DRN-5515913

The complaint

Mr K complains about how his insurer, Royal & Sun Alliance Insurance Limited (RSA) treated his vehicle as a total loss following an accident.

Any reference to RSA in this decision includes their agents.

What happened

In December 2023 Mr K was involved in an accident in which his vehicle was in collision with a third party vehicle. The third party vehicle sustained minor damage, while Mr K's vehicle sustained front end damage. He contacted RSA the same evening to report the accident, saying his vehicle appeared driveable. However, he then discovered his radiator failed, making the vehicle undriveable. He contacted RSA again and agreed that his vehicle be taken to one of their approved repairers (F). Mr K thought the extent of the damage meant the vehicle was repairable.

F collected the vehicle a few days later. F then contacted Mr K to say the estimated repair cost of £9,000 compared to the estimated value of the vehicle meant it was uneconomical to repair, so would be deemed a total loss. While the damage wasn't thought to be structural, the price of parts meant the repair cost was high. Mr K went to collect personal belongings from the vehicle, and said he was told by F he might be able to have repairs carried out more cheaply if aftermarket parts were used, rather than original manufacturer parts.

Mr K contacted RSA to tell them what he had been told by F, but RSA said it was unlikely the finance company through which Mr F was leasing the vehicle would agree to repairs to use other than original manufacturer parts. During the discussion, it also emerged RSA didn't have the correct model of the vehicle. Thinking he had no other option (to have the vehicle assessed at an independent repairer) Mr K accepted his vehicle was a total loss.

Separately, he contacted his finance company, who confirmed that any repairs to the vehicle had to include original manufacturer parts. RSA subsequently increased their valuation of the vehicle as a total loss to reflect the correct model (to £13,000). Given the increase, Mr K asked RSA whether that changed their view the vehicle was a total loss (as the estimated repair costs would constitute a lower proportion of the vehicle's value). But RSA maintained their decision to deem the vehicle a total loss, also saying Mr K wouldn't be able to have his vehicle assessed by an independent repairer. Mr K felt obliged to accept RSA's offer. RSA paid the settlement at the beginning of January 2024, based on the finance agreement settlement figure provided by the finance company (£12,380.03) direct to the finance company. After deduction of the policy excess (£350) this left £269.97 paid to Mr K.
Mr K then purchased a replacement vehicle and, when he contacted RSA to add it to his policy, he said he was told by the call handler he could have taken his vehicle to an independent repairer for assessment – contrary to what he had been told previously.

Unhappy at being given what he considered incorrect information about the option to have his vehicle assessed by an independent repairer, Mr K complained to RSA.

RSA didn't uphold the complaint. In their final response, issued in March 2024, RSA maintained their decision to deem the vehicle a total loss was correct. RSA said the value of the claim (the repair estimate) was one of several factors in their decision. They also noted the policy terms meant Mr K was entitled to use a non-approved repairer of his choice to carry out repairs. But when Mr K contacted them, he was asked if he was happy for RSA to instruct heir own repairer to assess his vehicle, to which he said 'yes'. Once his vehicle had been assessed as a total loss, it was too late in the process to switch to a non-approved repairer, as vehicles would normally have been partially dismantled to be assessed, And it wouldn't have been viable to move the vehicle to another repairer. This is what Mr K had been told in discussion with the RSA call handler. RSA added that Mr K had been given the option to see if he could retain the vehicle and arrange repairs himself, but the finance company would not agree to this option. As the owners of the vehicle, it was their decision.

RSA noted the incorrect model details had been recorded (due to an error between the dealer that supplied the vehicle and the DVLA) but they subsequently corrected this with a revised, higher valuation (which Mr K accepted). But the increase in valuation didn't change RSA's decision to deem the vehicle a total loss. And it was unlikely that a repair estimate from a main dealer of the make of vehicle would have been lower than RSA's approved repairer, given the discounted labour rates RSA received from the latter. While appreciating Mr K's financial position, RSA said this was outside their control and they'd made settlement to the finance company once Mr K agreed the figure, which was the correct process.

