

## **The complaint**

Mr P complains about the way Royal & Sun Alliance Insurance Limited handled a claim against his Motability car insurance policy.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them here in any detail. Instead, I'll focus on the reasons for my decision.

Mr P has a Motability vehicle insurance policy. This means he hires his car from Motability and RSA provides a policy for each hirer to cover those who are named as permitted drivers on the policy. This is similar to a comprehensive motor insurance policy and RSA handles claims by customers like Mr P.

A claim was made on the policy for an accident in November 2022.

Mr P explained to our service he was driving when the box on top of his vehicle - which holds his wheelchair – opened. The wheelchair came out which caused an accident and damage to a third party's car. The box operates by a button and Mr P says the box must be faulty as he couldn't have opened it while driving. At the time, matters were considered by RSA and it didn't uphold Mr P's complaint. It explained RSA's engineers reviewed the inspection reports and advised they couldn't identify a fault with his vehicle. After Mr P had complained, it said the matter was referred to the engineers but, based on the evidence provided, the decision remained the same.

Mr P brought his complaint to this service for an independent review. He says new information has come to light which shows he wasn't at fault for the accident in 2022 but RSA has failed to fully investigate matters. This is because:

- When his car was service in August 2023, he was told there was a recognized fault with the wires, but RSA refused to contact the dealer about this.
- RSA hasn't acknowledged a kill switch was fitted onto the car in July 2023 to stop this issue from happening.
- RSA has treated him poorly. It didn't give him the opportunity to have an active part in this process nor listen to him.
- The claim has unfairly increased his excess as he was held liable for it.

An Investigator at this service looked into matters. They explained a fault claim doesn't necessarily mean you were to blame for the incident, but that the insurer doesn't have another party to recover their outlay from. And, as the technical evidence available in this matter (independent reports from engineers and evidence from the manufacturer) show no faults were identified there is no third party for RSA to attempt to recovery its outlay from. Therefore, they didn't recommend RSA need to do anything in this matter to put things right.

Mr P didn't accept the Investigators view – he says he hasn't been listened to and isn't happy with how the matter has been handled from the outset. The matter has now been passed to me for a decision.

## **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 recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to speak to either party or comment on every individual argument to be able to reach what I consider to be a fair outcome. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts.

Having done so, I'm satisfied the Investigator reached a fair outcome here and I consider they set out the reasons for this clearly and thoroughly. So, I don't uphold Mr P's complaint in this matter. I will add the following comments.

Firstly, I acknowledge Mr P has strong views about what happened in the accident and how the third party conducted himself. But it's not the role of this Service to determine who is responsible for an accident – decisions on this are best dealt with by a court of law. Nor are we technical experts able to determine the extent of damage reasonably caused by an accident. Instead, we look to reports from experts to guide our findings on such matters.

What we decide in a matter like this is whether the insurer has acted in accordance with the terms and conditions of the policy which set out the agreement between the parties taking into account all available evidence. And I'm satisfied RSA did. I say this because the terms allow RSA to investigate, defend and settle claims as it sees fit. It therefore doesn't need Mr P's approval of any decision to admit liability, settle a claim or pay a third party. That can mean it makes a decision the policyholder disagrees with, as has happened here.

I have, however, gone on to consider whether RSA made a reasonable decision in settling the claim as it did, based on the evidence it had and the circumstances of the case - both at the time and when it reviewed its earlier decision upon Mr P notifying it new evidence had come to light.

RSA explained it accepted liability for the third party's claim on Mr P's policy considering the following:

- It appointed an independent engineer. They assessed the roof box and the mechanism in the presence Mr P as well as taking it into their possession for the purposes of test driving it and liaising with the manufacturer. The engineer advised they couldn't identify any faults with the roof box.
- It contacted the manufacturer who advised there was no reported incident of this fault in 10 years.

It also considered its expertise and experience in insurance claims which will have included how courts view such matters and the likelihood of success in pursuing a legal case. Whilst Mr P doesn't agree with the decision it has made, I'm satisfied RSA took into account all available evidence and ultimately accepted liability to limit the prospect of costs increasing if the third party took the matter to court. Taking everything into account, I'm not persuaded RSA was acting unfairly or unreasonably when it did this.

I understand Mr P is unhappy decisions were made which he feels were incorrect and contrary to the evidence he gave. But, as explained above, it's ultimately for RSA to decide how to settle the claim, acting fairly and reasonably. And, having taken everything into account, I don't agree there's sufficient evidence for me to say it's more likely RSA failed to do this.

Mr P says he's been treated poorly. But I don't see things the same. Whilst not obliged to do so, RSA listened to Mr P's concerns and commissioned an independent engineers report and liaised with the manufacturer. After concerns were raised by Mr P, the matter was referred back to the engineer who took the vehicle into their possession to carry out further tests over a longer period. Detailed reports setting out the tests conducted were prepared by the engineer and they also liaised with the manufacturer.

I appreciate Mr P says new evidence came to light when he had his vehicle serviced. But no evidence of what the dealer told him has been provided to this service. Notwithstanding this, RSA raised the matter again with the independent engineer who confirmed on each occasion they were asked to inspect and test the equipment, no fault was found and therefore no 'rectification' was required or carried out by them.

In summary, I won't be asking RSA to do anything to put matters right in this matter. I recognise Mr P will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with RSA – can do for him.

### **My final decision**

My final decision is I don't uphold Mr P's complaint in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 March 2024.

Rebecca Ellis  
**Ombudsman**