

## **The complaint**

Mr M complains Royal & Sun Alliance Insurance Limited (“R&SA”) unfairly avoided his home insurance policy from the date of renewal for not disclosing a previous conviction.

All references to R&SA include its agents.

## **What happened**

Mr M’s home has been insured with R&SA since around 2008. In August 2022, his insurance policy was renewed. Around November 2022, Mr M registered a claim on his policy. He says car oil had leaked onto his driveway after his car had been serviced. R&SA’s records show this happened in March 2022 – so before the policy renewal date.

When looking into Mr M’s claim, R&SA found that Mr M had an unspent conviction which he hadn’t disclosed on renewal. So it avoided his policy from the date of the renewal and refunded his premiums. It said the policy schedule made it sufficiently clear that Mr M would need to disclose any convictions or police cautions. And had he done so, it wouldn’t have agreed to provide cover. But it accepted Mr M’s claim and paid him around £1,500 to settle it.

Mr M raised a complaint with R&SA as he didn’t think it had acted fairly as he’d made an innocent mistake. He said he’d never been in this type of situation before and followed the advice of his solicitor at the time who told him he didn’t need to let his insurers know about his conviction. He’s explained what’s happened has had a serious impact on his wellbeing and he doesn’t think R&SA has treated him compassionately.

R&SA thought it had made the requirement for policyholders to disclose convictions clear. So it didn’t agree it had done anything wrong. As Mr M remained unhappy, he asked our service to look into things. Our Investigator didn’t uphold Mr M’s complaint. He thought R&SA had acted fairly as the letter sent to him at renewal, highlighted he needed to disclose any material changes such as convictions. He was satisfied the letter was sent to Mr M – who, he thought, could’ve questioned R&SA if he wasn’t sure whether to disclose this information.

Mr M didn’t accept our Investigator’s view. He said he hadn’t received the renewal documents for some years as his policy is automatically renewed. He didn’t think R&SA had acted proportionately and he said if he hadn’t been wrongly advised by his solicitor, he would’ve disclosed the information to R&SA. Mr M has also said he doesn’t think he’s been convicted of a criminal matter so he didn’t need to disclose the conviction. As the complaint wasn’t resolved at that stage, it was passed to me to decide.

R&SA sent me some further information including a call between it and Mr M from August 2022, around the time the policy was renewed.

I issued a provisional decision on this case in February 2024. I didn't uphold the complaint as I didn't think R&SA had done anything wrong. I've copied what I said in my provisional decision below:

*'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen so far, I'm not planning on upholding this complaint, I know Mr M will be very disappointed. I'll explain why.'*

*The key issue in dispute is whether R&SA fairly avoided Mr M's policy from the date of renewal due to him not telling it about his previous conviction. Insurers can avoid a customer's policy if they've made a qualifying misrepresentation. The relevant law which applies to this complaint 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 or renewing an insurance policy. The standard of care is that of a reasonable consumer.*

*If the consumer fails to do this, the insurer can take certain actions, as long as the misrepresentation is a qualifying misrepresentation. If the insurer can show that it would've offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation, then it will be a qualifying misrepresentation. The actions the insurer is permitted to take under CIDRA, will depend on whether the qualifying misrepresentation was deliberate, reckless or careless.*

*Did Mr M take reasonable care not to make a misrepresentation?*

*Mr M strongly believes that any misrepresentation he may have made was innocent as he didn't think he needed to tell his insurers about his conviction following advice he was given by his solicitors. So I've first considered whether Mr M made a misrepresentation to R&SA when he renewed his home insurance policy. And, at the moment, I'm satisfied that he did.*

*Mr M was asked in the renewal documents to check that the information provided was correct and to inform R&SA if any changes needed to be made. The schedule also asked him to confirm if there'd been material changes to his circumstances so R&SA could assess and amend his cover if needed. One of the changes the schedule highlights as something customers must let R&SA know of is, '...[A]ny conviction or police caution received by you... (apart from parking or speeding offences)'. By not disclosing his conviction at the time of renewal or before, I'm satisfied Mr M misrepresented information to R&SA.*

