DRN-3773387

The complaint

Miss A and Ms S have complained about their car insurer Royal and Sun Alliance Insurance Limited in relation to action it has taken to recover its claim outlay costs from Miss A.

Ms S is a named driver on Miss A's policy – and it is Miss A whom RSA is seeking to recover its outlay from. So my decision will, in the main, refer to Miss A.

What happened

Miss A was involved in an accident in March 2017 which was her fault and she was later convicted of drink driving. RSA noted early on in the claim that if Miss A was convicted it would have no liability to her under the policy but it would likely act as the Road Traffic Act insurer. Meaning it would settle the claims for the other driver and injured passengers, but look to Miss A to repay its outlay. RSA subsequently incurred a significant outlay in respect of the incident. In 2020 RSA began action to recover its outlay from Miss A and asked her to pay it £58,049.81.

Miss A thought RSA was being unfair as she had made a mistake in 2017 and done everything to put matters right since – being asked to pay such a sum was stressful and she couldn't afford it. She also wanted to be satisfied that the sum it was asking for had been reasonably incurred by it and she asked it to present invoices and details of the sums paid that made up that total. She knew it was partly made up of hire charges and personal injury costs for the other driver and his passenger. She said RSA had paid too much in respect of both these sums and that it should have done more to contest them.

RSA gave Miss A some detail of figures but wouldn't agree to cease its recovery action. So Miss A and Ms S complained to us.

Our Investigator felt that RSA had acted reasonably. He noted it had challenged the claims made by the other driver for various costs and the settlements it had finally made reflected reductions from what had been asked for. He didn't uphold the complaint. Miss A remained unhappy and asked for an Ombudsman's consideration.

I felt that RSA could fairly seek to recover its reasonably incurred outlay from Miss A. But that part of the outlay was not reasonably incurred because it had been allowed to accrue because of RSA's own delay. I felt RSA would have to waive £14,897.44, and deduct the total of any premiums paid, from the £58,049.81 it is seeking to recover from Miss A. So I issued a provisional decision to explain my findings to both parties. My findings were:

"I understand that Miss A accepts that she made a mistake in 2017, and that she has acted since to put matters right. I can also understand why, having dealt with all of that in the years since the incident that RSA's request for a substantial repayment in 2020 was distressing and worrying for Miss A. But, in the circumstances, RSA can fairly and reasonably seek to reclaim its outlay from Miss A. It doing so is no more than a further consequence of the mistake that was made.

RSA handled the claims made by the other driver and passengers. It did so as the Road Traffic Act insurer. It had a solicitor handle the claims for it. I know Miss A thinks the personal injury claims should have been challenged – but I see there was medical evidence which supported those claims. I haven't seen anything which makes me think the claims or costs in these respects should have been challenged or that settlement for them was unfair or unreasonable in anyway. I see that regarding the hire element of the loss, RSA did challenge the cost initially claimed. And the settlement it made was based on what its solicitor felt was reasonable, taking into account a number of issues such as the period over which the car was hired and the type of car which had been hired. The solicitor also considered whether the other driver, having taken out a hire agreement, could reasonably and successfully be challenged on grounds of his income. But it was felt this couldn't be done. I can't reasonably say RSA should have gone against the legal advice it received in this respect by offering less or refusing to offer to settle this element, thereby letting it proceed to a hearing where more costs would be incurred.

As it was, the hire element that was settled by RSA did not progress to a hearing. In short the other driver had claimed around £38,000 in costs (separately to personal injury claims made), for car hire through into November 2017. That sum included things like the cost of insurance cover for the hire car. RSA said it didn't think it was reasonable for those sorts of additional costs to be sought, so it wouldn't settle them. It also, as I noted above, made challenges regarding the period of hire and the type of car hired. The settlement proposal RSA put forward to the other driver (of £24,350 for this element of loss) was based, in part, on 200 days of hire, ending on 30 October 2017, at a rate substantially reduced from that requested (£86.73 per day as opposed to £109 per day, both plus VAT). That was £20,770 for hire, with £630 being paid for storage, a miscellaneous payment of £50 and £2,900 for pain and suffering, making up the total settlement sum. I think RSA acted fairly and reasonably in challenging the costs sought. I can't reasonably have expected it to do anything more.

But that doesn't mean I think RSA can fairly and reasonably expect Miss A to repay it all of that settlement sum. For me, I think RSA can only reasonably ask Miss A to contribute towards that figure because I think it caused delays which resulted in the need for a settlement based on 200 days of hire. So it isn't reasonable to expect Miss A to reimburse it the costs which were incurred due to its own delay.

RSA was sent an engineer's report in April 2017 from the other driver's solicitor showing their car was a total loss, with a market value of £650. The letter received also warned that the other driver was incurring hire costs and invited settlement of the vehicle damage claim based on its market value so the hire could end. But RSA didn't settle the vehicle damage element of the loss until October 2017. I think that was unreasonable of it. It is quite usual for insurers, even where fault is disputed, to look to settle vehicle damage elements of claims early when it is known that hire costs are accruing. Here whilst there was clearly a question over policy liability, fault for the incident was never in doubt. And RSA's file shows it knew in May 2017 that it would likely deal with this as the Road Traffic Act insurer. So I can't see any good reason why RSA then waited until October 2017 to settle this, really quite small, element of the loss. I think RSA should have taken a pro-active and pragmatic approach, and if it had done then this small cost could have been settled, allowing the other driver to come out of the expensive hire agreement by the end of May 2017, before he went on holiday on 31 May 2017. And if he had remained in hire past the end of May, then RSA would have legitimately been able to challenge costs incurred past that date. In saying that I'm mindful that is exactly the argument its reduced settlement was based on with the other driver claiming costs into November 2017 when it had made settlement for the vehicle damage in October 2017.

