DRN-4585790

The complaint

Mr and Mrs M thought Royal & Sun Alliance Insurance Limited ("RSA") unfairly voided their home insurance policy and declined their claim due to a misrepresentation made when taking out the policy.

What happened

Mr and Mrs M made a claim for theft from their home. When RSA validated the claim, it found Mr and Mrs M were underinsured. Mr and Mrs M's aggregate contents were valued over £75,000 by RSA's loss adjuster. But, Mr and Mrs M had only took out insurance cover for £50,000.

RSA said had it known Mr and Mrs M's contents was worth over £75,000 it wouldn't have insured them, so it voided their policy and didn't pay out the claim.

Mr and Mrs M have found the circumstances extremely stressful. They think RSA's decision is unfair and would like their policy reinstated and their claim paid in full.

Our investigator decided to uphold the complaint. He thought Mr and Mrs M had made a careless misrepresentation when taking out the policy. But, he didn't think the evidence provided by RSA justified the policy been voided, so he asked RSA to reinstate it and settle the claim proportionately based on the level of underinsurance. He also thought Mr and Mrs M should be compensated £250 for the distress and inconvenience they suffered. RSA disagreed, so the case has been referred to 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.

RSA declined the claim and voided the policy due to a misrepresentation, so I have considered the merits of this complaint from this perspective.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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 must show it would've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several 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.

So, I've considered Mr and Mrs M's circumstances in respect to CIDRA.

Was there a misrepresentation?

I think RSA has been fair in saying there was a misrepresentation. Mr and Mrs M's contents was worth materially more than the £50,000 contents cover they took out. This meant that RSA had set its premiums based on the wrong level of risk.

Did the consumer take reasonable care?

I don't think Mr and Mrs M did show reasonable care. When the policy was taken out, RSA's call agent clearly asks Mr and Mrs M to ensure that the cover taken out is sufficient for the value of the contents in the house. The agent informed Mr and Mrs M that there were higher levels of contents cover that could be arranged.

Whilst I appreciate it isn't always easy to value contents accurately, I think in this case RSA has been fair in saying Mr and Mrs M didn't take reasonable care. The contents of their home was around 50% more in combined value than what they'd declared to RSA when taking out the cover.

The policy clearly sets out the importance of supplying accurate information when taking out a policy.

Did it make a difference to RSA?

RSA has argued the misrepresentation was a qualifying one. It said if the contents was valued up to £75,000, the level of premiums charged would've been higher. However, RSA said if it had known the contents value was over £75,000 it wouldn't have insured Mr and Mrs M at all.

RSA has shared its underwriting criteria. It says this proves it wouldn't have insured Mr and Mrs M had it known. I've checked the underwriting criteria which confirms this.

Mr and Mrs M don't think the valuation provided by the loss adjuster was reasonable. They thought it was done quickly and was a subjective exercise. They've provided some examples to support their testimony which would support a lower valuation.

RSA think the opinion of the loss adjuster is the only expert piece of evidence supplied so think it should be relied upon. RSA have shown that Mr and Mrs M signed the valuation document.

I'm persuaded that the misrepresentation did make a difference to RSA, so was a qualifying one. I think it's reasonable to have expected the premiums to be higher if the correct risk was presented by Mr and Mrs M. However, I do have sympathy with Mr and Mrs M's viewpoint that any valuation is going to be subjective.

RSA said Mr and Mrs M haven't provided evidence to counter what it has said. However, I don't think the evidence provided by RSA is compelling either. It's an estimate which puts the value of contents roughly 10% higher than the £75,000 limit. Given the estimation was done quickly and subjectively, I think RSA has been too severe in voiding the policy. I think it's possible a different person may value the contents under £75,000. So, I uphold this complaint.

Was the misrepresentation deliberate or reckless, or careless?

It's for RSA to show the misrepresentation was deliberate or reckless. If it can't or we're not satisfied with its reasons, the misrepresentation should be treated as careless.

I haven't seen any evidence produced by RSA to show Mr and Mrs M were deliberate or reckless in making the misrepresentation. I'm not convinced they were aware of the consequences of getting it wrong or had a good idea what their contents was worth.

Therefore, I would say Mr and Mrs M G were more careless.

What remedy is available to RSA given there has been a claim?

The qualifying misrepresentation was careless. However, I don't think it was reasonable to void the policy for the reason I've set out. I think there is a fairer outcome. So, I require RSA to reinstate the policy and remove any records showing the policy was voided. If this isn't possible, it should provide Mr and Mrs M with a letter explaining its mistake so that Mr and Mrs M aren't penalised when taking out insurance in the future.

I think RSA would've provided the policy but due to the higher risk it would've asked for a higher premium. So, I require RSA to settle the claim. But as this additional premium hasn't been paid, then RSA are entitled to reduce the settlement in line with the underinsurance that they've calculated.

I think the impact of RSA's decision on Mr and Mrs M would have been significant. I think the declined claim would've placed unnecessary pressure on them. The whole situation will have inconvenienced them. Therefore, I require RSA to pay Mr and Mrs M £250 in compensation, for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint. I require Royal & Sun Alliance Insurance Limited to:

- Re-instate the policy from the start of the term
- Remove any records showing the policy was voided. If this isn't possible, it should provide Mr and Mrs M with a letter explaining its mistake
- Settle the claim in line with the underinsurance that RSA has calculated
- Pay Mr and Mrs M £250 compensation – for distress and inconvenience.

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 28 February 2024.

Pete Averill
Ombudsman