Mr K then complained to this Service. He was unhappy at not being given the option of his vehicle being assessed at an independent repairer, which could have meant his vehicle not being deemed a total loss. He had been misinformed about being able to have his vehicle assessed independently, which he thought went against regulatory guidelines, and hadn't been told about the option of using an independent repairer. He was also concerned that his vehicle being deemed a total loss was a better outcome for RSA. The repair estimate, compared to the revised vehicle valuation, was very close to what he understood was the 60% threshold for a vehicle being deemed a total loss. His vehicle being deemed a total loss had caused him distress, as his credit score meant his parents had to purchase a replacement vehicle for him, which affected their financial position. He wanted compensation for what had happened.

Our investigator didn't uphold the complaint, concluding RSA didn't need to take any action. Having listened to the call recordings, when Mr K called RSA to notify them of the accident, Mr K agreed to use of one of RSA's approved repairers. While not specifically referred to, the policy terms provided for Mr K to use his own nominated repairer, had he done so any repair estimate would have had to be approved by RSA and the vehicle damage assessed by one of their engineers. F's repair estimate was some 71% of the revised vehicle value, which was within the range typically used by insurers when deciding whether a vehicle should be deemed a total loss. So, the investigator concluded RSA's decision to deem the vehicle a total loss wasn't unreasonable.

The policy terms also provided for RSA to decide how to settle a claim, including the option to deem a vehicle a total loss And while Mr K could retain the vehicle, with a view to having it repaired, that would be subject to the agreement of the finance company (who required original manufacturer parts to be used). And listening to the calls between Mr K and RSA, the investigator didn't think the call handler acted other than as expected.

Mr K disagreed with the investigator's view and asked that an Ombudsman review the complaint. He maintained he had been misadvised by RSA, being told he couldn't obtain a repair estimate from another repairer (and the call handler agreeing the repair estimate from F was excessive). Mr K also referred to the Motor Vehicle Block Exemption Regulations EC

1400/2002 and Consumer Protection for Unfair Trading Regulations 2008, which meant he had the right to take his vehicle to another repairer for a second repair estimate..

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.

My role here is to decide whether RSA has acted fairly towards Mr K.

The key issue in Mr K's complaint is the decision of RSA to deem his vehicle a total loss. Mr K says he wasn't advised of the option of engaging his own repairer, which he thinks may have led to a lower repair estimate and his vehicle not being deemed a total loss. RSA say Mr K agreed that his vehicle be taken to one of their approved repairers, and they followed the correct process in deeming the vehicle a total loss and making a total loss settlement.

In considering the issue, I've first looked at what the policy provides for when a claim is made. Under a section headed *How we will settle a claim under sections 1,2 and 3* there's the following statement:

> *"**B. How we will settle your claim***
>
> *If the loss or damage is covered under your policy, we will settle your claim as explained below.*
>
> *If your car is lost or damaged we:*
>
> - *may choose to repair the damage or pay the amount of loss or damage*
> - *may decide to use recycled parts of parts or accessories that are not supplied by the original manufacturer*
> - *if your car is lost and never found, or if in our view, it cannot be economically repaired based on its market value, we will pay either:*
>   a. *the market value, or*
>   b. *the cost of a replacement new car (sections 2B and 3B).*
>
> *Should we choose to pay the market value or purchase a replacement new car, your car will become our property.*
>
> *Payments for cars on a lease agreement:*
>
> *If your car belongs to someone else, or is under a hire purchase or leasing agreement, we'll pay the legal owner."*

I think this makes it clear that the decision on how to settle a claim rests with RSA, including where they deem a vehicle cannot be economically repaired based on its market value. In that scenario, RSA will pay the market value of the vehicle. And, as in this case, they will pay the legal owner where the vehicle is under a leasing agreement. Which is the finance company. This is what RSA have done in this case, so I can't conclude they've acted outside the policy terms, or unreasonably.

Mr K says he wasn't advised about the option to use a non-approved repairer, rather than RSA's approved repairer. However, the policy terms and conditions make it clear this is an option. Under the same section headed *How we will settle a claim under sections 1,2 and 3*, there's the following text:

"If you choose not to use one of our recommended repairers we will:

- *require an estimate which we must approve prior to repairs commencing*
- *require the damage to be assessed by one of our own engineers*
- *not guarantee any repair even though we may pay for those repairs directly."*

So, it would have been an option for Mr K to nominate his own repairer but having listened to the various calls from the first notification of the accident in early December 2023 through to the beginning of January 2024, when Mr K accepted the [revised] total loss settlement offered by RSA, there's no indication from Mr K he wanted to nominate his own repairer.

