

## **The complaint**

Mr S complains that Royal & Sun Alliance Insurance Limited ("RSA") has declined his accidental damage claim on the basis of non-disclosure of his previous claims.

RSA are the underwriters of this policy and part of this complaint concerns the actions of the agents acting for it. As RSA has accepted it's accountable for the actions of the agent, any reference to RSA includes its agents.

## **What happened**

Mr S took out contents insurance with RSA in April 2021.

He says in March 2022 he had an accident at home where he slipped and injured himself. During the fall he says he was trying to stop his laptop from being damaged but unfortunately he wasn't able to.

Mr S contacted his insurer to report the incident. After not hearing from his insurer for some time the claim was declined and his policy was voided.

The claim was declined because Mr S failed to disclose two previous claims when taking out the policy. He was told he would need to declare that he'd had a policy voided to current or future insurers.

Mr S used different comparison sites to purchase his policy so he had to answer lots of different questions for the various sites. He says he was asked whether he had made any claims in the past and he answered 'yes'. He was then provided with a list of insurance quotes and he chose the one he wanted.

Mr S says when the policy documents were received he filed them away and didn't look at them until he needed to make a claim. When he made the claim he was told that the policy was being voided due to his careless misrepresentation, and his premiums would be refunded. Mr S wasn't happy with the response from RSA so he complained.

RSA said when the incident was initially reported Mr S was told there was a £100 excess for the claim and RSA's supplier would be in touch to arrange collection of the item. The laptop was collected and an inspection was attempted. But, since the hard drive had been removed it wasn't possible to complete all the necessary checks.

As a result the claim was referred to the technical experts to complete a review. Following that referral the claim was declined. RSA tried to do a telephone interview with Mr S in May but were asked to put all communication in writing. RSA wrote two letters asking for an explanation as to the extent of the damage sustained to the laptop and the two undisclosed claims. Once the information was received it was referred to the underwriter who said if it had been aware of Mr P's previous claims it wouldn't have offered a policy. So RSA refunded Mr P's premiums and voided the policy. So it didn't uphold the complaint.

Mr S wasn't satisfied with the response from RSA so he referred the complaint to this service. One of our investigators looked into things for him. She said RSA had provided evidence that had Mr S disclosed the previous claims it wouldn't have provided him cover. And so she was satisfied there had been a qualifying misrepresentation. RSA voided Mr S's policy and refunded his premiums which it is allowed to do under the rules that apply to cases such as these. So the complaint wasn't upheld.

Mr S didn't agree. He says he answered 'yes' to the question about previous claims and doesn't know how the answer changed after that. He says RSA employed a third-party company to investigate the claim and so RSA is trying to do everything to avoid dealing with the claim. Because Mr S didn't agree the claim has come to me to decide.

### **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'd like to start by assuring Mr S that I've considered all the information he has provided as well as his comments. I've focussed on what's relevant to the outcome of the complaint.

I appreciate Mr S feels very strongly that RSA has treated him unfairly. But in reaching my conclusions I've needed to consider the relevant law which is Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), as well as the terms and conditions of the policy, and the circumstances of the claim.

### **Misrepresentation**

The relevant law in this case is CIDRA as detailed above. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance policy. And if a consumer fails to do this the insurer has certain remedies provided the misrepresentation is a qualifying one. For it to be qualifying the insurer has to show it would have offered the policy on different terms or not 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

RSA thinks Mr S failed to take reasonable care not to make a misrepresentation when he answered the question regarding previous claims. Mr S has said he answered, 'yes' and the system somehow changed his answer to 'no'. But there is no evidence to confirm this happened. Mr S has said he chose the quote after going through a number of home contents insurance comparison sites and comparing different levels of insurance. So I think it's more likely he keyed the wrong answer accidentally rather than it being a software issue. But regardless of how it happened Mr S had the opportunity to review his submission when completing the price comparison websites. And then again when the documents were sent to him after he took the policy out. I would have expected him to check the cover at that stage to ensure the details were correct. And I can't see he did that.

So, I'm satisfied the question asked was clear and Mr S failed to take reasonable care not to make a misrepresentation.

I will now move on to whether the misrepresentation was a qualifying one. And what RSA would have done had it known the correct information.

RSA has provided evidence by way of the relevant underwriting criteria which shows that part of the decline criteria is the previous claims. So had RSA been aware of the previous two claims it would not have provided cover for Mr S's contents. And so I agree with RSA's view that Mr S made a qualifying misrepresentation.

RSA has said Mr S's misrepresentation was careless because he didn't take care to answer the question accurately.

I have looked at what Mr S has said about what happened when he answered the questions on the website. I empathise with Mr S's position here and can see why he is frustrated; he perhaps didn't appreciate the potential consequences of his actions. But I can't say RSA has treated him unfairly.

Taking all of this into account I'm satisfied RSA acted fairly and reasonably when declining the claim for the laptop. And its actions are in line with the actions it can take in accordance with CIDRA.

### **The price comparison websites**

Mr S has said when he was asked whether he had made any previous claims he answered, 'yes'. And the system somehow changed his answer to 'no'. But there is no evidence that this happened, or explanation as to why or how it occurred. And in the absence of any corroborating evidence, as is the case here, I make my decision based on the balance of probabilities, that is, what I think more likely than not happened in light of the available evidence and the wider circumstances.

Mr S says he chose to take out a policy with RSA after going through a number of home contents insurance comparison sites comparing different levels of insurance. So I think it's possible he did answer the question incorrectly given he was using a number of different sites which would all ask similar questions in different ways.

Nonetheless RSA can't be held responsible for issues arising with the price comparison website. It sent Mr S the policy documents and the cover letter says, "*please read the enclosed Statement of Insurance very carefully and let us know as soon as possible if you need to make a change to your insurance cover or if your personal details are incorrect or missing...incorrect information may result in your insurance being cancelled or a claim being rejected or not being paid in full.*" And Mr S didn't do this.

It isn't for the insurer to ensure the customer has answered the questions correctly. It is the customer's responsibility to check they have answered everything correctly. Mr S had a chance to do this when he reviewed the answers he provided when completing the price comparison websites. And when the documents were sent to him after he took the policy out.

### **Instructing another company to investigate the claim**

Mr S complains RSA instructed another company to investigate the claim. But I don't think RSA did anything wrong. When a customer makes a claim the insurer will decide how to deal with it. When a claim is more complex or high value insurers will usually appoint a third-party company to handle and investigate the claims on the insurer's behalf. So I can't say RSA has done anything wrong here.

### **RSA avoiding the claim**

Mr S says RSA has done all it can to avoid the claim. But I haven't seen any evidence of this. RSA is entitled to conduct an investigation into the circumstances of the claim, and if it doesn't receive satisfactory evidence proving the claim, it's entitled to make enquiries as it did here. And an insurer will always have to validate a claim before paying any settlement. So I don't think RSA acted unfairly here.

I understand this isn't the outcome Mr S is hoping for. But any decision I make must be both fair and impartial. And in this situation I think RSA has acted fairly.

### **My final decision**

For the reasons explained above my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 December 2023.

Kiran Clair  
**Ombudsman**