DRN-4869178

The complaint

K – a limited company – has complained it lost out on five days earnings because of the poor service Royal & Sun Alliance Insurance Limited (RSA) provided when it made a claim under its commercial motor insurance policy.

What happened

K holds a commercial motor insurance (mini fleet) policy covering several vehicles used in connection with its business. In March 2023 one of K's vehicles suffered a breakdown, so it made a claim to RSA under the breakdown section of cover.

The breakdown cover is underwritten by RSA, but the service is provided by another business, acting on behalf of RSA as its agent. For simplicity, any further reference to RSA also includes the actions or arguments of its agent.

When the claim was made, K was advised by RSA that the vehicle would be collected and delivered to its chosen repair garage the same day. K made arrangements with a repair garage to repair its vehicle the same day, but RSA didn't end up collecting it until near midnight and didn't deliver it to the repairing garage until two days after the breakdown occurred. Due to this, the garage no longer had capacity to repair it on the day it was received, and so K's vehicle was off the road for five days.

RSA accepted its service had fallen short. It explained that loss of earnings wasn't covered, but it offered K £100 compensation for the inconvenience it had suffered.

K brought its complaint to our service where it was looked at by one of our investigators. He thought K's complaint should be upheld. He said the available evidence didn't explain why it had taken so long for K's vehicle to be collected or delivered to the repairer. He said the lost earnings were a consequence of the poor service RSA provided and so it was fair for RSA to reimburse K, subject to evidence of the losses. He also said RSA should pay K £100 compensation.

RSA accepted our investigator's assessment in principle, but said K hadn't adequately evidenced lost earnings. K provided additional evidence, but RSA maintained the evidence wasn't sufficient. RSA also said any reimbursement should be of lost profit, rather than lost turnover.

As no agreement had been reached, the complaint was passed to me to decide.

I was minded to reach broadly the same outcome as our investigator, but to be more specific about what RSA needed to do to put things right. So, I issued a provisional decision to give the parties the chance to respond before I reached my final decision. Here's what I said:

"What I've provisionally 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 not in dispute that the service K received from RSA fell short, nor that a consequence of this was the vehicle being off the road for five days. RSA has accepted this and has accepted, in principle, that it should reimburse K's lost profits for the five days the vehicle was off the road. It has also agreed to pay K £100 compensation.

As these issues are no longer in dispute, I don't intend to revisit them in detail. Instead, I'll focus my attention on the matter which remains outstanding. That is, whether K has adequately demonstrated its lost earnings and how much, if anything, RSA should reimburse for this.

K has provided an email from a client confirming their agreement to pay K £480 per day for its services throughout the duration of their partnership, and a separate email confirming K had to cancel between 16 and 21 March 2023 due to the breakdown.

RSA said this wasn't sufficient to evidence K's losses and suggested the day rate for K's services seemed excessive. In response K provided an invoice for services provided to another well known client showing a day rate of £460. RSA again suggested this was insufficient because it was for a different client. It said K should be able to provide a contract between it and the relevant client to substantiate the losses. RSA has also said that the day rate would represent turnover, rather than lost profit, which is all it should be expected to reimburse.

I've thought carefully about all of the relevant evidence and arguments. In terms of the evidence K has so far provided, both to substantiate the fact it lost out on five day's business from the client and of the day rate it would have received, I'm persuaded it has done enough to evidence its losses. So, I am intending to direct RSA to reimburse K.

But in terms of the argument around lost turnover vs lost profit, I agree that RSA should only be required to reimburse K's lost profit. This is because any award I make is made with the intention to put K back in the position it would have been had RSA's error not happened. And had K been able to get the vehicle back on the road the same day and complete the job for its client, there would have been overheads which would have come out of the gross amount received from the client.

Our investigator confirmed with K that had the vehicle remained available to fulfil the job for the client, it would have needed to cover £50 to £70 per day in fuel costs and £180 to £190 per day for labour costs. So, when thinking about a fair and reasonable way to resolve this complaint, I'm minded to decide that RSA can deduct £60 per day for fuel and £185 per day for labour (the average costs supplied by K), from the £480 per day it needs to reimburse K. This leaves a daily figure of £235 to be reimbursed.

So, to put things right in this case, I currently intend to make RSA pay K £1,175 – five days lost profit at £235 per day. And that RSA should add 8% simple interest to this amount, from 21 April 2023 (one month after the job would have been completed – to allow for invoicing and payment) to the date of settlement, to compensate K for being deprived of funds I think it ought reasonably to have had use of.

As K is a commercial entity, it can't experience distress as a result of poor customer service. But it can, and did, experience avoidable inconvenience as a result of RSA's service failings when dealing with its claim. RSA offered K £100 compensation to acknowledge this. I'm satisfied that this, coupled with the reimbursement of lost profit, is enough to put things right as the fair and reasonable outcome to this complaint."

I asked both sides to send any further evidence or arguments they wanted me to consider within two weeks, after which I said I'd move forward with my final decision.

Both sides responded more quickly than that to confirm they were happy with my provisional conclusions. So, as both sides have already responded, I'm moving forward with my final 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.

In the absence of any new evidence or arguments, I've reached the same conclusions I reached in my provisional decision – and for the same reasons.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold K's complaint.

Royal & Sun Alliance Insurance Limited must:

- Pay K £1,175 in compensation for lost profit.
- To this amount add 8% simple interest* from 21 April 2023 to the date of settlement.
- Pay K £100 compensation for the inconvenience it has suffered – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 22 July 2024.

**If Royal & Sun Alliance Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell K how much it's taken off. It should also give K a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding
Ombudsman