

The complaint

Mr S's complaint is about a claim he made on his Royal & Sun Alliance Insurance Limited ('RSA') legal expenses insurance policy, which was declined.

All references to RSA include their claims handlers.

What happened

Mr S made a claim on his RSA legal expenses insurance policy for cover to deal with a claim made against him by a mortgage provider seeking possession of his property. RSA considered the claim and concluded it didn't fall within any of the sections of cover available under the policy. Mr S doesn't agree so referred his complaint to this Service.

Our investigator considered Mr S' complaint and concluded it shouldn't be upheld. He said the policy terms seemed to exclude the claim Mr S was making and Mr S hadn't provided anything in the form of a legal opinion setting out why the advice he told RSA he received meant the claim should be covered by them.

Mr S doesn't agree with the investigator's view, 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 won't be upholding Mr S's complaint for the reasons I've set out below.

Before I explain my decision, I'd like to acknowledge that Mr S requested a conversation with me to discuss his complaint. That's not something I think is required in order to allow me to resolve it fairly. To do so would give Mr S the benefit of a one sided personal hearing to press his complaint without RSA's involvement. Nor would it give RSA the opportunity to respond.

There are very rare occasions on which we might decide to conduct a hearing in person, but this isn't one of them. And I'm satisfied that the information I have from both parties means I can decide Mr S' complaint fairly, in accordance with our process.

I know Mr S is unhappy that the investigator referred to RSA rather than his home insurer or the claims handlers who acted for RSA. RSA is the underwriter of the legal expenses insurance policy, so they are responsible for the declinature of his claim. That's why both the investigator and I have referred to them rather than the other parties he's dealt with. And as I've set out above, my references to RSA include their claims handlers, who act for RSA. RSA is responsible for the decisions they've made in relation to the declinature of cover.

The starting point is the dispute itself that Mr S wants cover for. He's explained that he wants help dealing with a claim by a mortgage company for possession of his property. Based on

another complaint Mr S has brought to this Service- which concluded with another Ombudsman's final decision in February of this year- my understanding is the legal action taken against him was by his mortgage company to enforce a possession order. The mortgage company pursued this action as a result of proceedings brought against Mr S by his freeholder to forfeit his lease. The mortgage company was concerned about losing its security so sought possession of the property as a result.

The policy terms applicable to Mr S's present claim for legal expenses insurance cover exclude Property Protection claims for:

"Someone legally taking your property from you, whether you are offered money or not, or restrictions or controls placed on your property by any government public or local authority"

"Adverse possession (meaning the occupation of any building or land either by someone trying to take possession from you or of which you are trying to take possession."

"The enforcement of a covenant by or against you (meaning the enforcement of an agreement you have entered into in connection with land you own)."

Whilst I haven't seen the terms of Mr S's mortgage, it does seem to be the case that his claim would fall into at least one of the three exclusions set out above, if not more. And he hasn't provided any information to RSA to suggest this is not correct.

Mr S says he took advice from a Solicitor that supported his claim was covered by the policy. He says he wasn't able to obtain that advice in writing as he couldn't afford to. But I also haven't seen any compelling arguments he might have been given in advice that would persuade me the claim he's making is covered. He's referred to the claim being covered under the contracts section of cover. But that section applies to:

"Your legal rights in a contractual dispute arising from an agreement or an alleged agreement which you have entered into for the buying or hiring in of any goods or services, or the selling of any goods."

I don't consider the dispute that Mr S has described to fall within this definition. The dispute with his mortgage company is plainly not for goods or services- rather it is a loan secured on property. And the cover he's seeking is to defend against possession of his property- again not something that's covered by this definition. That section of the policy also requires the agreement that's the subject of the dispute to have been entered into during the insurance period. The possession order obtained against Mr S was in 2017 so the mortgage clearly predates this. And I think it's more than likely the date of the mortgage itself won't fall within the period of cover.

If of course Mr S can show that this is a claim that's capable of cover with compelling arguments that relate specifically to the details of his claim and the policy terms, then I'd expect RSA to reconsider the position. But as things stand, I've seen nothing to suggest they did anything wrong in turning down cover.

My final decision

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

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

Lale Hussein-Venn
Ombudsman