

The complaint

Mrs W is unhappy with what Royal & Sun Alliance Insurance Limited did after she made a claim on her legal expenses insurance policy.

What happened

In March 2022 Mrs W contacted RSA to make a claim on her policy for assistance with employment related claims. She subsequently provided additional information in support of her claim. RSA asked one of its panel solicitors to assess whether the claim would have reasonable prospects of success (a requirement of the policy) and its advice was received at the end of May.

RSA told Mrs W in early June her claims for victimisation, discrimination and harassment didn't have reasonable prospects of success. And it said further information was required to decide if a claim for constructive dismissal was proportionate to pursue. RSA said it would be happy to reconsider the position on this if Mrs W was able to provide further information.

Mrs W raised concerns about the assessment with RSA and provided a schedule of loss in relation to the constructive dismissal claim. The panel firm advised the claim was arguably proportionate to pursue but the other side had already made an offer which exceeded the value of this. So their advice was this should be accepted. RSA therefore said it wouldn't be taking further action in relation to this.

Our investigator thought RSA were entitled to rely on the assessment and advice provided by the panel firm. And she thought it had provided relevant information to that firm so it could carry out that assessment. It also shared Mrs W's subsequent concerns with the firm but that hadn't caused it to change its assessment. She thought RSA had acted fairly and reasonably when considering the claim. There had been some confusion over whether documents had been received by RSA but she didn't think that had caused significant delay to the assessment of the claim.

Mrs W didn't agree. She thought there had been delays by RSA in responding to her. And she highlighted in particular a request for more information the panel firm had sent to RSA on 13 April (asking about the quantum of her claim) which she wasn't made aware of until it wrote to her in June. She also said there had been a delay in letting her know what the panel firm's prospects assessment was. And she said further information she then sent to RSA in relation to her constructive dismissal claim wasn't considered by the panel firm and she wasn't satisfied it had reviewed the other information she provided. 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.

We can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. "*Carrying out a contract of insurance*" is a regulated activity. That's why we can consider what RSA did here.

But while I appreciate Mrs W also has concerns about the actions of the panel solicitors that isn't something I can look at. When acting in their legal capacity that firm isn't carrying out a regulated activity (and their actions aren't covered by any of the other activities we can consider). So her concerns about their actions aren't something I can consider.

Turning to the actions of RSA the relevant rules and industry guidelines say it has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked at the terms and conditions of Mrs W's policy. This does provide cover for employment disputes but that's on condition it has prospects of success. And the policy says that means "*at least a 51% chance*" of you achieving a favourable outcome. The policy also contains a general exclusion for costs where the likely settlement is disproportionate to the time and costs incurred in dealing with the claim. And it excludes costs where the policyholder fails to follow the advice of the solicitor acting for them.

As an insurer isn't a legal expert we don't think it's in a position to carry out the prospects 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.

In this case RSA did refer the matter to one of its panel firms for assessment. I can see that assessment was carried out by a qualified lawyer whose area of expertise include discrimination and employment law. I've read the assessment and I think it is properly written and reasoned; it addresses the claims made by Mrs W and gives reasons for why (with the exception of the constructive dismissal claim) they were unlikely to succeed. And it provided advice on next steps with the constructive dismissal claim.

I appreciate Mrs W disagrees with that assessment, but I think it's one RSA was entitled to rely on. And while Mrs W feels not all of the information she provided was taken into account the evidence I've seen shows RSA did provide that to the panel firm. That firm confirmed receipt of key documents and said on 19 May it would update its assessment based on the further information received. So I don't think there was further action RSA needed to take in relation to this.

After the assessment had been completed Mrs W then provide further information (including a schedule of loss) in relation to her constructive dismissal claim. RSA provided that to the panel firm as I'd expect. And on the basis of that information it concluded the claim was likely proportionate to pursue. However, as there was already an offer from the other side that exceeded the value of that claim its advice was this should be accepted. Again I think it was reasonable and in line with the policy terms for RSA to rely on that advice when deciding that, as a result, it wouldn't provide funding for this claim.

I appreciate Mrs W says the panel firm had previously emailed RSA with questions about the value of her claims (in April) and this request hadn't been passed on to her. I've reviewed the file and I can see RSA did respond to the panel solicitors on this and queried what evidence would be required.

It's not clear any response was provided prior to the panel firm's assessment being provided at the end of May. However, I accept it would have been sensible in any case to have passed this request on to Mrs W when it was made as she might have been able to address this issue earlier. But I don't think that's caused a significant issue with the progress of her claim; I think it's reasonable to conclude the advice from the panel firm would always have

been to accept the offer that had been made given this exceeded the total value of her constructive dismissal claim. And given that I don't think RSA needed to ask the panel firm to carry out any further review of the merits of Mrs W's constructive dismissal claim.

Mrs W also says there was a delay in the outcome of the prospects assessment being provided to her. This was received by RSA around the 26 May and was sent to her on 9 June. But I think it was reasonable that RSA would need time to review and consider that assessment prior to communicating its claim decision to Mrs W. And looking at the correspondence between Mrs W and RSA in the round I don't think that, overall, the timeframes for its responses were unreasonable. I do accept that RSA gave Mrs W what it accepts was incorrect advice about whether she could make a complaint about the panel solicitor. But given this issue appears to have been resolved relatively quickly I don't think there's anything more it needs to do to put things right here.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 15 December 2023.

James Park
Ombudsman