

## **The complaint**

Mr G complains about Royal & Sun Alliance Insurance Limited (RSA)'s decision to hold him at fault and settle another driver's claim against his commercial motor insurance policy. He's also unhappy about the amount it paid out and its level of service.

## **What happened**

Mr G was involved in an incident with a van, and he notified RSA. RSA investigated the claim and settled it as fault. It paid for the other driver's repairs, but it didn't tell Mr G this at the time. RSA agreed that it should have given Mr G clearer information and engaged better with him. After Mr G's complaint came to us, RSA offered him £100 compensation for the trouble and upset this caused. But Mr G remained unhappy.

Our Investigator didn't recommend that the complaint should be upheld. He thought RSA was entitled by the policy's terms and conditions to settle the claim as it thought best. And he thought it had reasonably considered the evidence before holding Mr G at fault. He thought it had reasonably based its payment for the other driver's repairs on an expert's assessment. But he thought RSA should have been clear to Mr G from the start that he was at fault. And he thought its offer of £100 compensation for this was fair and reasonable.

Mr G replied that he thought RSA hadn't considered the full evidence and information available to substantiate that the claimed for damage was accident-related. He said his photographs showed that the damage was pre-existing. He thought the accident hadn't caused any damage and the other driver had been uninjured. He thought RSA should revisit the investigation. Mr G asked for an Ombudsman's review, so his complaint has come to me for 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.

Mr G said he had a minor collision, at low speed, with a van. He said he notified RSA of this and that the other driver had said damage to the van was pre-existing. Mr G offered RSA photographs and more information, but RSA said this wasn't then needed.

RSA later contacted Mr G to ask if he was claiming for any damage, which he wasn't. And he heard nothing further until he learned that the other driver was making a personal injuries claim, and RSA had paid £5,000 for repairs.

I can understand that Mr G feels frustrated that the minor collision he described led to such an outcome. And he's told us that the fault claim on his record means that he is unable to locate affordable cover. Mr G thought the other driver may have been partly at fault.

The Investigator has already explained that it isn't our role to decide who was responsible for causing an accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr G the same as someone else in his position.

RSA is entitled under the terms and conditions of its policy with Mr G to take over, defend, or settle a claim as it sees fit. Mr G has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I don't find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence available before deciding how to settle it.

Mr G said he had hit the van in the rear at low speed in traffic. In keeping with relevant rules, this would be regarded as a fault claim as Mr G has a duty to allow enough stopping distance. RSA didn't tell Mr G this at the time, and I will consider this further below. But I think it reasonably decided to hold Mr G at fault.

RSA contacted the van's owner, and it then made a claim for repairs. It isn't unusual or wrong for an insurer to proactively make contact with the other party as this may reduce its outlay if there is a claim. So I can't say that RSA did anything wrong in this.

Mr G described the damage caused at the time:

*"...there was a mark on the bumper of the van and my car bumper was broken and bent, as was my number plate, and the undertray below the engine was knocked out of place."*

But the other driver said there was also damage to the van's rear door. RSA appointed an independent engineer to inspect the van, review the repair estimate from the chosen repairer and authorise the work. Repairs were authorised and carried out and further repairs were then required and authorised. It isn't unusual for further hidden damage to be identified when repairs are undertaken.

I've seen the engineer's report and it doesn't identify any pre-existing damage on the van. And I think the amount of damage to his car Mr G has described made it unlikely that just a mark was left on the van. So I think it was reasonable for RSA to rely upon the expert engineer's report.

Mr G thought dashcam footage from the van would show that there had been pre-existing damage, but the van's owner said this wasn't in operation at the time. RSA is required to rely on a civil standard of proof. Mr G accepts that he hit the van in the rear and caused damage. But if Mr G thinks cross-examination in a court may support his view, then this may be something he may want to pursue at his own cost.

Mr G said his photographs taken at the time showed that the van's damage was pre-existing as there was dirt and rust present. We're not engineers. We don't assess whether or how damage to a vehicle would be caused as this is a matter for the experts in these situations, the insurance companies and engineers. Our role in these complaints is to determine whether an insurance company has considered all the available evidence and whether it can justify its decision about repairs.

In this case, I can see that RSA considered the photographs after Mr G complained. It said the damage to the door was consistent with the other damage caused. It thought the damage didn't look old. So I think it considered Mr G's evidence and justified its decision to pay for the van's repairs. Mr G still had a fault claim on his record regardless of the amount RSA paid out.

RSA didn't tell Mr G at the time that the claim would be recorded as a fault. It did tell him that it would deal with the other driver's claim if one was made. But it didn't tell him it had settled the claim. This could have caused Mr G harm as he would have to declare incidents to future insurers, but I can't see that he has raised this as a concern.

From what I can see, RSA is now dealing with the other driver's personal injuries claim. I can understand that Mr G feels this may be fraudulent or exaggerated. But, as I've said above,

RSA is entitled to settle a claim as it sees fit. It's already told Mr G that the amount of damage caused doesn't support his claim that no injuries were caused. But RSA won't want to pay out a claim which isn't supported by medical evidence.

RSA paid Mr G £100 compensation for not communicating sufficiently with him. And I think that's in keeping with our published guidance, so it's fair and reasonable. I think it's for Mr G to decide whether or not he wants to accept its offer.

### **Putting things right**

I require Royal & Sun Alliance Insurance Limited to pay Mr G £100 compensation for the distress and inconvenience caused by its level of service, as it's offered to do.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part. I require Royal & Sun Alliance Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 January 2024.

Phillip Berechree  
**Ombudsman**