

complaint

Mr W's complained about the way Royal & Sun Alliance Insurance Plc (RSA) dealt with his motor insurance claim.

background

In July 2016 Mr W's car was hit while parked and unattended. A witness let him know someone had pulled out of a driveway opposite and hit his car. She provided the colour of the car but not the registration number. There was another witness nearby but she didn't want to get involved as she'd said the driver of the car was her neighbour.

Mr W claimed on his policy. RSA traced the driver it thought was involved and contacted her insurer. But the other driver said she hadn't been involved in the accident and it was case of mistaken identity.

In 2018 Mr W complained to RSA about how long things were taking. RSA said it would pass the case to a solicitor to look at taking the other driver to court. The solicitor told RSA they didn't think they'd be able to prove the other driver was to blame if the case went to court. So RSA said it wasn't going to pursue the other driver.

Mr W complained to RSA. RSA thought its decision was reasonable based on the legal advice from the solicitor. However it accepted it had caused some delays before passing the case to a solicitor and offered Mr W £100 compensation.

Mr W didn't think this was enough and brought his complaint to us. He said RSA had delayed in dealing with things and made a number of mistakes. He said the other driver's insurer had harassed his witness which meant she no longer wanted to help. And he didn't think RSA had properly investigated what had happened. He said as a result of the claim his premiums had increased. He thought £2,000 was a fairer amount of compensation to make up for what had gone wrong. Mr W also raised concerns about the solicitor who'd looked at his case.

I issued a provisional decision on Mr W's complaint on 9 May 2019. In that decision I said:

In this decision I can only consider what RSA might, or might not, have done wrong. So I can't make any findings on the actions of the solicitor or the other driver's insurer.

We don't decide who's at fault for an accident as that's the role of the courts. Instead we look to see that the insurer (in this case RSA) has made a fair and reasonable decision that's in line with the terms and conditions of the policy.

Like most policies we see the terms and conditions of Mr W's policy give RSA the right to take over, defend or settle a claim as it sees fit. This might mean RSA makes a decision Mr W disagrees with but the policy allows it. Again, I consider whether it's done so fairly and reasonably.

It took two years for RSA to pass Mr W's information to a solicitor to consider. When Mr W reported the accident RSA traced the car it suspected as being involved quickly and contacted that owner's insurer. It also sent out a witness statement request form. The other driver denied being involved so RSA collected more information from Mr W and continued to try to hold the other driver at fault. I can see there was a delay of around five months before

RSA chased the other driver's insurer and then of another five months before chasing the insurer again. At this point RSA said it would look to take the other driver to court if her insurer didn't reply. It passed the file to a solicitor in early 2018.

It's clear there were times when RSA could have done more to chase the other driver's insurer. RSA has accepted there were delays and has offered Mr W £100 compensation. I think it's fair RSA compensates Mr W for these delays as it's reasonable for him to expect his insurer to be chasing things. I can see from RSA's claim notes that the other driver's insurer rarely responded to its chasing. So even if RSA had chased more it's likely the other insurer still wouldn't have responded. I also don't think the delays ultimately led to RSA not pursuing the case in court.

The solicitor said to recover the money from the other driver in court RSA would need to be able to identify the driver rather than the car. The solicitor said the witness who'd been walking her dog had only been able to provide the colour of the car. While RSA had used the details provided to Mr W by someone who lived locally this meant it only had the details of a car and not of a driver. The solicitor said RSA wouldn't be able to pursue the other driver in court as it was unlikely it would be able to show a judge that it had correctly identified the driver.

I understand Mr W's witness initially completed the witness statement but then stopped responding after the other driver's insurer got in touch. Mr W feels RSA may have let the other driver's insurer contact her and intimidate her. But I haven't seen anything to persuade me RSA is responsible for any contact the other insurer might have had with the witness. Or that she wouldn't have stopped responding even if the other driver's insurer had got in touch sooner. In any event this witness didn't have the number plate of the car or know the driver.

It was the second witness who provided the other driver's address. And she had always indicated that she didn't want to be involved which means RSA wouldn't have been able to rely on her in court.

The other driver's insurer provided photographs to show the car hadn't been in an accident. They also said the amount of pre-existing damage to Mr W's car made it almost impossible to check what damage was likely to have been caused by the other driver's car. Mr W said the other driver had been hiding their car away in the garage, changed the number plates and moved away. However the other driver's insurer said she'd bought a cherished number plate for the car.

I can understand Mr W's frustration at what happened because his car was damaged in an accident that wasn't his fault and someone identified the driver as their neighbour. But ultimately RSA didn't think it would be able to persuade a court it was most likely the other driver was to blame for the accident. Given this was the advice it received from a solicitor I think it was reasonable for it to rely on that advice and not pursue the other driver. And I think it's most likely it would have reached the same conclusion even if it hadn't caused any delays.

However I don't think £100 is enough to compensate Mr W for the delays RSA caused. It didn't chase the other insurer for five months and only did so when Mr W called to find out what was going on. After this there was another five months where RSA didn't chase the other insurer and it again needed Mr W to chase up his claim. I don't think these delays are reasonable. And while I don't think the delays made a difference to the overall outcome of the claim, Mr W has the distress of thinking it might have done. When taking account of

other awards our service makes, I think £250 is a fair and reasonable amount for RSA to pay Mr W for the distress and inconvenience it caused him.

Mr W said his premium has increased as a result of the claim. But as I don't think RSA has done anything wrong in not ultimately pursuing the other driver in court I'm not going to ask it to compensate him for that.

Overall I'm satisfied RSA's decision to not pursue the other driver was fair and reasonable and in line with the terms and conditions of the policy. However it should increase the compensation to £250.

RSA didn't reply to my provisional decision. Mr W still thought RSA's delays had led to his claim collapsing.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr W hasn't raised any further points which would lead me to depart from my provisional findings. Overall, while I think RSA's delays caused him unnecessary distress and inconvenience, I don't think it was likely they made a difference to the outcome of his claim for the reasons I've set out above. I remain satisfied that £250 is a fair and reasonable amount for RSA to pay him to compensate for that.

my final decision

My final decision is that I partly uphold this complaint and require Royal & Sun Alliance Insurance Plc to pay Mr W a total of £250 compensation for the unnecessary distress and inconvenience it caused him.

It should pay this within 28 days of us telling it Mr W's accepted my final decision. If it pays later than this it should add interest to the compensation at a rate of 8% simple per year from the date of my final decision to the date it makes payment¹.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 June 2019.

Sarann Taylor
ombudsman

¹ If RSA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.