

complaint

Mr L has complained about Royal & Sun Alliance Insurance Plc's (RSA) handling of his car insurance policy.

Reference to RSA includes their agents.

During his dealings with RSA and in bringing his complaint to our service, Mr L has been assisted by his father who has made representations on his behalf. But for ease of reference I'll refer to all comments as being those of Mr L.

background

In July 2017, Mr L took out a telematics (also known as a "black box") car insurance policy with RSA. The black box installed on his car would measure a range of driving behaviours and points would be awarded, which could result in Mr L either being rewarded or penalised depending on how he drove. If his driving was deemed to be good he would get financial bonuses and also get a discount off his premium the following year if he renewed with RSA.

Soon after the policy started, Mr L raised a number concerns with RSA about the accuracy of the data produced by the black box, which he said had a negative effect on his driving score. He felt the black box wasn't working as it should.

When RSA looked into it they accepted that due to a fault, two sets of journeys had merged into one. This happened on at least two separate occasions in July and September 2017. In September 2017, RSA replaced the black box with a new one and offered Mr L £50 compensation. RSA also did a firmware update which they said resolved the problem of journeys merging. RSA also said they removed the relevant journey data to avoid any negative impact on Mr L. But Mr L said the faults continued and he said he believed the new black box was also faulty and was providing wrong data.

On several occasions Mr L was penalised for driving over the speed limit on a number of 20mph roads. But Mr L, using dash cam footage from his car, was able to prove that the data generated by the black box was in fact wrong, and on the dates and times RSA said he was speeding, he was in fact driving within the speed limit. He was also able to prove that he wasn't driving on the roads RSA, having relied on the data, said he was. Faced with the evidence Mr L provided, RSA accepted there had been errors and said they corrected the data to avoid any negative impact on Mr L.

Mr L complained. In addition to his belief that the black box was faulty, he said: the customer service was poor, in particular he was misinformed; he believed RSA were manipulating data thereby reflecting badly on his driving score resulting in him being deprived of rewards; he wasn't provided enough information about how RSA assessed driving behaviours, such as speed, smoothness of driving and usage; he could only access his data on his mobile and not on his desktop or laptop; his scores and rewards would change overnight and appear/disappear intermittently; and when he bought more miles during his policy he was overcharged.

RSA said the problem with the journeys merging was a glitch and the "*likely cause*" was the need for a firmware update, which was done. They said the problem with the data wrongly showing Mr L speeding was an issue with the GPS and not the black box. They said the original black box was working properly and didn't have to be replaced, but it was replaced

because that's what Mr L wanted. They said they should have explained the firmware issue to Mr L but they didn't. RSA said the second black box was working properly and that they believed the data it generated was accurate. RSA said that when Mr L bought extra miles he was charged correctly. RSA accepted the service was poor and that they had misinformed Mr L at various points. They said they could have responded to Mr L's queries more promptly and should have given him full explanations. RSA accepted that their actions caused Mr L to lose confidence in the black box and RSA's staff. They offered Mr L a total of £300 compensation. RSA also told Mr L that he could, if he wanted, cancel his policy without penalty and that he would only be charged for the time he was on cover. In fact they said they would only charge him until 15 December 2017, the date he made his complaint.

Mr L didn't think that was fair so he brought his complaint to us. One of our adjudicators looked into the complaint. She felt that RSA had dealt with the complaint fairly, so she didn't think that RSA needed to do anything further. As Mr L didn't agree with our adjudicator, the complaint was passed to me to decide.

My provisional decision was issued on 17 June 2019. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm intending to uphold this complaint in part. I'll explain why.

the black box and the accuracy of the data

Soon after the installation of the black box, Mr L questioned its functionality and disputed the accuracy of the data produced. RSA have accepted that inaccurate data was generated by two separate events - the merging of journeys and the locations of where Mr L was allegedly speeding. And those events happened on multiple occasions. The inaccurate data had a detrimental effect on Mr L's driving score. Those instances were corrected by RSA to remove their negative impacts. But, importantly, the identification of those events and the correction of the inaccurate data only came about because of Mr L's efforts in gathering evidence and persisting with RSA. Had he not done that I think those errors wouldn't have been picked up and Mr L would have been penalised.

