Financial Ombudsman Service

The complaint

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

Mr P says RSA treated him unfairly.

All references to RSA include their claims handlers.

What happened

The history of this complaint is well known to both parties, so I won't repeat it again here. Instead, I'll focus on addressing the crux of Mr P's complaints against RSA which is essentially how they handled his claim up until 26 June 2023. RSA have set their position out in their final response letter of the same date. I won't be addressing any other matters that arose following this because RSA have not had the opportunity to comment on them. If Mr P remains unhappy with anything beyond the date of RSA's final response letter, he should raise this with them directly.

The investigator considered the complaints that are the subject of this decision and didn't think they should be upheld. Mr P doesn'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 P's complaint. I'll explain why under the headings below. Before doing so I wish to acknowledge the volume of the submissions Mr P has made. I have considered everything he has said but I won't be addressing it all. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service.

The panel firm

Mr P's claim was for cover for his legal costs in respect of an employment dispute. RSA appointed a panel firm to consider the claim who initially said Mr P should go through ACAS in the first instance and exhaust that avenue before cover could engage. Mr P duly did this. When that process wasn't successful in resolving his dispute with his employer, he reverted to the panel firm.

The panel firm reviewed the merits of his claim and determined that it wasn't proportionate to pursue, but this might change if he was dismissed by his employer. Mr P was then dismissed, following which a further assessment was carried out by the panel firm. At that point they took the view that Mr P's claim didn't have reasonable prospects of success, as required by the policy. Following this, RSA said they wouldn't cover the claim any further, but they also offered Mr P the alternative of appointing another panel firm for a second opinion if

he wanted this.

As Mr P is aware I'm not able to determine any complaints about the panel firm's conduct including any issues around the sharing of information with them, the quality of their legal advice or the conduct of another panel firm that initially reviewed his claim when it was first submitted. That's because those firms are subject to their own codes of conduct and have a separate regulator. What I am able to look at however is whether RSA did anything wrong here.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and is proportionate to pursue. Mr P's policy is no exception. That means his claims needed to have over 51% prospects of succeeding in order for RSA to cover them and the cost of any intended claim be less than the amount they are likely to recover.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or if they're likely to pay more in costs than they are likely to recover. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. RSA did this.

I'm satisfied that the person advising Mr P was suitably qualified and experienced in the area of law Mr P was asking for help with, and I've seen nothing that suggests this advice was based on factual mistakes. I appreciate Mr P didn't agree with that advice because his claim against his former employer concerned some very specific issues, had a complex background and because he subsequently received alternative advice that his claim did have reasonable prospects of success. But that doesn't mean that RSA weren't entitled to rely on the advice they received. The fact that the case contained nuanced matters or a complex background, doesn't in my view mean the panel firm were not suitably qualified to advise on it nor indeed that RSA should have done something different.

Following the panel firm's assessment, Mr P was given the unusual option to take a second opinion from an alternative panel firm or to obtain his own legal opinion. Mr P says this was at his own cost and he couldn't afford alternative advice at that stage. Whilst I appreciate that, the onus was on him at that point to show he had a claim that was capable of cover. And I think RSA's stance on giving him more than one option to obtain alternative advice was reasonable in the circumstances.

In this case Mr P did obtain alternative advice from a barrister that supported his claim had reasonable prospects of success, so RSA agreed to fund those costs and the costs of his own Solicitor going forward. Whilst I appreciate that Mr P feels that he should have received this outcome from the outset, RSA weren't responsible for the advice they received from the panel firm and when they did receive advice that supported the merits of Mr P's claim they agreed to fund his costs. So, I don't think they did anything wrong here.

The appointment of Mr P's own choice of Solicitor and agreement of costs

I can see that there was correspondence between RSA and Mr P's own choice of Solicitor over their appointment and on the issue of proportionality. In this case RSA didn't confirm their agreement to continue to fund Mr P's costs until they were satisfied that the terms of

appointment had been accepted and the claim was proportionate to pursue. They also made the point that they would only fund Mr P's costs up to the indemnity limit applicable to the policy.

Whilst I appreciate Mr P might have found this process frustrating, it's in line with what I would expect to see from an insurer. RSA were funding the litigation and as the funders of it they needed to satisfy themselves that the parameters of funding were understood and agreed to and that the claim remained covered under the terms of the policy in accordance with the ongoing requirement for it to be proportionate. For the reasons I've mentioned above, I don't think that was unfair. So, I don't think RSA did anything wrong here.

Delays

RSA accepts that there were a number of avoidable delays on Mr P's claim which prevented it from progressing in a timelier manner. They offered Mr P £200 in compensation for the trouble and upset this caused him. Looking at those delays (which were in relation to RSA providing Mr P with the panel firm's assessment of his claim, taking action when Mr P contacted RSA about an impending hearing date, responding to his barrister's assessment of his claim and approving his hourly rate) I'm satisfied that RSA's actions would have caused Mr P both distress and inconvenience in already difficult circumstances given his underlying claim. But I also think the amount RSA have offered him adequately compensates him for this. If Mr P has not accepted the sum offered by RSA and wishes to do so, he should contact them directly.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 August 2024.

Lale Hussein-Venn
Ombudsman