

The complaint

Mr and Mrs D have complained about Royal & Sun Alliance Insurance Limited's ("RSA") decision to refuse their contents claim and cancel their home insurance policy.

Mr and Mrs D are represented in this complaint by solicitors but for ease I will refer to Mr and Mrs D throughout.

What happened

In April 2021, Mr and Mrs D contacted RSA to make a claim under their home insurance policy following a fire in their detached garage. The garage and everything inside was destroyed.

RSA settled the claim for the cost of rebuilding the garage in (approximately £15,000). RSA dealt with the claim of the contents separately.

There was a substantial amount of catering equipment that had been destroyed and Mr and Mrs D say one of their daughters ("Daughter 1") had recently moved back to live with them and her possessions were being stored in the garage. I understand Daughter 1's possessions were valued at around £8,500 and included a designer handbag. RSA asked for further evidence in relation to some of the items, including the designer bag that was being claimed for.

RSA asked for the receipt or a photo of the bag to help prove ownership of the bag. Mr and Mrs D provided three photographs to RSA. RSA said the meta data showed that the photos had been taken after the fire, so it asked for confirmation whether they were of the bag that they were claiming for or of a similar bag. RSA also arranged an interview with Mr D, during which RSA also spoke to Daughter 1. Following the interview, RSA sent a statement to Mr and Mrs D summarising what had been discussed and asked them to sign it.

Mr and Mrs D signed the statement which confirmed that they had told RSA the photos had been taken around three years earlier and were of the bag belonging to Daughter 1, which they said had been destroyed in the fire.

RSA said the photographs were taken in January 2022, eight months after the fire. RSA therefore declined the claim on the basis that Mr and Mrs D had acted fraudulently. RSA also said that as the claim had not been honestly represented, it was voiding the policy with effect from 11 January 2022 (the date the images of the bag had been presented).

RSA also said it reserved the right to ask for the money it paid to rebuild the garage back and other monies spent on the claim, including clearance etc (a total of just under £19,000).

Mr and Mrs D are very unhappy with this and RSA's handling of the claim and raised a complaint. They say they were asked by RSA to provide photos of similar or replicas of the insured bag. Their other daughter ("Daughter 2") had the same bag, so they provided photographs of her bag. Mr and Mrs D say RSA has caused them major distress and they

have been unable to replace all the items lost in the fire and they cannot afford to repay the money for the garage.

Mr and Mrs D have made a number of points in support of their complaint. I have considered everything they have said but have summarised their main points below:

- There were discrepancies and misunderstandings whilst making the claim and they were treated unfairly throughout.
- The written witness statement RSA sent them was different from what was said in the interview. They only realised this when they watched the recording of the interview.
- They were asked by RSA to provide photos of similar or replicas of the insured bag. They should not be penalized because they acted on information given to them by RSA.
- Their claim was passed onto several different people, where the request for exact photos of items in the fire was expressed by the different representatives. They repeatedly responded that it would not be exact but similar, however as this has been dealt with by so many different people, there has been a level of misunderstanding.
- During the interview, when asked about the photos of the bag, Daughter 1 tried to explain that she had photos of various clothes and accessories, which she would take to show her sisters. She was speaking generally and did not mean that the photo of the bag being claimed for had been taken prior to the fire and was the actual bag destroyed in the fire. The photo was of a bag similar to the destroyed bag but belonged to Daughter 2. There was therefore a misunderstanding.
- The statement was not therefore an accurate recording of what was discussed and Mr D signed the statement at a time when he was tired and stressed by the claim process and strain of putting their lives back together after the fire.
- The photo is not relevant to the validity of their claim. They refer to the case of *Versloot Dredging BV and another v HDI Gerling Industrie Versicherung AG and others* [2016] UKSC 45, in support of their complaint, which found that where there was a “collateral lie” by a claimant or a “fraudulent device” it is irrelevant if the claim is genuine; dishonest information given in support of a genuine claim should not defeat the claim.
- The photo was provided in order to evidence the loss of the bag in the fire. The bag was lost in the fire and so it is a genuine claim, so any issue with the photo is irrelevant and the claim should be met.
- Refusing the whole claim over one item is disproportionate. The photo they provided of the bag was provided innocently. They were under stress and it was simply a misunderstanding about the bag. This should not cause the whole claim to be refused.
- The Consumer Protection from Unfair Trading Regulations 2008 also say that it is unfair for an insurance company to continue asking a customer for produce documents which cannot reasonably be considered relevant as to whether the claim is valid.

Mr and Mrs D want their claim met in full and the request for the rebuild money to be repaid, cancelled.

