

The complaint

Mrs M complains about Royal and Sun Alliance Insurance Limited (RSA) who has voided her cover (treated it as though it never existed), following her claim under her home insurance policy.

What happened

Mrs M was a victim of a theft. She made a claim against her policy with RSA. During the claim's validation process, RSA found that Mrs M hadn't disclosed previous claims. It said that Mrs M originally took out the policy on 18 March 2021. She was asked if there had been any claims made in the past five years. To which Mrs M disclosed one claim made in 2018.

RSA said that during its investigations, it found that there had been two claims one made on 13 November 2016 (not disclosed) and the other made on 29 June 2018 (disclosed). RSA said that it would not have offered Mrs M insurance, had it been made aware of both claims. So, it voided (treated it as though it never existed) Mrs M's policy.

RSA refunded all the premiums Mrs M paid, as they said that the misrepresentation wasn't deliberate.

Mrs M said that she had only not disclosed one claim and not two. She said that she had forgotten about the claim in 2016 and it was unfair for RSA to void her policy. RSA issued a final response, in which it maintained its position.

Mrs M was given her referral rights and referred a complaint to our service. One of our investigators considered the complaint and didn't think it should be upheld. He said that Mrs M's policy was voided on the basis of the non-disclosure. And although he sympathised with Mrs M's situation, he couldn't agree that RSA were unreasonable or unfair in its decision to void her policy.

RSA accepted the view, Mrs M did not. She said that the claim in 2016 was so old and over five years ago. She felt that RSA ought to have carried out more checks before it accepted her as a customer. She felt RSA's actions were questionable. And she said that she hadn't received a full refund, as promised. So, she asked for a decision from an ombudsman.

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.

Having done so, I will not uphold this complaint, for much the same reasons as our investigator, which I understand is likely to be a disappointment to Mrs M. But I hope my findings go some way in explaining why I've reached this decision.

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 (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation 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 said that there is an onus on a policyholder to ensure that the information they provide is accurate and factually correct. It also said that had it been made fully aware of all of the claims, it would not have offered cover. Based on this, RSA said that the misrepresentation made by Mrs M, was careless.

Mrs M initially purchased the policy on a price comparison website. During the purchase process she was asked whether there had been any claims in the previous five years. It's fair to say that Mrs M disclosed the 2018 claim. But she didn't disclose the 2016 claim.

The relevant date for considering is the date the policy was inceptioned, which was 18 March 2021. I accept that Mrs M said she had forgotten about the claim, due to the passage of time, but I agree with RSA, that there is an onus on policyholders to ensure that they provide accurate and factually correct information. And it's clear that the 13 November 2016 claim, would have been within the previous five years from the policy inception date. Accordingly, Mrs M didn't disclose this claim.

Mrs M said (and RSA agree) that the claim made in 2018 was disclosed. I have reviewed RSA's underwriting criteria and it said that had it been made aware of the two claims (the 2016 and the 2018 claims) then it would not have offered cover, as it would have deemed this too high risk. Consequently, I think this error made by Mrs M, amounts to a qualifying misrepresentation.

I've next looked at the actions RSA can take in accordance with CIDRA and one of the remedies allows for it to void Mrs M's policy. Which lets it not have to deal with her claim following the theft. RSA said that as Mrs M failed to disclose the total amount of claims, it would not have offered cover. In light of this, I agree that the misrepresentation was careless, and I'm satisfied that RSA was fair to rely on CIDRA to void Mrs M's policy.

Finally, Mrs M said that RSA hadn't refunded her full premiums, as it had said it would. I asked RSA for its comments, and it said that all the premiums have been refunded in full.

Taking everything into consideration. I find that the onus was on Mrs M to disclose factually correct information as required by the terms of the policy. Which then would've allowed RSA to make an informed choice as to whether it would've wanted to take on the risk. As this wasn't done, I'm satisfied that RSA provided enough evidence to show there had been a qualifying misrepresentation. And I think it was reasonable to void the policy (treated it as if it had never existed). I also think that it was fair to refund all premiums paid since inception of the policy. Consequently, there is nothing further I can reasonably ask RSA to do here.

My final decision

Royal and Sun Alliance Insurance Limited has agreed and refunded all the premiums from the date of inception to the date the policy was voided. And I think this offer is fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 October 2023.

Ayisha Savage
Ombudsman