panel firm to act for them instead.

Mr and Mrs S say the panel firm provided them with a poor standard of work. They say they made considerable amendments to the Defence that was drafted on their behalf, which they were unhappy with, so they asked RSA to fund a junior Barrister's fees to deal with the claim instead. Mr and Mrs S say DAS refused this request on the basis that the costs would exceed the amount they were prepared to pay in respect of this claim.

Mr and Mrs S say they later instructed their own Barrister to review the Defence and the merits of their claim. They say he advised that they had reasonable prospects of defending the claim against them but recommended the Defence be amended because a point of law had been missed by the panel firm. As a result, the panel firm made an application to Court to amend the Defence, for which a hearing was listed.

By November 2022 the panel firm stopped acting for Mr and Mrs S under their RSA policy because RSA said no further cover was available. Following this, Mr and Mrs S continued to defend the claim as litigants in person. They represented themselves at Tribunal at, at least three separate hearings. At the time their complaint was brought to the Financial Ombudsman Service, Mr and Mrs S were due to attend a costs hearing the following month with a view to concluding the claim.

This particular complaint is about Mr and Mrs S' claim for their costs incurred in attending the hearings following RSA's decision to bring cover to an end. RSA say the policy terms don't permit this and cover was no longer in place. Unhappy, Mr and Mrs S referred their complaint to us.

Our investigator considered Mr and Mrs S' complaint and said it shouldn't be upheld. Mr and Mrs S don't agree so the matter has been passed to me to determine.

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 don't uphold Mr and Mrs S' complaint. This is why.

The starting point is the policy terms. The Jury Service and Court Attendance section states:

"We will cover the Costs and Expenses for the following:

Your absence from work

- *To attend any court or tribunal at the request of the Appointed Representative"*

"Appointed Representative" is defined as "the law firm, accountant or other suitably qualified person we will appoint to act for you".

In this case RSA didn't agree to reimburse Mr and Mrs S' costs at the request of the Appointed Representative, as defined. So, I can't interpret the terms as allowing their costs to be covered. The panel firm had stopped acting for Mr and Mrs S by the time these hearings came around and cover had come to an end because RSA had decided the claim was disproportionate to defend. And although I appreciate why Mr and Mrs S felt they had to continue to defend the claim themselves, I can't say that RSA were obliged to cover their costs in doing so.

Mr and Mrs S feel that because the application to amend their Defence was made during the panel firm's involvement and this was a hearing they proceeded to attend themselves after they stopped acting, the panel firm should have asked RSA to cover Mr and Mrs S' costs in attending this hearing at least.

As I understand it, Mr and Mrs S were advised to settle the claim on the basis that it wasn't proportionate to pursue. But they declined to do so. Whilst the option they chose might have resulted in a better outcome for them, I can't say that RSA were obliged to continue to afford funding to them after they made their decision to bring funding to an end. I say so because it's a requirement of virtually all legal expenses insurance policies that any intended claim is proportionate to pursue. Mr and Mrs S' policy is no exception. We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised the costs are likely to outweigh the monetary benefit. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either. So, despite the outcome, I don't think RSA were wrong to bring cover to an end when they did. It follows that there was no indemnity available under the policy when Mr and Mrs S incurred the costs they're claiming for and as such RSA don't need to reimburse them for these.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs S' complaint against Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 28 November 2023.

Lale Hussein-Venn
Ombudsman