

The complaint

Mr K is unhappy Royal & Sun Alliance Insurance Limited (RSA) hasn't agreed to cover repairs for damage he says was caused during the breakdown recovery of his vehicle.

Any reference to RSA includes the actions of its agents.

What happened

- The circumstances of this complaint are well known to both parties, so I've summarised what's happened.
- Mr K has a vehicle breakdown policy which is underwritten by RSA. Whilst driving on the motorway his car tyre suffered a puncture. Having manoeuvred the vehicle to the hard shoulder, Mr K called RSA for recovery assistance.
- Mr K says that when the recovery operator transferred his car to the recovery vehicle, the side and roof of it was damaged by bushes positioned next to the hard shoulder. Conversely, RSA said the damage was caused when Mr K pulled his car on to the hard shoulder and positioned it next to overhanging bushes.
- Mr K has said the operator acknowledged the damage at the time saying he'd tried to hold back the branches to prevent it happening. He also said the operator admitted he was meant to take photographs of the vehicle on arrival but hadn't.
- In response to Mr K's complaint, RSA said: the recovery operator wasn't required to take photographs; the operator had offered to move Mr K's car further along the hard shoulder to avoid the brambles, but Mr K had declined the offer. RSA also said Mr K signed the agreement that damage hadn't been caused during the initial recovery or whilst in transit to the destination garage.
- RSA didn't consider the operator to be responsible for the damage and so, has said it won't cover the cost to repair Mr K's car. Unhappy, Mr K brought a complaint to this Service.
- An Investigator considered it and upheld it. He said RSA had given a conflicting account of what happened – namely that it had said due to the hazardous location of Mr K's car its operator couldn't move the vehicle further along the hard shoulder, but also, that the operator had offered to move Mr K's car - but he declined.
- So, the Investigator wasn't persuaded RSA had taken reasonable care during the recovery of Mr K's car and said it should cover the cost of repairing it. RSA disagreed and so, the complaint was passed to me for an Ombudsman's decision.
- I considered it and issued a provisional decision, in which I explained why I didn't intend to uphold the complaint. I've included an extract of this below.

“What I’ve provisionally 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’m currently not minded to uphold this complaint, and I’ll explain why.*
- Mr K says RSA is responsible for causing avoidable damage to his car during the recovery of it. So, I must consider what I know to decide whether it’s reasonable to hold RSA responsible for this.*
- Mr K pulled his vehicle on to the hard shoulder having suffered a blow out to the front tyre. Mr K has said himself that he was in a state of shock following the incident and needed time to recuperate – and so, it’s not implausible that all or some of the damage to his car occurred when he did so. Though I appreciate Mr K has said this wasn’t the case.*
- RSA has indicated there may have been a discussion with Mr K about moving his vehicle, but that Mr K didn’t want to. However, Mr K disputes this conversation took place. So, I can’t be certain about what was said.*
- Taking into account risks of the road, I consider the priority here would have been to recover the vehicle and get it and Mr K off the hard shoulder. And whilst I understand Mr K has said the vehicle could have been easily moved to avoid it being damaged, I must consider that RSA’s objective here was to move the vehicle to a safe location as soon as possible.*
- Mr K has said he wasn’t happy with the recovery of the vehicle, but I don’t have evidence to support that he objected to this at the time. And it’s not in dispute that Mr K signed paperwork to say the vehicle hadn’t been damaged during the recovery. I appreciate Mr K has said he didn’t know what he was signing and assumed it was simply to say his vehicle had been recovered, but I don’t think it’s unreasonable to have expected him to report an issue at the time of signing - given his strength of feeling - if he considered RSA to have caused damage to his car as he has reported.*
- Mr K has provided a very detailed account of what he says happened but when I consider the available evidence, I’m not persuaded there’s enough to conclude RSA failed to take reasonable care during the recovery of his car and in turn caused avoidable damage.*
- Even if there was a degree of damage that could’ve been avoided, I must consider that the recovery operator had to weigh up the potential damage to the vehicle and the risk to human life while on the hard shoulder. So, in the circumstances, I’m not persuaded based on the available evidence that the actions they took were unreasonable given the environment they were in.”*

Following my decision, Mr K provided a lengthy response detailing why he disagrees with the outcome I’ve reached. I won’t repeat it in full, but to summarise he:

- challenged whether RSA was the correct respondent party as the recovery of the vehicle was carried out by another company.
- disputed the version events – saying there weren’t any bushes at ground level next to the hard shoulder rather these were 6-8 feet off the ground, and it’s these that damaged his car when it was moved on to the recovery vehicle. He said he’s an

experienced driver - owing to his profession - and was able to safely bring his car to a stop without causing damage to it.

