

## **The complaint**

Mr and Mrs D are complaining Royal & Sun Alliance Insurance Limited (RSA) has held them liable for an accident after they made a claim on their car insurance policy.

## **What happened**

Mr and Mrs D's car was damaged when it was hit by a third party's vehicle. Mr D – a named driver on Mrs D's policy – says he was helping his disabled daughter get into the back of the car when the car door was hit by the third party's vehicle. He says the third party was driving too fast and had misjudged the clearance between the two vehicles. Liability is in dispute as the third party said Mr D opened the door onto his oncoming vehicle.

RSA says it tried to pursue the third party's insurer to settle the claim, but it ultimately said it wouldn't pursue the claim further. It wrote to Mr and Mrs D and said the following:

*"The onus rests on our side to provide the version of events. Having looked at the damage to your vehicle, it shows the point of impact on the driver's side rear door and travelling along the outer door skin. There is no damage to the inside of the door or the check strap on the hinge which, if the door was open when hit, would normally be damaged in some way."*

RSA thought the photographs of the respective vehicles supported the third party's version of events and it didn't think it would win if the matter proceeded to court. So it didn't pursue the third party's insurer for its outlay. However, as a gesture of goodwill, it paid Mr and Mrs D £25 for the inconvenience of having to make telephone calls. Mr and Mrs D thought RSA's decision was unfair, so they referred their complaint to this Service.

Our investigator didn't uphold this complaint. She said it wasn't for this Service to decide who was at fault for an accident, but we look at whether RSA had taken everything Mr and Mrs D had provided in coming to the conclusion it did. She was satisfied RSA had done so.

Mr and Mrs D didn't agree with the investigator as they maintain that RSA's investigation into this incident was carried out unfairly and unobjectively for cost cutting purposes. They said that, as a general rule, the driver of a vehicle who hits a legally parked car is at fault. They highlighted that RSA didn't attempt to retrieve pictures from the third party's insurer, nor obtain a detailed engineer report. They also considered the £25 compensation to be derisory – especially given they had to pay their excess of £100.

As Mr and Mrs D disagreed with the investigator, the complaint's been passed to me to decide.

## **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.

I've decided to not uphold this complaint and I'll now explain why.

I should first explain that this service isn't able to say who's at fault for causing an accident, as that is the responsibility of the courts. Our role is to look at whether RSA has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

Mrs D's policy, like all other car insurance policies, allowed RSA to "*defend or settle the claim*." So it was entitled to settle the claim, on the best terms it thought fit. And it had the ultimate and final say in how to settle a claim. But it needed to exercise this right fairly and reasonably, taking into account everything both parties had provided.

I recognise that Mr and Mrs D think RSA didn't investigate the claim at all and chose the most cost-effective option. But insurers are entitled to be mindful of the high cost of litigation. And they can choose to settle a claim rather than go to court if they didn't feel there were reasonable prospects of success in court. But in deciding this they must take all evidence into account. In this case, RSA reviewed all the evidence Mr and Mrs D provided – included their testimony and photographs of the damage – but they thought the evidence supported the third party's version of events. I can also see they wrote to the third party's insurer a number of times – initially holding the third party at fault, but then asking for photographs. I understand the third party's insurer explained there weren't any additional photos it can provide. I note Mr and Mrs D wanted RSA to obtain a full engineer report. But it's entitled to take a pragmatic approach to claim handling and it ultimately felt it had enough information based on the photographs provided. I can't say that was unfair.

I recognise Mr and Mrs D feel RSA has been unfair, but I haven't seen anything to support that. It has considered everything Mr and Mrs D has provided in coming to the conclusion it did. To pursue this claim further would likely require expensive litigation and it didn't think this would be successful. I can't say its decision was unfair.

I note Mr and Mrs D are unhappy with the £25 in compensation RSA has paid as they consider it to be derisory. However, as I said, I haven't seen anything to show that RSA has acted unfairly. So I think it's more than fair.

### **My final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint. Royal & Sun Alliance Insurance Limited should pay the £25 in compensation it's previously offered to Mr and Mrs D directly if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 16 January 2024.

Guy Mitchell

**Ombudsman**