

The complaint

Mrs B and Mr B complain Royal & Sun Alliance Insurance Limited (RSA) declined to appoint alternative solicitors to handle Mr B's employment dispute under their legal expenses insurance policy.

Since this was Mr B's claim, I mainly refer to him in this decision.

Where I refer to RSA, I include their claims handlers.

What happened

In around August 2022 Mr B made a claim on the legal expenses insurance (LEI) policy he and Mrs B had with RSA for cover to pursue an employment dispute. RSA accepted he had appropriate cover. And RSA's panel solicitors initially advised his claim had reasonable prospects of success and would be proportionate to pursue. RSA appointed them to act on Mr B's behalf.

In early March 2023 the panel solicitors revised their advice. They said Mr B's claims for unfair dismissal and wrongful dismissal no longer had reasonable prospects of success. They said although he had a good claim for breach of contract, it wouldn't be proportionate to pursue on its own since the costs would outweigh the amount of the claim. They told Mr B they would be letting RSA know and it was likely RSA would withdraw cover.

Mr B understood the panel solicitors were declining to act for him anymore. He said they'd made mistakes and asked RSA to appoint an alternative firm. RSA said they were entitled to rely on the solicitors' advice about prospects and, since Mr B's claim wasn't proportionate to pursue further, they withdrew cover. They said Mr B could appeal their decision by providing further information to see if it changed the solicitors' advice. Alternatively, he could submit his own legal advice on the prospects of success, at his own cost, from a suitably qualified barrister and, if the advice was supportive, they would meet the cost.

Mr B was unhappy with RSA's response and complained. RSA didn't change their minds. They said as Mr B's claim fell outside the terms and conditions of the policy, they wouldn't continue to cover it or appoint an alternative firm of solicitors. RSA acknowledged Mr B's concerns about the actions of the panel firm but said they couldn't get involved in that.

Mr B brought his complaint to the Financial Ombudsman Service. Our investigator didn't think RSA had treated Mr B unfairly. Since Mr B didn't agree, the complaint's been passed 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.

I'm sorry to hear of Mr B's difficult circumstances and the effect they've had on his well-being. I won't set out here everything he and RSA have told us. I'll focus on what is key

in coming to my decision. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'd reassure the parties that I've considered everything they've said carefully.

I don't have the power to look at Mr B's concerns about the advice the solicitors gave or the way in which they handled his legal claim. Once they were instructed on Mr B's behalf, he became their client in relation to his employment dispute. So, he'd need to raise any concerns about their handling of his case with them direct, which I understand he has. If he's unhappy with the outcome of that complaint, the next step would be to raise it with the Legal Ombudsman.

I can consider Mr B's complaint about RSA. What actually happened here was that, based on the updated advice the panel solicitors provided in early March 2023, RSA withdrew cover under the policy and would no longer meet Mr B's legal costs.

We expect insurers to handle claims promptly and fairly and not to decline claims – or withdraw cover – unreasonably, in line with Financial Conduct Authority rules. So, I've considered what happened against that background. The starting point is the terms and conditions of the LEI policy.

RSA agreed to cover Mr B's legal costs and expenses up to a limit for certain incidents - including disputes relating to his employment contract - subject to the terms, conditions and exclusions set out in the policy. They included that there must be "Reasonable Prospects" for the duration of the claim. The policy said that to be reasonable, the prospects of recovering losses or damages had to be at least 51%. The policy also said the most RSA would pay under the policy in costs and expenses would be the value of any likely award. In simple terms, the costs had to be proportionate to the amount in dispute.

The solicitors advised in September 2022 that Mr B's claim had reasonable prospects of success. The case was handled by a solicitor with appropriate experience in employment law. The advice they gave was clear and well-reasoned, and it didn't contain any obvious factual errors, which should have alerted non-lawyers like RSA to question it. So, I think it was reasonable for RSA to rely on the advice the solicitors gave initially about the prospects of the claims succeeding, even though Mr B's raised concerns later on about the information it was based on.

The solicitors changed their advice in early March 2023 after the employer had formally responded to Mr B's claim. Mr B thinks they did so because of mistakes they'd made in handling his case. And he says there was a conflict of interest that meant RSA should have agreed to appoint alternative solicitors.

We'd generally consider a conflict of interest had arisen where the solicitors had made a damaging mistake that would constitute professional negligence, such as missing a procedural deadline. I don't think there's enough evidence to show a conflict of that sort arose here.

Mr B says he missed out on getting judgment in default against the employer because the solicitors failed to notice and rectify a mistake in the employer's address for service. But when Mr B's case came before the tribunal, the judge said, broadly, he wouldn't have allowed the default judgment application because of the error and the uncertainty of whether the employer had received the claim. If the solicitors had amended the address earlier and re-served the claim, it's possible the employer would have served its response and the chance of applying for a default judgment would never have arisen.

In the circumstances, I think it's reasonable to say there's some doubt about whether the

solicitors' mistake damaged Mr B's case. And I'm not aware of any other mistakes that might have led to a conflict of interest based on what Mr B's told us. But even if I'm wrong about that, I don't think it affects the outcome of Mr B's complaint, as I'll explain.

I'm not aware Mr B raised any concerns with RSA about the solicitors' handling of his case, or that he made them aware of his vulnerable state and health issues, until around the time of the solicitors' updated advice. In the circumstances, whilst I empathise with the difficult time he was facing, I wouldn't have expected RSA to intervene on Mr B's behalf in relation to the handling of his legal claim.

I think it was reasonable for RSA to rely on the updated advice in March 2023 partly for the same reasons it was reasonable for them to rely on the initial advice. In addition, it's apparent that proceedings had moved on. The employer had submitted its response to Mr B's claim. There was additional material for the solicitors to consider and advise on, so it wasn't surprising their advice might have changed.

There's nothing in the advice that suggests the solicitors were trying to cover up any mistakes they might have made. And even if the solicitors' actions had affected the possible outcome of Mr B's claim, that doesn't mean their advice about the prospects of it succeeding and proportionality going forward were wrong.

It's unlikely an uninsured person would want to bear the costs of running a case where the prospects of success were poor or where the legal costs would exceed the value of the claim, as here. So, it wouldn't be fair to ask an insurer to do so either.

In all the circumstances, I think it was reasonable for RSA to rely on the updated advice in coming to a decision about withdrawing funding. I think RSA's decision to withdraw cover was fair and reasonable. And I wouldn't expect them to have appointed another firm, even though I understand it left Mr B in a difficult position.

I think RSA acted reasonably after that. They looked into Mr B's concerns and reviewed them. And they gave him options reasonably promptly to submit further information about his claim or obtain his own legal advice. They explained too that he could continue to access the legal helpline for general advice about his case. Overall, they acted in the way we'd expect them to.

We don't generally consider complaints about complaint handling. I note RSA let Mr B know after the eight weeks within which they had to respond that he could bring his complaint to us. They'd let him know they weren't going to continue to cover his claim and their position didn't change after he'd brought his complaint to us. So, he wasn't adversely affected by RSA's failure to give a reasoned response sooner.

Bearing everything in mind, I don't think RSA treated Mr B unfairly. Whilst I am sympathetic to Mr B's circumstances and appreciate he and Mrs B will be disappointed, for the reasons I've explained, I don't uphold this complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 27 December 2023.

Julia Wilkinson

Ombudsman