

The complaint

Mr and Mrs A are unhappy RAC Insurance Limited turned down a claim they made on their legal expenses insurance policy.

As the claim and complaint has been brought by Mr A I'll refer to him in this decision. All references to RAC include its agents and claims handlers.

What happened

In February 2024 Mr A contacted RAC seeking assistance with a legal expenses claim. He told it he'd entered into a contract to buy a property in October 2021 but the purchase didn't complete. He wanted the policy to fund a breach of contract claim against the seller. RAC said it became the insurer of Mr A's policy following renewal in December 2022. And the policy only provided cover where the incident which gave rise to a claim was within the period of insurance. In this case the contract had been entered into prior to its policy being in place and the breach of contract had taken place in December 2021. It didn't consider Mr A's claim was one its policy covered and turned it down.

Our investigator said although the policy didn't cover claims where the contract was entered into prior to the policy start date that didn't apply where equivalent cover was in place with a different insurer. He agreed that was the case here. However, he thought for cover to be provided the 'date of incident' (as defined in the policy) would still need to fall within RAC's period of cover. He thought that was December 2021 (and noted Mr A had made a claim in relation to the breach of contract to his previous insurer the following month). As that was prior to cover with RAC being in place he thought it had fairly declined the claim he made.

Mr A didn't agree. In summary he said:

- Based on the policy definition of "date of incident" he thought this would apply at a point when legal proceedings and costs could have been incurred and for which a claim could be made on the policy. And that wasn't the case until November 2023 which was within the RAC policy period.
- He didn't accept a claim for legal costs could have been made at the point the breach occurred and referenced the Civil Procedure Rules and pre-action steps that would need to be carried out prior to legal proceedings being initiated. He thought that was supported by the reference to continuous cover in the policy which meant it should cover the cost of an event when it reasonably occurred.
- He said a claim was made to his previous insurer because they covered pre-action costs and that shouldn't impact the outcome of this complaint which should be based on the terms and conditions of the RAC policy. He thought including information about the previous claim within this complaint was inappropriate and a breach of the requirement to consider each complaint on its own merits.

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 RAC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr A's policy. That says "*we will provide you with cover for your legal costs associated with pursuing or defending a claim that falls within the policy terms of sections A-H below up to a limit of £100,000 provided that...the incident occurs within the policy period*".

It appears RAC thought the claim could fall within the 'Consumer Disputes' section of cover which covers "*Legal costs for the pursuit or defence of a claim relating to a contract for the sale, purchase, servicing, repair or hire of personal goods or services*". However, Mr A wasn't selling anything and his contract didn't relate to services. So for cover to be available the contract would need to be for the purchase of personal goods.

But in this case his contract was for the purchase of a property. I think goods are generally understood to represent tangible, moveable items. I don't think they would reasonably include a physical building. As a result I'm not persuaded his claim would fall within this section of cover. However, I don't think that's something I need to determine because even if Mr A could show he had a claim which fell within sections A-H of the policy it would still need to have occurred within the policy period.

The policy defines claim as an "*incident which we accept as falling within the terms and policy period of this Home Legal Expenses policy and which, in our reasonable opinion, is the incident or first in a series of incidents that could lead to a claim being made*". In this case Mr A entered into the contract to buy a property in October 2021 and was aware that contract had been breached by the seller by December 2021. And his policy with RAC was taken out in December 2022.

I think that breach is the first in a series of incidents that could lead to a claim being made on the policy. I accept Mr A might not have been able to progress legal action at that point and I appreciate he believes the date of incident should only apply from when a claim could be made on the policy. But the policy definition doesn't say it applies from when a legal claim could be made. It references the first in a series of incidents that could lead to a claim being made. I'm satisfied the breach of contract which occurred in December 2021 would reasonably meet that definition.

And I agree with our investigator that it's relevant in January 2022 Mr A made a claim on his previous policy for assistance with a claim against the seller for breach of contract. Taking that information into account doesn't mean I'm not determining this complaint on its own merits as Mr A has suggested. I am doing that but in considering what's fair and reasonable in all of the circumstances I think it's appropriate to consider the available evidence as to whether Mr A knew that there was an issue which could lead to a legal dispute at the point he took out his policy with RAC. I think he did. He'd already made a claim on his policy with his previous insurer for assistance with that dispute (and I've not seen evidence to show he could reasonably have thought that dispute had been resolved).

I do appreciate Mr A has had continuous cover in place throughout this period. I also recognise that while his policy with RAC excludes contract disputes where the contract was entered into before the policy started that doesn't apply where "*you held equivalent cover with us or another insurer continuously from the date of the contract*". But RAC hasn't

declined cover on the basis the contract was entered into prior to the start date of the policy; it's done so because the 'date of incident' was before that.

Sometimes, where a policyholder held continuous cover, a claim could be declined because the first insurer says its terms require the claim to be made during its policy period but it's no longer in force and the second insurer won't deal with it because the event began before its policy was taken out. In that situation we'd say one of the insurers would need to consider the claim.

But that's not what's happened here. Mr A did have continuous cover but the first insurer hasn't disputed the claim is one it would be responsible for. The issue is it didn't consider it fell within the other terms of its policy (which we've considered as part of a separate complaint). I appreciate why Mr A therefore sought cover under his policy with RAC but for the reasons I've explained I don't consider this to be a claim that policy covers. And I don't think there are grounds on which I could require RAC to accept it on a fair and reasonable basis. I'm sorry to bring Mr A what I appreciate will be very disappointing news.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 1 April 2025.

James Park
Ombudsman