

The complaint

Mrs D complains Royal and Sun Alliance Insurance Limited (RSA) unfairly recorded her claim on her motor insurance policy as her fault. She was also unhappy with the general service and communication throughout the claim process.

RSA are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As RSA have accepted it is accountable for the actions of the intermediary, in my decision, any reference to RSA includes the actions of the intermediary.

What happened

Whilst driving her car In October 2022 Mrs D was involved in an incident with a bus. She made a claim on her motor insurance policy and described the circumstances of the incident as the bus had cut across in front of her lane causing a collision. She said it was not her fault.

The third-party insurer denied liability. After considering the information provided of the incident, which included video footage, RSA recorded liability was that of Mrs D.

Because Mrs D was not happy with RSA recording the incident as her fault, and the time RSA had taken to tell her this, she brought her complaint to our service.

Our investigator did not uphold the complaint. They looked into the case and said RSA gave valid reasons why it believed Mrs D would be held at fault if the matter went to court and they didn't think it had acted unfairly in relying on the term in her policy which allows it to deal with the claim as it deems appropriate. They said the £150 paid by RSA because it fell short on service was fair.

Because Mrs D is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

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.

It's important I make it clear that it's not my role to decide who's at fault for an accident, as ultimately that's a matter for the courts. And, like all motor policies, Mrs D's policy allows RSA to settle claims as it sees fit. That means it doesn't require Mrs D's consent to decide how to settle a claim and it may make a decision Mrs D doesn't agree with. But I'll look to see that it's done so reasonably.

When Mrs D made her claim she described the incident to RSA and based on this information I think it was reasonable, at this point in the claim, for it to accept the third-party was at fault based solely on the information from Mrs D. I saw RSA contacted the third-party asking them to admit liability.

The third-party insurer did not make any claim however they disagreed it was at fault for the incident. They said rule 221 of the highway code applied. Rule 221 says;
“Large vehicles. These may need extra road space to turn or to deal with a hazard that you are not able to see. If you are following a large vehicle, such as a bus or articulated lorry, be aware that the driver may not be able to see you in the mirrors.”

I saw RSA contacted the third-party insurer within a few days of the incident being reported to request its admittance of liability. As this was not forthcoming RSA chased for a response a number of times. Then in March 2023 after the third-party insurer eventually said it held Mrs D at fault, RSA’s technical team reviewed the available video footage and then accepted liability on a without prejudice basis.

The process to decide on liability for the incident took almost five months and I can understand Mrs D was frustrated that it took so long. However I saw action was being undertaken by RSA to confirm third-party liability during this time and I did not see any evidence of avoidable delays. Repairs to Mrs D’s car were not delayed whilst liability was being sorted out by RSA.

When Mrs D made a complaint in March 2023 because she disagreed that RSA had accepted liability, I saw it obtained independent professional legal advice. Based on the video evidence the legal advice concluded if the case were to go to court a judge would decide in favour of the third-party.

Based on the legal advice obtained, RSA maintained its decision to accept liability for the incident. Because it accepted liability on a without prejudice basis Mrs D is still able to take her own action against the third-party should she wish to.

I found RSA was thorough in its investigation into this incident, it gave valid reasons for its decision and also paid for independent legal advice when the decision was contested by Mrs D. I therefore think the decision to record liability for the incident as that of Mrs D’s was reasonable.

I saw Mrs D made her complaint at the end of March 2023 and RSA did not progress this until mid-August 2023. I saw it accepted it failed to record her complaint and paid her £150 compensation by way of an apology. I agree this a fair and reasonable amount.

I do understand Mrs D feels strongly she was not at fault for the incident in which her car was damaged, and because liability was recorded as that of hers she will have been required to pay her policy excess for the repairs to her car, meaning she incurred costs. I also acknowledge Mrs D was dealing with some difficult personal issues and having to deal with the claim at the same time will have added to her stress at an already very difficult time for her.

However, although I know Mrs D will be disappointed with my decision, I don’t uphold her complaint and don’t require RSA to do anything further in this case.

My final decision

For the reasons I have given I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 1 August 2024.

Sally-Ann Harding

Ombudsman