

## **The complaint**

Mr C complains that when he made a claim on his policy, Royal & Sun Alliance Insurance Plc trading as More Than ("RSA") wouldn't pursue the claim on either his motor insurance or legal expenses insurance cover.

## **What happened**

Mr C wanted to claim on his policy when his car was damaged. He said a builder caused scratches to it while carrying out excavation work close to where it was parked.

RSA said it would consider the claim and arrange for repairs but Mr C would need to pay the excess. Mr C thought this was unfair and said the builder should pay for the repairs.

RSA contacted the builder to ask them to cover the costs but the builder didn't accept liability for the damage. The builder accepted it had spilled something on Mr C's car and offered to clean it but Mr C declined this offer; he cleaned the car himself. The builder said Mr C caused the scratches when he cleaned his car.

RSA reviewed all the information and decided it wouldn't take the case further. Mr C felt he was being blamed for the incident and that was unfair. RSA said it had written to the builder but the builder denied liability. It didn't think there was enough evidence to prove the builder caused the damage. RSA also said it had referred the matter to solicitors to consider if cover could be provided for Mr C to take legal action under the legal expenses section of the policy, but the solicitors advised the claim wasn't likely to succeed and the costs wouldn't be proportionate in any event.

When Mr C complained RSA didn't change its decision. But it did accept there had been confusing and misleading information given to Mr C and paid compensation of £250 in respect of this.

Mr C was still unhappy and brought his complaint to this service but our investigator didn't think it should be upheld. He said:

- the legal advice was that the claim wasn't likely to succeed and that was a requirement for legal expenses cover to be provided;
- the motor insurance included a term allowing RSA to take control of the claim and decide how to settle it, and it had done so fairly.

Mr C disagreed and requested an ombudsman's decision. Amongst other things, he says:

- the builder accepted that topsoil was dropped onto his car by an excavator;
- the damage to his car was caused by this – he couldn't have caused such deep scratches just by cleaning his car.

## **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 C's policy includes both motor insurance and legal expenses cover. RSA considered the claim under both.

The policy allows RSA to take over and settle the claim. this is a very common term and most, if not all, motor policies have this.

The legal expenses section of the policy would provide cover for Mr C's legal costs of pursuing a case against the other party in some circumstances, but only where the claim has prospects of success. In other words, it must be more likely than not that the policyholder will win their case. And the costs must be in proportion to the value of the claim. Again, terms like these are very common. They mean insurers don't have to meet costs for claims that are unlikely to be successful or where the costs are too high compared to the value of the claim.

I would expect an insurer to get legal advice before deciding whether a claim has reasonable prospects. And the insurer is entitled to rely on that advice, unless it's obviously wrong.

It's not for me to decide who was to blame for the damage to Mr C's car. What I need to consider is whether, when deciding how to settle the claim, RSA acted fairly. In considering this, I've taken into account the policy terms and the requirement for insurers to deal with claims promptly and fairly, and not unreasonably reject a claim.

There's no dispute that soil was dropped onto Mr C's car. But that doesn't necessarily mean the builder was responsible for the damage. RSA said it would accept the claim and arrange for repairs (estimated at around £750), but Mr C would have to pay his excess of £550. He didn't want to do that and said the builder should pay. RSA looked into this but said there wasn't evidence to show the builder caused the damage. It also referred the matter to solicitors to assess. They advised:

- because of the value of the claim it would be dealt with in the small claims procedure;
- a person of moderate means wouldn't instruct a solicitor to pursue a disputed small claim with no supporting evidence, because the costs would be more than the value of the claim and there was a very poor chance of success;
- while the car had been covered in dust that wouldn't in itself give rise to a claim and there was nothing to show this had caused the damage.

Taking everything into account, I'm satisfied RSA considered Mr C's claim appropriately. On the evidence available I think its decision not to pursue the builder itself or provide legal expenses cover for Mr C to do so was reasonable and in line with the policy terms, particularly when there was clear advice from a solicitor about the poor chances of success and the high cost relative to the value of the claim. It was reasonable for RSA to rely on that advice.

There was some confusion about whether a claim on the legal expenses section of cover could be considered, and the information given to Mr C about this initially wasn't clear. But RSA accepted this and agreed to pay compensation of £250 for any distress or inconvenience caused to him.

I appreciate it was confusing for Mr C but this was cleared up, and the claim was referred for legal advice. Looking at the sequence of events and timescales involved, I think the compensation was reasonable and I wouldn't award any more in respect of this.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 July 2021.

Peter Whiteley  
**Ombudsman**