RSA maintains its position on the claim and policy. RSA said that there were multiple people involved in Mr and Mrs D's claim but said this was necessary and did not cause any issue. RSA says the correct process was followed throughout the claim. RSA however, accepted there was a delay in responding to Mr and Mrs D's initial complaint and apologised for this.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that RSA was entitled to refuse the claim and cancel the policy for the reasons it did.

Mr and Mrs D do not accept the Investigator's assessment. They say the Investigator did not address the court case that they had referred to and how it supports their complaint. The photo was a "*fraudulent device*" but they gained nothing from this inadvertent "*lie*" that the photo was of the actual destroyed bag. The bag was destroyed in the fire and the fact the photo they provided was of a different bag and was taken after the fire, is irrelevant to their entitlement to have the claim paid, including for Daughter 1's bag.

In addition, Mr and Mrs D say the Investigator has not acknowledged the communication from RSA that said they could provide an image of a similar bag to the one lost in the fire, as they said they had no receipt or photos of it.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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.

There is no dispute that a fire happened at Mr and Mrs D's property and I acknowledge this would have been extremely distressing. It is also not in dispute that Mr and Mrs D suffered a genuine loss of a number of items in the fire.

However, if it is found that any part of an insurance claim is fraudulent, or exaggerated, then an insurer is entitled to end the contract it has with the policyholder with effect from the date the fraud occurs and refuse the claim entirely. This is because if any part of an insurance claim is established to be fraudulent, then it taints the rest of the claim and means that an insurer is entitled to reject the entire claim, even if parts are genuine. The relevant law about this is the Insurance Act 2015.

An allegation of fraud is a very serious matter and so, whilst it is not a requirement that this be proved beyond reasonable doubt, there is a high threshold of proof required to support such an allegation against a policyholder. Fraud is basically a dishonest act or omission made with a view to obtaining financial advantage or some other benefit to which the person is not entitled. So I have to consider whether there is sufficient evidence that Mr and Mrs D submitted the photos of a bag belonging to Daughter 2, in order to obtain payment for the bag which was not actually lost in the fire.

Given the potential consequences to Mr and Mrs D I haven't taken this decision lightly and considered everything carefully. Having done so, I consider that RSA has provided enough persuasive information to demonstrate its belief that it is more likely than not that Mr and Mrs D provided false information with a view to obtaining a benefit they were not entitled to. So I am satisfied that RSA's reliance in the fraud terms within the policy was reasonable in the circumstances. Therefore, I won't be upholding this complaint, I'll explain why.

RSA has provided evidence that the photos were taken several months after the fire and at an address linked to Daughter 2. Mr and Mrs D also accept that the photos are not of Daughter 1's bag, which they say was destroyed in the fire.

Mr and Mrs D say there was no fraud as they were not trying to get any financial advantage they were not entitled to. They lost the designer bag in the fire and as they were asked to

provide evidence of the type of bag, they sent pictures of the identical bag bought by Daughter 2 after the fire.

Mr and Mrs D say that RSA misunderstood them despite them being clear in the interview, and in other communications, that the photos were not of the actual lost bag that had belonged to Daughter 1.

I have considered this carefully.

RSA asked for some evidence to help substantiate the ownership and possession of the bag, such as a receipt, or photos of the bag. We do expect insurers to be reasonable when asking policyholders to evidence such claims, as people do not always keep receipts for every item they own. So sometimes photos of the bag being used or some other such evidence might be enough. Mr and Mrs D said they could not provide a receipt but they provided photos of the bag. They say they did so on instruction from RSA. I have seen no evidence that RSA asked specifically for photos of a similar bag. RSA had asked for photos that might help validate the claim for the bag that was lost.

Having received the photos RSA wrote to Mr and Mrs D on 12 April 2022 and asked: *"With respect to the ... bag, the image helps validate costs, but can you confirm that this is an image of the item that has been damaged rather than an image of a similar bag? if it is an image of a similar bag, we will again need the receipt or evidence of purchase via a bank statement or similar"*.

Mr and Mrs D responded on 21 April 2022 saying: *"Regarding the... bag, I can confirm that the image sent, is the damaged ... bag"*.

I'm satisfied RSA's question was clear, as was the answer to confirm that it was the damaged bag.

RSA subsequently arranged the interview to discuss this issue further.