I'm aware that Mr L has invested a lot of time and effort in gathering evidence, for example the dash cam footage which he downloaded and made available to RSA. Mr L's actions have been worthwhile because they have helped him in his cause, but I don't think Mr L should have been expected to police the accuracy of the data. He paid RSA the premium he was asked to pay. And in exchange he had every right to expect the equipment to function properly and for accurate data to be produced. Especially given how crucial that data was as it could have led to financial penalties and a higher premium had Mr L renewed the policy with RSA.

While RSA insist that the two black boxes were working properly and that the first fault was to do with a firmware update being needed and the second a GPS issue, I think that is irrelevant. The fact is, and RSA have admitted, that inaccurate data led to Mr L being penalised because of the system installed by RSA. And RSA are responsible for that.

RSA have also accepted that Mr L lost faith in the black box device. But that includes the whole system that was set up of which the black box was a part of. For example,

Mr L has challenged the number of times he was penalised with low scores for not driving smoothly. He produced a number of dash cam clips showing what he said was good driving to counter RSA's claims that he wasn't driving smoothly on a number of occasions. But RSA said that they didn't base their assessment of his driving on the footage but the data produced by the black box, irrespective of what the footage showed. Mr L said the black box wasn't accurately reflecting his driving behaviour. But, given the occasions that RSA accepted the data produced was wrong, I can understand why Mr L didn't have confidence in the equipment or the data.

While it was possible for Mr L to prove the inaccuracy of the data showing merged journeys and the inaccurate locations of where he was said to be speeding, I think that other than producing footage of his driving, proving the data generated about the smoothness of his driving was inaccurate wasn't possible without expert evidence. Perhaps expert technical evidence could have shed light on how well the equipment was working, and the accuracy of the data. But putting the onus on Mr L to get further evidence was, in my view, unfair. Given the serious errors Mr L had already evidenced, I agree with him that the data wasn't reliable. I think RSA could have had the black box and the equipment assessed independently to alleviate his concerns, but they didn't do that.

Given the above, I'm intending to uphold this part of Mr L's complaint. I intend to require RSA to treat Mr L as though he acquired the highest points score possible for the policy year on the basis of good driving. That's because the reliability of the data has been proven to be in doubt. I think it's therefore possible that Mr L's low scores were wrongly recorded. He should therefore be given the benefit of the doubt. On that basis, RSA should pay Mr L the financial rewards he would have been entitled to had he got the highest score. Simple interest should be added to any such payments from the date(s) they were due until payment is made.

I also intend to require RSA to award Mr L the highest possible percentage discount on the basis that he attained the highest possible score for good driving. On that basis RSA should calculate what Mr L's premium would have been for the 2018 to 2019 policy year with the maximum percentage discount. I understand Mr L took out a policy with another insurer for the 2018 to 2019 policy year. If that other premium was higher than the premium RSA would have charged Mr L for that same year, then RSA should pay Mr L the difference. Any such payment should include simple interest at 8% per year from the date Mr L paid for his new policy until payment is made.

the confusing information on the dashboard

Mr L said his scores and rewards would change overnight, and would appear and disappear intermittently. He said he believed RSA were manipulating the data to reflect badly on him so that he wouldn't get financial rewards.

To illustrate the problem, Mr L provided screen shots of data in relation to a journey over a weekend in February 2018. The data shows the financial bonus he got and also the percentage premium discount he was on track to receive on renewal. But the screen shots show how the information disappears and then returns on several occasions.

RSA said this happened because of the way their systems are set up and that changes might happen to the information during updates. They accepted this could be confusing and inconvenient to Mr L. They also said they are looking into ways of improving their systems. But they said, notwithstanding the confusion, the correct scores and rewards were given to Mr L.

From the information available, I don't believe RSA manipulated the data to deprive Mr L of his rewards. But I do agree with Mr L that the behaviour of the system caused confusion and inconvenience. I'm therefore upholding this part of the complaint. My intended compensation of RSA awarding Mr L maximum financial rewards and percentage discount based on good driving, as explained above, will ensure that Mr L won't lose out on rewards. And my intended compensatory award, below, takes into account the inconvenience this aspect of RSA's service caused.

lack of access to data on Mr L's desktop and laptop

Mr L said he wasn't able to gain access to his data on his desktop and laptop computers, although he was able to on his mobile. RSA said that as he was able to gain access on his mobile, there wasn't a problem on their end. But they said they would be happy to look into it if Mr L wanted to continue with his policy. I don't think there's sufficient evidence to show that this was a problem caused by RSA. And while I accept it may have been an inconvenience, Mr L was still able to access his data on his mobile. So I'm not intending to uphold this part of the complaint.