So I think that of the 200 days hire RSA settled for, it can only reasonably expect Miss A to reimburse it for the 60 days incurred between 1 April and 30 May 2017 (inclusive). At RSA's accepted rate of £86.73 plus vat that is £6,172.56 (inclusive of VAT). The difference between that figure and the hire cost set by RSA's solicitor of £20,770, which made up part of the £24,350 settlement sum, is £14,897.44. I intend to require RSA to deduct this sum from the total sought from Miss A of £58,049.81.

For completeness, I know that RSA has, at times, said that the sum of £24,350 was all for hire costs. But as I referenced above, that is not the case. I think the advice about what figures were paid for which element has varied during the course of the complaint because RSA didn't settle exactly in line with what was claimed for. And when it settled with the other party, that was put forwards as a global settlement against the hire element of the claim. But RSA's file is clear about how it came to justify that offer, and the challenges it refences in explaining the offer (internally) are also featured in the court claim defence it put forwards. So I am satisfied that the figure of £24,350 was made up of a number of elements with the hire cost being £20,770.

Further, RSA's recovery request also seems to have not taken account of the premium Miss A had paid it for cover to the point it cancelled the policy, which I understand was the date of the accident. I'm not sure what that amounts to. But, assuming that premium wasn't refunded to Miss A (which seems unlikely), it should be taken into account and off-set against the claim outlay I've said RSA can reasonably seek from Miss A. For clarity that is £43,152.37 (£58,049.81 less £14,897.44).

I note RSA accepted it should have communicated with Miss A better and it has paid her £250 compensation. I think that is fair and reasonable. Even though I'm making RSA reduce the outlay it is seeking from Miss A, I am not going to require it to pay more compensation. The sum I am saying is reasonably due is still a substantial amount and it is really the fact of RSA asking for its outlay, regardless of the actual figure requested, which Miss A doesn't think is fair, that has caused her the worry and upset. And whilst I understand how Miss A feels about this, I don't think it did anything wrong in asking her to pay back its outlay."

RSA did not respond. Miss A and Ms S did. I've summarised their reply below:

- They feel it is worrying that I could reach such a different decision to that issued by our Investigator.
- They feel even the remainder of the hire car costs should be challenged on the basis of the other driver's financial position.
- They feel the personal injury element needs further challenge/review.
- The other driver is clearly, inherently dishonest. He and the passenger lied about injuries.
- They should have had a chance to defend their position with credible, factual material – but RSA prevented that by settling out of court.
- Or RSA should at least have asked them first if they'd be willing to cover the settlement sum.
- It shouldn't be assumed they would not have been prepared to take on court action.
- Most insurers won't pursue recovery if the previous policyholder doesn't have means to pay – and Miss A does not have the means to pay.
- The £250 compensation has not been paid by RSA.

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 is sometimes the case that an Ombudsman, on reviewing a complaint, will reach a different decision to that of the Investigator who initially considered it. When that happens, a provisional decision is issued, as it was here. That does not mean the Investigator acted improperly in reaching the view they did. Rather it is possible for different reviewers to form different opinions about the evidence they see. And when that happens with an Ombudsman's review – the Ombudsman's decision supersedes anything the Investigator found or said in their view.

As I said provisionally, RSA acted to settle the claim in the way that it did based on legal advice. That was both in respect of the personal injury and car hire elements. I know Miss A has her own view about these aspects. But RSA acted on the basis of formal legal advice, and I can't reasonably expect it to have ignored that or done anything differently. Of course, that advice and consideration did not take into account RSA's own delays and liability for some of the car hire costs. Which is where I was able to say RSA had acted unreasonably – by passing costs on to Miss A that only arose out of its delay.

RSA can fairly settle claims without reverting to the policyholder. Clearly, I think, even if RSA had asked Miss A for agreement, that would not have been given. And that would likely have led to the matter progressing to court and more costs accruing.

I can see from RSA's file that it did consider Miss A's financial position before it chose to pursue her for its costs. It even took legal advice. Having done so, RSA decided to pursue Miss A. So I think it gave the situation reasonable consideration before deciding to act. And whilst I don't wish to cause Miss A further upset, I'm mindful that RSA only incurred costs as the Road Traffic Act insurer because of her actions. Whilst I fully understand that Miss A is struggling financially and striving to reinstate her life following events of recent years, I can't fairly say that means RSA should forego seeking to recover its outlay from her.

I understand that RSA asked Miss A for her bank details in order the £250 could be paid to her. I haven't seen that RSA was ever able to make this payment. As RSA was satisfied that Miss A should receive £250 in compensation, and I've also found it was fairly and reasonably due, I'll add a direction here for it to pay this by cheque.

Putting things right

I require RSA to amend the total sum it is seeking from Miss A of £58,049.81, so that the sum of £14,897.44 is deducted, along with the total of any premium paid for the policy.

I also require RSA, unless it can show Miss A that this has already been paid, to pay Miss A £250 compensation, by cheque.

My final decision

I uphold this complaint in part. I require Royal and Sun Alliance Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Ms S to accept or reject my decision before 28 December 2022.

Fiona Robinson
Ombudsman