

The complaint

Mr and Mrs M complain that Royal & Sun Alliance Insurance Limited (“RSA”) rejected a claim on their home insurance policy and voided the policy, saying there had been a misrepresentation.

What happened

Mr and Mrs M took out a buildings and contents insurance policy through their bank in February 2013 and renewed the policy each year. The insurance was initially provided by a different insurer but from February 2018 was provided by RSA.

Mr and Mrs M made a claim on the policy in September 2021 after they noticed cracks in some of the internal walls, particularly one of the walls on the first floor.

RSA arranged for a loss adjuster to inspect the property. They provided a report in October 2021. This noted that there had been cracks previously – Mr M said he had first noticed some cracks around 20 years earlier and he’d had repairs done twice, the last time around six years earlier.

The report said there were a number of issues at the property, including damp, and further investigation was needed as the cause of the damage wasn’t clear.

RSA carried out some further investigations including an interview with Mr M. In May 2022 a letter was sent to Mr M saying that, following the interview, RSA had decided to void his policy as from February 2018. The letter referred to a fraud condition in the policy terms and said

- the policy had been voided due to a breach of that condition;
- because the claim was deliberately misrepresented, it would not give any refund of premium;
- where fraud is identified, it may share that information with fraud prevention agencies.

Mr and Mrs M complained but RSA didn’t change its decision. In its final response to the complaint RSA said there had been ongoing subsidence damage before the policy was taken out and the policy was to be voided from the start due to misrepresentation.

When Mr and Mrs M referred the complaint to this Service our investigator said the information RSA had provided was inconsistent, it had not provided evidence showing the damage was caused by subsidence rather than anything else, and there was evidence of other problems. She did not think there had been a qualifying misrepresentation at the start of the policy or that Mr and Mrs M should have made RSA aware of damage during the policy.

The investigator said RSA should reinstate the policy, deal with the claim, remove any records of misrepresentation or policy voidance and pay compensation for all the distress and inconvenience caused to Mr and Mrs M.

RSA disagrees with the investigator and has requested an ombudsman's decision but hasn't provided any further evidence.

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 making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, the insurer has certain remedies provided the misrepresentation is a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have either offered the policy on different terms or not offered insurance at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care, including how clear and specific the questions asked were.

RSA didn't ask any questions, but provided a list of statements about the property and asked them to confirm they were correct. The relevant statement for this case was:

"The home isn't showing any sign of, or has ever had any damage caused to it by subsidence, landslip or heave."

This statement is not a general one about the condition of the property – it's specifically about subsidence. There had been some cracks in the property at different times over the previous 20 years but these had been repaired. I don't think Mr and Mrs M needed to report all the maintenance they had done at the property. They needed to say if the property had had subsidence.

Looking at the reports on the condition of the house, RSA hasn't shown Mr and Mrs M were aware the cracks were caused by subsidence rather than something else. The report from October 2021 said not all of the damage was caused by subsidence; there were some signs of subsidence but also damage caused by water ingress, thermal movement and routine maintenance repairs. Indeed the report said the cause of the damage was not clear and further investigation was needed. Mr and Mrs M may have known there had been some problems with their property but that doesn't mean they knew they were caused by subsidence.

For this to be a misrepresentation RSA would need to show Mr and Mrs M should have told it there had been subsidence but I don't think it has shown they knew the problems were due to subsidence.

The reasons given by RSA for its decision have been inconsistent, for example saying at one point Mr and Mrs M didn't disclose the subsidence in order to get a lower premium (without producing evidence showing this) and at other points that they didn't think the damage was significant and had repaired it themselves. It also said Mr and Mrs M should

have made it aware of the damage during the policy term. Before this claim in 2021, the last time this damage had appeared was in 2015 and at that point RSA wasn't the insurer. So, I don't agree that Mr and Mrs M needed to make RSA aware of the damage.

RSA also referred to a condition in the policy relating to fraud rather than misrepresentation and didn't refer to the relevant law or set out how it had met the requirements in CIDRA that would allow it void the policy. It doesn't seem clear what the basis of its decision was.

For these reasons, I don't think RSA has shown Mr and Mrs M failed to take reasonable care or that there was a misrepresentation. So it wasn't fair to void the policy.

All of this has been very difficult for Mr and Mrs M. They have been very upset trying to handle the claim and this has affected their health. Mr M has been in hospital twice during the claim and says the distress caused by this claim has contributed to his ill health. They were very upset at being accused of fraud. Taking this into account I agree it's fair they should be compensated for the distress caused to them.

Putting things right

To put things right RSA needs to

- reinstate the policy from 2018 onwards;
- remove any record of misrepresentation or fraud and of the policy being voided from all internal and external databases;
- consider the claim in line with the terms and conditions of the policy; and
- pay £500 compensation for the distress and inconvenience caused to Mr and Mrs M.

My final decision

I uphold the complaint and direct Royal & Sun Alliance Insurance Limited to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 12 January 2024.

Peter Whiteley
Ombudsman