- reiterated that the recovery operator never offered to move his vehicle along the hard shoulder, and so, he didn't decline the offer. And that he didn't know what he was signing – saying it hadn't been explained to him properly, and that he'd only been told he was signing to say his vehicle had been removed from the road.
- raised concerns about the vehicle recovery operator's attire – suggesting the lack of protection was indicative of the situation not being considered a hazardous one and so, he doesn't consider it reasonable to say the recovery of his vehicle was more urgent than any other recovery.
- concluded that RSA caused avoidable damage to his car because it cut corners, and not as a necessary step to protect life.

Photographs provided by RSA depicting the location were also shared with Mr K. Having reviewed these, Mr K said:

- the photographs weren't taken in the correct location.
- the photographs don't prove his car was parked against the bushes.
- the vehicles used in the photographs are a different make and model to his car and so have different measurements. And so, it's not reasonable to infer that the branches touching these vehicles at a lower height, means they would have reached his car too.

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 K has provided a detailed reply to my provisional findings. I won't be responding in the same manner - my intention isn't to be curt but is rather to reflect the informal nature of this service. So, whilst I want to assure Mr K I have read his submission in full, I'm only addressing those points which I consider relevant to deciding this complaint.
- Before addressing the merit related arguments, I'll explain why RSA is the correct respondent business in this complaint. Whilst the vehicle was recovered by a separate company (company A), and Mr K liaised with another company (company B) to arrange the recovery, both are acting as agents of RSA, and so, RSA is responsible for their actions. And any reference I've made to RSA includes these or any other agents or representatives that it has.
- Mr K strongly refutes the recovery operator offered to move his car to avoid it being damaged. I've acknowledged this within my provisional decision and given the nature of the two opposing versions of events, I've had to look at the surrounding evidence. So, this point has not been material to the decision I've made.
- Mr K has said the recovery operator's lack of suitable protective attire is indicative of the recovery not being considered more urgent or hazardous than any other recovery. To clarify, my point is not that Mr K's breakdown was more hazardous than

another motorway recovery, but rather that breaking down by the side of the motorway is by its very nature, inherently dangerous. And that the recovery operator would have to weigh up these risks as part of the recovery.

- Mr K has said he didn't know what he was signing when his signature was asked for at the time of recovering his vehicle. He's also said he was told by the recovery operator that he was signing to simply say his car had been recovered.
- RSA says Mr K was asked to sign to confirm that *no damage had been recorded*. Mr K says he was in shock when he signed and so, it's unfair for RSA to be absolved of responsibility on this basis. I accept its possible Mr K was not walked through the agreement he was signing, but I must look at what is most likely in the circumstances. And I remain of the view that it would've been reasonable for Mr K to have enquired further as to the nature of the document or objected to signing it given the extent of the concerns he's described witnessing shortly before. But Mr K did sign it.
- Mr K has said the bushes weren't low lying and that his vehicle was damaged as it was raised on to the recovery vehicle. But beyond his testimony, he's not given me any further evidence to support this version of events. And whilst Mr K says the photographs provided by RSA are of the incorrect location, and that the bushes were not low lying - he hasn't provided any contemporaneous evidence of the scene to show otherwise.
- I've also noted that the scratches on Mr K's car are not consistent – noting that the markings differ in direction and regularity. For example, the wing mirror is heavily scratched whereas the side of the vehicle is less so. If branches were protruding at a height and could extend beyond the width of the recovery vehicle, I would reasonably expect to see the same number of scratches to the side of the car as the wing mirror – but that's not the case here. Which suggests the damage was less likely to have occurred whilst being raised on to the recovery vehicle.
- Mr K's strength of feeling about this complaint is very clear, and I don't doubt this has been a stressful event for him. Whilst he's provided testimony detailing his version of events, he hasn't provided contemporaneous evidence which persuades me the damage most likely occurred in the way he's put forward. Ultimately, as the policy holder it's for Mr K to demonstrate on the balance of probabilities that the damage occurred because of the negligence of the recovery operator but I'm not persuaded he's done that. It's not a decision I've taken lightly, but having considered the evidence I do have, I'm not upholding this complaint.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 December 2023.

Nicola Beakhust
Ombudsman