

The complaint

Mr L has complained about Royal & Sun Alliance Insurance Limited (RSA)'s decision to settle a claim as a fault claim against Mr L's car insurance policy.

What happened

Mr L reported an incident involving a third party vehicle (TPV), a lorry, to his insurer RSA.

After RSA received information from both Mr L and the third party insurer (TPI) it made the decision to settle the claim as a fault claim, on a 'without prejudice' basis.

Mr L didn't agree with RSA's decision as he said the TP was at fault for the incident.

One of our Investigators didn't recommend the complaint should be upheld. He thought RSA had reached its decision in a reasonable way.

Mr L doesn't agree and wants an ombudsman to decide.

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.

We don't decide liability as this is the role of the courts. But we can look at whether an insurer reached its decision reasonably and in line with the policy.

Mr L's policy with RSA allows it to take over the defence and settlement of a claim in Mr L's name. This means that RSA might make a decision Mr L disagrees with, but the policy allows RSA to do this.

We don't disagree with this term in principle provided an insurer can show it properly investigated and treated its customer fairly when reaching its decision.

Mr L told RSA that he was in the third right hand lane of three at traffic lights, and a lorry was to his left in the second lane. He says as the lights turned to green, he accelerated and was ahead of the lorry. While ahead, the third lane was to merge into the second lane. Mr L said there was a van in front of his car, so also in the closing lane, merging from the third lane to the second lane.

Mr L says the van in front of Mr L's car stopped at a pedestrian crossing. And as Mr L was attempting to merge, the lorry driver accelerated to close the gap, causing a collision. Mr L says the lorry driver collided into the front passenger side of his car.

Mr L provided RSA with a clear aerial diagram and photos of the damage to his car.

RSA considered the information provided by Mr L. However, the TPI disputed Mr L's account. They said that Mr L was in a lane which merged into their insured's lane and Mr L didn't give way, colliding with their insured driver's lorry.

So although RSA initially looked to defend the claim, as it explained to Mr L, this would depend on the response from the TPI. And having considered their response, RSA said the following:

“..we also advised that if an offer to settle the claim on a split fault basis was rejected by the third-party, we would need to deal with their claim in full.

This has unfortunately now occurred, and third party are holding you fully at fault.

We agree that if the case were taken to court you would be found fully negligent for the incident. This is due to the merging lanes, as per the road markings you should have held back to allow the third-party vehicle to merge before you did so. The road markings were there to allow you ahead of time that the lanes would be coming to an end”

I understand Mr L is unhappy that RSA didn't make sufficient attempts to speak with him about the claim before reaching its decision. Our Investigator asked Mr L what would he have told RSA in addition to the information it already had. Mr L said the point is he wasn't given an opportunity to contextualise events or discuss his concerns about how the claim had been handled. Mr L said he felt RSA had predetermined the outcome.

RSA says it did attempt to call Mr L to discuss his complaint. And based on what both parties say, there was a brief call on a mutually agreed date before RSA responded to Mr L's complaint. But Mr L wasn't able to speak and it was agreed RSA would call back the next day. Mr L says this call didn't happen. The next day RSA issued its final response confirming its decision on liability.

RSA asked for the information it needed in order to consider Mr L's claim. I can see that he provided a clear written statement of what happened, a detailed diagram setting out the location and how the incident occurred, and evidence of damage to his car.

I can see that RSA clearly explained by letter and email what its original stance would be, and that it was possible this would change depending on what the TPI said.

I don't think Mr L was denied the opportunity to discuss the claim with RSA, as some call contact was exchanged. In any event, from what Mr L has provided, there was no new information or persuasive evidence for RSA to consider.

I've read the article Mr L provided about drivers' behaviour when lanes merge. The article suggests that the Highway Code *“states drivers should wait until the final merging point before switching lanes, despite 69% of drivers thinking it's rude to do so.”*

The context of the article was in relation to drivers merging from a closing lane earlier than necessary, which causes unnecessary congestion. This doesn't detract from the basic principle set out under Rule 134 of the Highway Code which says;

“Merging in turn is recommended but only if safe and appropriate when vehicles are travelling at a very low speed, e.g. when approaching road works or a road traffic incident. It is not recommended at high speed.”

RSA's view is that Mr L should have held back to allow the third party vehicle to merge.

I don't find RSA's approach unreasonable as the lorry was proceeding in the lane that wasn't closing, so the onus was on Mr L to merge from the closing lane when it was safe and appropriate to do so.

RSA says that if the matter went to court it believes Mr L would be found at fault. Insurers have experience in negotiating and settling claims, and is entitled to make a decision that it's better to settle a claim on the best terms possible than risk significant costs in court action if it doesn't believe it has high prospects of success.

I understand Mr L disagrees. But I think RSA properly investigated the claim and reached its decision in a reasonable way. As it has settled the claim on a 'without prejudice' basis, Mr L is able to take separate legal action directly against the third party if he wants to. He will need to seek legal advice about that.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 February 2025.

Geraldine Newbold
Ombudsman