lack of information about how RSA assess driving behaviours

While there is some information on their website, I don't think RSA provided Mr L with sufficient information about how driving behaviours are assessed and what actions cause low scores. The policy is aimed at new, young drivers and their driving behaviours are recorded. Certain behaviours lead to poor scores and penalties. So I think it's important for as much information as possible to be provided from the beginning so that drivers know what they have to do to avoid poor scores. For example, RSA's website says: "We look at the following aspects of your driving: The time of day, the number of journeys & how long they are." I am aware that some other black box insurers consider night time/early morning driving to be a higher risk which can lower the score. But I couldn't find any readily available guidance on RSA's website as to what times of the day attract lower scores. Likewise, there is mention of "the number of journeys", but again I couldn't find any readily available information if, for example, four journeys a day would indicate high usage meaning higher risk thereby reducing scores, or if ten journeys would attract a detrimental score. I am aware that some insurers send their policyholders guides on black box policies where detailed information is given about what behaviours attract higher/lower scores with illustrated examples. But I'm not aware that RSA provided such information to Mr L. So I don't think they gave enough information with which Mr L could ensure he was driving well, as defined by his policy.

I'm therefore intending to uphold this part of the complaint. My intended compensatory award, detailed below, covers this aspect of Mr L's complaint.

the charge for additional miles

When Mr L took out the policy a limit of 3,000 miles for the policy year was imposed. But during the policy year he bought some additional miles. The cost of additional miles was contained in the literature supplied to Mr L when he took out the policy. The cost per additional 1,000 miles was on a sliding scale. For someone who had the highest score for good driving the additional miles cost less than someone who had the lowest score as a result of poor driving.

Given my intended resolution of RSA awarding Mr L the highest score for the entirety of the policy year due to the unreliability of the data, as described above, I intend to require RSA to recalculate the cost of the additional miles Mr L bought and to charge him on the basis that at the time he bought more miles, he had the highest score. That would mean he would have been charged the lowest amount on the sliding scale. I intend to require RSA to refund Mr L the difference between what he actually paid for the additional miles and what the lowest cost of the miles was for someone on the highest score. Simple interest at 8% a year should be added to that amount from when Mr L paid for the miles until he is refunded.

no claims bonus (NCB)

This policy was Mr L's first. When RSA sent him their final response letter they gave him the option to cancel the policy without any financial penalties. At the time of RSA's letter Mr L still had around four months left to run on his policy.

To gain a full year's NCB Mr L would have had to have completed the full policy year with RSA without any claims. And had Mr L taken up RSA's offer and cancelled the policy before the full policy term, he wouldn't have got a full year's NCB. Mr L interpreted RSA's letter as wrongly saying that he could get a full year's NCB if he cancelled early. While I think RSA's letter on this point could have been clearer, I note that the day after the letter during an email exchange RSA clarified the point confirming Mr L couldn't get a full year's NCB if he cancelled early. I'm therefore not intending to uphold this part of the complaint.

data collated by RSA

Mr L said he was concerned that RSA would share any poor driving data relating to him with other insurers which might affect him in the future. But RSA assured Mr L that they wouldn't do that and the data they collated about his driving was solely for their use in scoring his driving for rewards or penalties and for a possible discount on renewal. Given RSA's assurance, I don't intend to ask them to do anything further.

poor service

RSA accepted that their service could have been better. To address that they offered Mr L a total of £300 compensation. But I don't think that went far enough, especially given the substantial time and effort Mr L had to invest in gathering evidence, which he successfully used to convince RSA that some of the data used to reduce his score was inaccurate. I also take into consideration that this matter has been ongoing for almost two years and that it has been a source of distress and inconvenience for Mr L. I therefore intend to require RSA to pay Mr L a total of £500 compensation. This takes into account the poor service and the individual heads of complaint that I intend to uphold as detailed above."

The parties were invited to comment on my findings. Mr L agreed with my provisional findings. RSA said:

- They accept at the time the policy was sold to Mr L they could have been clearer about what factors might impact his usage scores.
- The data recorded by the black box was accurate. In support, RSA provided a technical statement from a senior telematics claims manager and a document titled *"Dashcam vs Speedometer Test – June 2018"*.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my findings remain the same. But I would like to respond to the additional comments as follows:

The technical statement RSA obtained was from an expert who is employed by RSA's telematics partner who provided the device and maintained the data, software and dashboard. While I've taken into account the technical statement and its attachment, I feel it would have been preferable for RSA to have obtained expert evidence from someone completely independent from them.

