

The complaint

Ms P is unhappy with what Royal & Sun Alliance Insurance Limited did following a claim she made on her legal expenses insurance policy.

What happened

Ms P was involved in a number of motor accidents. She sought assistance on her policy with RSA to claim damages. The claims were accepted and referred to panel solicitors. In relation to the claim which forms the subject of this complaint a settlement offer was made in November 2018 which I understand Ms P accepted.

Ms P is unhappy the costs of medical assessments were deducted from that settlement. She thinks this is something RSA should have paid for under the terms of her insurance policy. RSA said Ms P had complained to the Legal Ombudsman about this matter and had accepted an award made by that body. It said it wasn't able to investigate further.

Our investigator said as this was a claim for costs payable under Ms P's legal expenses insurance it wasn't an issue which the Legal Ombudsman would have considered. And her policy did provide cover for disbursements. But that was subject to written agreement from RSA which hadn't been provided in this case. However, RSA hadn't suggested the costs incurred were unreasonable or disproportionate. And it hadn't put forward any other reason why these shouldn't be covered by Ms P's policy. So she thought RSA should reimburse Ms P these costs (plus interest). And it should pay Ms P £250 to recognise the distress and inconvenience it had caused her.

RSA didn't agree. It still thought the complaint had addressed by the Legal Ombudsman. And it said the relevant medical reports weren't relied on because Ms P was unhappy with their content and they hadn't been disclosed to the other side. It said Ms P had accepted the settlement offer in the knowledge these costs would be deducted from it. 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.

The relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

First, I don't agree this complaint has already been considered by the Legal Ombudsman. Its role is to consider the conduct of the solicitors involved in the case which it has done. And it did identify issues with the information those solicitors provided Ms P about the circumstances in which she might have to pay the costs of the medical reports herself. It recommended compensation for the distress she was caused by that.

But it has no remit to consider the actions of RSA as insurer and what cover should be provided under Ms P's policy. And its outcome letter makes clear it hasn't seen a copy of

that policy. So it wasn't in a position to make informed comment on her claim in any case. Decisions on what cover the policy should provide (and what costs should be covered by it) are the responsibility of RSA and fall within the regulated activity of effecting and carrying out a contract of insurance.

And the claim and complaint Ms P is bringing is about whether her policy should cover the amounts deducted from her settlement agreement for medical reports. I'm clear that falls within the regulated activity which RSA is responsible for and so is something I can consider. I don't think her acceptance of a separate decision from the Legal Ombudsman related to the actions of the panel solicitors means I shouldn't do so.

I've therefore gone on to look at the terms and conditions of Ms P's policy. This does cover 'Uninured Loss Recovery and Legal Expenses'. It says RSA will assist the insured person in appointing a legal representative to recover their uninsured losses from the party who caused the motor accident. And it says "*Whether or not the Insured Person is successful RSA will pay the Legal Expenses which their Legal Representative reasonably and proportionately charges them*".

Our investigator referenced a specific section of the policy as it relates to disbursements. But I don't think that's relevant here because that applies to claims involving criminal proceedings brought against the insured person for an offence under road traffic laws. In this case Ms P was seeking to bring proceedings against a third party to recover damages for her injuries.

However, the policy does cover 'Legal Expenses' and the definition of that includes "*Legal fees, costs and other expenses... which a court has ordered the Insured Person to pay or which they have agreed to pay on the advice of their Legal Representative arising from Legal Proceedings*". I understand in this case the medical reports which form the subject of the claim were obtained in relation to the legal proceedings as they were to establish the nature and extent of Ms P's injuries.

RSA hasn't suggested these wouldn't represent legal expenses as defined in the policy. From the comments RSA has made and the other information I've seen (including the decision of the Legal Ombudsman) the issue appears to be that Ms P didn't agree with the contents of the medical reports and didn't agree they should be disclosed to the other side. As a result the panel solicitors weren't able to recover the costs of those reports as part of the settlement because they weren't ones that had been relied upon (albeit the other side nevertheless appears to have made a contribution to one of the reports).

So the question is whether these costs are ones that should be covered by her policy. It's for the insured (Ms P in this case) to show an insured event under the policy has taken place. I don't think it's in dispute she's done that because RSA accepted her claim. Where that's happened an insurer either needs to pay the claim in line with the terms and conditions of the policy or show, on balance, that an exclusion or condition applies which means it doesn't need to do that.

I've looked at what RSA has given as it's reasons for not paying this element of Ms P's claim. It argued first this issue is the responsibility of the panel solicitor and was covered by the decision from the Legal Ombudsman. I've already explained why I don't agree with that. But, to reiterate, the claim Ms P is making is for costs she feels should be covered by her legal expense insurance. That's something which RSA is responsible for.

RSA also says Ms P was aware the costs for medical reports were to be deducted from her settlement at the point she accepted it. That may be the case but I don't think that's the issue

here. The question is whether, under the terms of her insurance policy, those costs are ones that should be reimbursed to her by RSA.

RSA says Ms P went against legal advice by not disclosing the reports. However, RSA hasn't made any specific reference to a policy exclusion or condition which it's using to decline cover on that basis. Nevertheless, from my own review of the policy I can see it does contain a condition that the insured person must "*follow their Legal Representative's advice*".

However, RSA hasn't evidenced where the panel solicitors provided advice that Ms P didn't follow; it hasn't for example provided written correspondence from the panel firm clearly advising the medical reports should be disclosed or a response from Ms P refusing to accept that advice. I accept this issue is referenced in general terms in the response from the Legal Ombudsman but that doesn't set out in any detail what was said either. In fact the limited evidence I have suggests Ms P accepted (perhaps reluctantly) the advice from the panel firm to settle the complaint based on the offer that had been made by the other side.

As I've already set out it's for RSA to show that a condition of the policy hasn't been complied with. I'm not satisfied it's done so in this case. And even if Ms P did go against legal advice, in order for RSA to fairly turn down the claim on that basis there would also need to be evidence the breach of that condition had adversely affected (prejudiced) its position. RSA hasn't provided anything to show it did. So I don't think RSA can in any case rely on any failure to follow legal advice to turn down the claim Ms P made.

I also agree it will have been frustrating for Ms P to have her claim wrongly turned down and for RSA not to provide a clear explanation of its reasons for doing so. In correspondence with her it simply referenced the outcome of the Legal Ombudsman complaint. But as I've explained that body was considering a separate (though related) issue and the fact it had done so didn't mean there wasn't also an issue here for RSA to consider. I think it's right it pays Ms P £250 in recognition of the distress and inconvenience it caused her.

Putting things right

RSA will need to reimburse Ms P with the amounts deducted from her settlement for the medical reports. It will also need to pay interest at 8% simple on that amount from the date the deduction was made until the date the amount is paid by RSA. And it will need to pay Ms P £250 in recognition of the distress and inconvenience it caused her.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 7 March 2024.

James Park
Ombudsman