In the first notification of loss call, Mr K provides details of the accident, and the call handler asks if he would want to use one of RSA's priority repairers, to which he says 'yes'. At that point, from the discussion, I think the assumption is that the vehicle will be repairable, there's no mention that the vehicle may not be economical to repair. However, until the vehicle was inspected and an estimate of the repair costs produced, that wouldn't have been known, either by Mr K or by RSA. So, it was reasonable, given the description of the accident and the damage from Mr K, for the presumption to be the vehicle was repairable. So, it was reasonable for RSA to offer one of their approved repairers (which Mr K accepted).

However, following the inspection of the vehicle by F and their report, the outcome was that RSA concluded the vehicle wasn't economical to repair, and Mr K was advised of this. There are then two calls towards the end of December 2023, in which the repair estimate is discussed as well as the decision of RSA to deem the vehicle a total loss. The RSA call handler acknowledges the repair estimate looks high but notes the high cost of parts (being original manufacturer parts) and damage to the vehicle behind the external panels. There's also discussion of the option to retain the vehicle (a salvage value is mentioned) but this would be subject to the finance company's agreement (which the call handler thinks unlikely). The salvage value is also higher because of the Cat N (non-structural damage) status of the vehicle. There's no mention (by Mr K) of the option to have a repair estimate from an independent repairer. On the second call Mr K confirms that, having spoken to the finance company, they require original manufacturer parts for any repair.

There's also a further call at the beginning of January 2024 in which covers the repair estimate being costed and again refers to the high cost of parts and other repair elements. There's some discussion of the repair estimate cost as a proportion of the vehicle market value and the RSA call handler notes the salvage category means a higher salvage value of the vehicle and therefore a lower repair cost proportion they would use as a guide when deciding to deem the vehicle a total loss (a figure of 60% is mentioned).

RSA's case notes subsequently record the revised valuation of £13,000 (to reflect the correct model of the vehicle and advertised vehicles for sale and a salvage value of £5,200 – they record Mr K didn't want to retain the vehicle}.
Taking all these points together, I've concluded RSA followed the policy terms and acted reasonably in deeming the vehicle to be a total loss.

While the valuation of the vehicle hasn't been raised by Mr K as a complaint issue, I've noted RSA provided their valuation report that supports the revised £13,000 figure they placed on the vehicle. Which includes data from a recognised industry valuation guide together with some examples of similar vehicles advertised for sale. So, I can't conclude the [revised] figure they offered is unfair or unreasonable.

On the issue of whether an independent repairer might have provided a lower estimate (or significantly lower) than that prepared by F, it's not possible to determine whether it would have been the case. Particularly given – as Mr K mentions in the call to RSA – the finance

company would require any repairs to use original manufacturer parts, rather than potentially cheaper aftermarket or used parts. Had Mr K had the vehicle assessed at a manufacturer main dealer, it's unlikely their labour rates would have been lower than the [discounted] labour rates RSA would have received from F (as an approved repairer, it's likely RSA may have negotiated discounted rates due to the volume of business they place with F).

In addition, the policy terms require that RSA would have to had assessed and approved any non-approved repairer estimate and have their own engineer assessment. Again, it's not possible to know what the outcome would have been in that scenario, so I can't reasonably conclude RSA would have approved a lower estimate and changed their decision to treat the vehicle as a total loss.

Mr K also challenges the repair estimate prepared by F. RSA have provided the engineer's report following their inspection of the vehicle. It doesn't include a detailed breakdown but does include a total repair estimate of £9,210 and assesses the vehicle as salvage category 'N – Non-Structural'. The estimated repair costs represent 70.8% of the vehicle valuation. While RSA refer to a range of factors that would influence their decision on whether to deem a vehicle a total loss, typically insurers tend to use a percentage above 60% when deeming a vehicle to be a total loss. And in this case, as I've noted from one of the calls referred to earlier, the salvage category of the vehicle meant RSA would be working to a lower percentage (60%). 70.8% isn't unreasonable in this context, so I can't conclude RSA's decision to deem the vehicle a total loss to be unreasonable. And as I've noted above, the policy terms provide for RSA to make that decision.

Taking all these points together, I can't conclude RSA have acted unfairly or unreasonably, so I won't be asking them to take any further action.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 June 2025.

Paul King
Ombudsman