*I appreciate Mr M says he didn't think he needed to disclose his conviction. But the importance of providing accurate and up to date information was highlighted to him in the renewal documents. So, I think, it ought reasonably to have been clear to him that he needed to make R&SA aware of his circumstances surrounding his conviction. And I don't think R&SA is responsible for the wrong advice he may have been given by his solicitors.*

*Mr M argues that he didn't receive the renewal schedule or letter as he changed his communication preference so he wouldn't receive letters and documents by post. So he thinks he wasn't made aware of the need to disclose his conviction. But based on what I've seen so far, I don't agree.*

*R&SA has said it sent the renewal letter and schedule by post. It's given us a screenshot of its internal systems which it says shows this. It's also given us a call recording from August 2022 when Mr M contacted it about his renewal. During this call, Mr M questions why his premium has increased and asks questions about various parts of the cover. It sounds to me like he's reading from his schedule whilst confirming the specific details it sets out, including the breakdown of costs of different parts of the cover. And at around four minutes and 30 seconds into the call, he asks where the personal possessions cover is on his schedule as he can't find it on there. So I currently think it's more likely Mr M did receive – and read – his renewal schedule of insurance as he was referring to it throughout the call.*

*Was the misrepresentation a qualifying misrepresentation?*

*R&SA has provided evidence to show that it wouldn't have offered Mr M an insurance policy if he'd provided accurate information. I'm therefore currently satisfied that as R&SA wouldn't have entered into the contract with Mr M, the misrepresentation was a qualifying misrepresentation.*

*The remedies available to insurers under CIDRA, on a qualifying misrepresentation include avoiding the policy, refusing all claims and retaining the premiums paid. I understand R&SA avoided the policy from the date of renewal. And at the moment, I think it was entitled to do so as it's shown it wouldn't have offered it on any terms if Mr M had disclosed his conviction.*

*Mr M argues he doesn't have a criminal conviction so he didn't need to disclose anything. But I don't currently agree. From the evidence I've seen, Mr M was convicted in a criminal court for a criminal matter. And the sentence he received is irrelevant in this case. I say this because the insurance schedule directs policyholders to tell R&SA if they have any conviction – except parking or speeding offences – and it doesn't limit this by the type of sentence received. And at the time of renewal, I can't see that the conviction was spent.*

*Overall, based on everything I've seen so far in this case, I'm satisfied Mr M did misrepresent his circumstances to R&SA. And R&SA hasn't done anything wrong by avoiding his policy.'*

I asked both parties to make any further comments in response to my provisional decision by the deadline set. R&SA didn't make any further comments. Mr M said in summary:

- He doesn't have a criminal record. He's provided a copy of his Disclosure and Barring Service ("DBS") certificate which he says proves this as no convictions are shown.
- He received legal advice from his solicitor confirming he had no criminal record so he didn't need to tell R&SA anything.
- I have no evidence to challenge that he didn't have a criminal record at the time of the renewal.

### **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.

I've thought carefully about the further information Mr M has provided but it hasn't changed my outcome and I'm not upholding the complaint.

Mr M's given us a copy of his basic DBS certificate which he says proves he doesn't have – and has never had – a criminal conviction. So, he says, he had nothing to disclose to R&SA upon renewal of his home insurance policy. But I don't agree. Basic DBS certificates show details of *unspent* convictions and conditional cautions. The time it takes for a conviction or caution to become 'spent' depends on the rehabilitation period for the conviction, which is based on various factors, including the sentence the court applied.

Mr M's DBS certificate is from around two years after he was in court. So it's likely by the time it was issued, the convictions would no longer be showing. That doesn't mean he had no criminal record at the time of renewal or that there was nothing to disclose to R&SA. I also note he's previously accepted in his communication with our service and R&SA that he received a criminal conviction.

I understand Mr M's said he received – and acted upon – legal advice from his solicitors. But I'm satisfied he did need to disclose what had happened to R&SA in line with the policy terms and conditions which I think had been made sufficiently clear to him. And I don't think R&SA is responsible for the advice he received from his solicitors.

Overall, whilst I thank Mr M for the further information he's provided, I think R&SA has acted fairly in this case.

### **My final decision**

It's my decision that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 April 2024.

Nadya Neve  
**Ombudsman**