The statement prepared by RSA following the interview with Mr D and Daughter 1, dated 13 May 2022, is essentially two pages and consists of 51 bullet points. Points 38 – 51 are most relevant to this matter:

- "37. I have provided images of the ... bag that was destroyed.*
- 38. The images of the ... bag capture the bag that was actually destroyed in the fire.*
- 39. The ... bag belonged to ... [Daughter 1].*
- 40. I have been advised that the photograph is linked to ...[daughter 2's address].*
- 41. I confirm that my ... [Daughter 2] lives at that address.*
- 42. The images of the shoes are the actual shoes that were destroyed in the fire.*
- 43. The shoes belong to ... [Daughter 1] also.*
- 44. I have been advised that the image links to [Daughter 1's previous address].*
- 45. I confirm that ... [Daughter 1] used to live at ...*
- 46. [Daughter 1] ... has provided the following information in relation to questions relating to the purpose taken photographs:*
- 47. She will state that when she purchases a new item, she captures photographs, and these are sent to her sisters.*
- 48. [Daughter 1] ... confirmed that generally, herself and her sisters will take photographs of new purchases as they tend to borrow and share each other's belongings.*
- 49. [Daughter 1] ... was unable to recall when the items (... bag and shoes) were purchased or when the photographs were taken.*

50. [Daughter 1] ... *will confirm that the photographs of the ... bag and the shoes were definitely taken before moving back to ... [the insured address].*

51. [Daughter 1] ... *advised that the ... bag may have been purchased around 3 years approximately) and that the purchase was pre-COVID."*

Mr D signed the statement. I have also watched the video recording of the call between Mr D and RSA and I am satisfied that the above is an accurate recording of what was said.

I don't think there is any misunderstanding on RSA's part. It asked specific questions of Mr D and Daughter 1 by email and during the interview that were sufficiently clear and Mr D and Daughter 1 both said the photos were of the actual bag that they were claiming for and which they said had been destroyed in the fire.

Mr and Mrs D had the opportunity to clarify any misunderstanding that they may have thought existed about the bag that was in the photos in response to the email in April 2022 and during the interview. They did not explain the bag was a different bag, purchased several months after the fire but rather stated it was the actual bag that they claimed was lost in the fire.

Given this, it was reasonable of RSA to conclude that Mr and Mrs D were submitting that the photos of the bag were of the actual bag they were claiming for and that they had been taken before the fire.

It was only after RSA had made its decision on the claim that Mr and Mrs D said they'd provided a photo of Daughter 2's bag to show the type of bag that they were claiming for. In September 2022 they said "*it was explained since the request was to provide a photo, her sister who they do share their belongings had bought the same bag after the fire*".

Mr D have also said he was stressed and tired and this is why he signed the statement, even though he says it was not an accurate reflection of what was said. Having listened to the recording, I consider it is an accurate record of the discussion. Also, I could not see any indication that Mr D or Daughter 1 did not understand the questions being asked or were unsure in their answers.

I do therefore consider there is enough evidence for RSA to reasonably conclude that Mr and Mrs D were not acting honestly when they submitted the photos.

Mr and Mrs D say this is irrelevant because Daughter 1 did have an identical bag which was destroyed in the fire, so they were not trying to get any financial advantage they were not entitled to.

They are correct that in situations where a false document or evidence has been provided in order to support a claim that a policyholder is entitled to make, this would not amount to fraud. So if I were satisfied that Mr and Mrs D had lost Daughter 1's bag in the fire and they had provided the false photos to try and validate this part of the claim, then they would not be claiming for something they not entitled to and RSA would still be obliged to meet the claim.

However, in this case RSA is challenging Mr and Mrs D's position that there was such a bag lost in the initial fire, and that by providing photographic evidence after the event in the way they had, that this was specifically to claim for something they either didn't own, wasn't damaged, or was still retained.

There is no other evidence to substantiate Daughter 1's ownership of the bag or its loss in the fire (such as a receipt, or photos of her wearing or carrying the bag before the date of the

fire). As mentioned above, it is not always possible to provide such evidence. I note however, that Mr and Mrs D explained the nature of the photos of the bag they did provide (which RSA pointed out were staged of the bag and its dust bag alone) because Daughter 1 and her sisters take photos of their possessions, so they can share them. Given this, it might be reasonable to expect that Daughter 1 would have done the same and had some photos of the bag she said she'd owned for three years before the fire.

Where a policyholder is asking us to accept their word alone about the ownership and possession of an item, it is important that there be nothing which might cast doubt on their credibility.

Mr and Mrs D provided false photos and provided false information in response to the email and during the interview and did not clarify the truth of the photos when given the opportunity to do so. I am satisfied that RSA's position that this does cast doubt is reasonable.

Of course I cannot be certain but I have to consider what is more likely than not. And having considered everything carefully, I do think RSA has provided enough evidence that it is likely the photos were provided in order to obtain payment for the bag which Mr and Mrs D weren't entitled to. While Mr and Mrs D did suffer a genuine loss, RSA is therefore entitled to refuse the entire claim and cancel the policy from the date of the dishonest act (which it deemed to be the date the false photos were provided). It does not have to return the premium.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 10 January 2024.

Harriet McCarthy
Ombudsman