The technical statement said *"I make this statement in connection with a complaint regarding data accuracy compared to comparison with an alternative dash camera device equipped with GPS for display of speed."* This suggests the main remit was to counter the accuracy of the speed Mr L was shown to be driving in the dash cam footage he provided.

The technical statement said Mr L's dash cam footage couldn't be relied upon as being accurate for the purposes of showing the speed he was driving at any given time. The explanation given was: *"...the process a dashcam appears to take is to update the speed reading at multiple second intervals, but what can be seen on the dashcam in relation to the vehicle speed it is not the current speed of the vehicle, but a moving average calculation. A moving average means several samples are taken over a time period and the average speed across the samples is output as the current speed. This will of course be inaccurate as the speed will only ever report an average and not the actual speed at the time."*

But I didn't make a finding that the dash cam footage provided by Mr L gave more accurate speed readings when compared to the speed readings recorded by the black box. My reliance on the dash cam footage was in relation to disproving the inaccurate data from RSA that showed Mr L's car at wrong locations ("GPS drift"). Dash cam footage could also have been helpful in disproving inaccurate data of merged journeys. That was another data error RSA accepted had occurred. But I did say in my provisional findings that *"proving the data generated about the smoothness of his driving was inaccurate wasn't possible without expert evidence"*, which was one of the main reasons why Mr L produced dash cam footage. But I didn't make a finding that the dash cam footage provided by Mr L proved that his driving satisfied the smooth driving criteria of RSA.

The thrust of my provisional decision as to why I felt Mr L's complaint should succeed was based on the fact that he was successful in showing at least two separate sets of data inaccuracies that had a detrimental affect on his driving score.

I note that the technical statement provided by RSA confirmed that both black boxes Mr L had installed on his car were reviewed and confirmed as a *"satisfactory working device"*. It

further confirmed that the data generated by the devices was accurate, except of course for the occasions where there were journey mergers and the GPS drift problems.

But the technical statement didn't categorically discount any other possible data inaccuracies. The technical statement said the two black boxes were working satisfactorily. That is something that RSA have also said before. But while RSA said the black boxes were functioning correctly, they had also said some of the data inaccuracies were GPS related. From Mr L's perspective, I don't think it gives him any relief to know that the black box was functioning satisfactorily while at the same time inaccurate data was being recorded due another problem, such as the GPS or firmware. In my provisional findings I said: *"RSA have also accepted that Mr L lost faith in the black box device. But that includes the whole system that was set up of which the black box was a part of."*

My view remains the same that given the issues Mr L experienced and the proven data inaccuracies, and given his loss of faith in the device, he should be given the benefit of the doubt. My view is further reinforced by the fact that RSA have accepted that they should have provided Mr L with more information at the start of the policy about what factors might impact his usage scores. So had he been provided with adequate information from the start, I think it's likely that he would have adapted his driving habits accordingly and he would have got better scores. So I think that by not giving him that information from the start, RSA disadvantaged Mr L.

my final decision

For the reasons set out above, I uphold this complaint in part and require Royal & Sun Alliance Insurance Plc to:

- Treat Mr L as though he achieved the highest possible score for good driving during the policy year. As a result, RSA should pay Mr L the financial rewards he would have received for getting the highest possible score. Simple interest at 8% a year should be added to that amount from the date(s) he would have got those rewards until the date payment is made.¹
- Pay Mr L the difference between the premium he paid for the 2018 to 2019 policy year with another insurer and the premium Mr L would have paid if he renewed with RSA on the basis that he attained the maximum percentage discount. Any such payment is only to be made if the premium Mr L paid the other insurer was higher. And if there is such a payment to be made, simple interest at 8% per year should be added from the date Mr L paid for his new policy until payment is made.
- Pay Mr L the difference between what he actually paid for the additional miles and what the lowest cost of the miles was for someone on the highest score for good driving. Simple interest at 8% a year should be added to that amount from when Mr L paid for the miles until he is refunded.

¹ If RSA consider that they are required by HM Revenue & Customs to take off income tax from that interest, they should tell Mr L how much they have taken off. They should also him a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.

- Pay Mr L £500 compensation for the distress and inconvenience he experienced. This total includes the £300 already offered to him. This should be paid within 28 days of us telling them that Mr L has accepted my final decision. If they pay later than this they must also pay interest on that amount from the date of my final decision to the date of payment at a rate of 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 August 2019.

Mehmet Osman
ombudsman