

The complaint

Mrs L complains that Royal & Sun Alliance Insurance Limited (“RSA”) treated her unfairly following a claim against her home insurance policy.

What happened

The details of this complaint are known to all parties, so I won’t repeat them here. Instead, I’ll focus on giving the reasons for my decision.

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.

Mrs L had an AA branded home insurance policy which was underwritten by RSA. Mrs L made a claim against the policy for an escape of water. The crux of her complaint is in two parts:

1. RSA validated the policy following the claim and concluded Mrs L had made a deliberate qualifying misrepresentation when applying for it. It decided to void the policy from inception, decline the claim, and retain Mrs L’s premium; and
2. RSA started to deal with the claim, which led to visits from trace and access agents and a great deal of damage to her home, which turned out not to have been necessary, and now RSA has left her home unsafe and in a poor condition.

I’ll address each part in turn.

Misrepresentation

The relevant law here is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires a consumer 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.

If the misrepresentation was deliberate or reckless and an insurer can show it would have at least offered the policy on different terms, it’s entitled to avoid the consumer’s policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not

have offered the policy at all if it wasn't for the misrepresentation. If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims against it.

As part of the policy validation process RSA found Mrs L had claimed for similar damage previously, that Mrs L had more claims than she'd disclosed when applying for the policy, and that Mrs L had previously had a renewal declined.

Mrs L strongly disputed that she hadn't disclosed information she would have when she applied for the policy, explaining, broadly, that as far as she was concerned, she'd disclosed all the previous claims to the best of her knowledge and ability. And she didn't receive a renewal decline letter; instead, she moved to a different insurer as she was unhappy with her old one and wanted a cheaper policy.

I will focus on the renewal decline as that's the most impactful. RSA has set out that Mrs L didn't answer the following statement correctly:

"You and the people you live with:

- *Have never had insurance cancelled, refused or had special terms given by your insurer"*

RSA has said underneath this statement included the following information:

"If any of these statements are incorrect you should get a quote from one of our specialist insurers here and not progress with this quote."

Mrs L confirmed this statement was true during the sales process. I find the statement itself clear in what it's asking, I find a reasonable consumer would understand why the answer is important to RSA, and I find a reasonable consumer would know – generally, and because of the content of a letter I will come on to – that being declined a renewal fell within what the statement was asking.

RSA says, in brief, Mrs L should have said the statement was false because of the previous insurer's renewal decline letter, which was sent to Mrs L about a month before this policy was taken out. I will include the content below:

"We're writing to let you know that your home insurance policy will end on 22 October 2022 and we won't be able to offer you cover for the next year.

Unfortunately we're no longer able to offer you home insurance due to misrepresentation concerns raised on a claim you registered last year.

Please note that it's really important when applying for an insurance policy, that you let the new insurer have a full and accurate answer to any questions they ask. You should let them know about any policies that have been cancelled or declined.

They need this information to help them decide whether to provide cover and to make a decision on the price of the policy. If you don't, it could make your future policy invalid and may affect any claims that you make."

This letter included the cover start date, the renewal date, and confirmation of a cancellation date of 20 October 2022.

Mrs L says she didn't know she had been declined renewal. I find RSA's decision not to be persuaded by this argument a reasonable one. I say this for the following key reasons:

- While post can go missing, the overwhelming majority does successfully reach its intended recipient, so I find it more likely than not this letter did reach Mrs L given it was correctly addressed;
- I find it more likely than not Mrs L would have known all wasn't well with the previous insurer given she would have been aware of the circumstances which led to the renewal being declined. Further, Mrs L said her reason, in part, for deciding to leave her old insurer was because she was unhappy;
- This policy followed the lapse of Mrs L's previous policy, which suggests she was prompted to make a change; if not by the declined renewal letter, then it's unclear what. Mrs L hasn't said she called to cancel her previous policy or decline a renewal. And if she was looking for cheaper cover as she says, she had no cost to compare with; and
- While less key, Mrs L has a vested interest in saying she didn't receive the letter, the reason the previous insurer stated for declining renewal, and Mrs L not declaring some claims in the application, impact her credibility.

I find RSA's conclusion that Mrs L failed to take reasonable care not to make a misrepresentation in answering this statement a fair one. RSA has shown if Mrs L had answered the statement as she should have, it would not have offered cover at all, so it is a qualifying misrepresentation.

I further find it was reasonable for RSA to consider Mrs L made a deliberate or reckless qualifying misrepresentation because I'm satisfied she knew – or ought reasonably to have known – her answer was untrue and that it was relevant to RSA's decision to take her on risk.

It follows I find RSA's decision to void the policy from inception, decline the claim, and retain Mrs L's premium was fair and reasonable in the circumstances. And so, I don't uphold this part of her complaint. Given this finding, there is no compelling need for me to comment on RSA's other concerns with Mrs L's application.

RSA left Mrs L's home unsafe and in a poor condition

Mrs L reported an escape of water, so RSA sent out trace and access agents. I've reviewed their report which says, in summary:

- They initially conducted an acoustics survey, which didn't show any anomalies in water pipes, heating pipes, or feed pipes;
- Later, with support from the council because of issues with Mrs L's boundary box, the cold water feed was isolated, but water was still escaping; and
- Finally, they removed tiles, laminate flooring and skirting boards in the kitchen, lounge, and hall, and then found the water was escaping from the fridge/freezer.

I acknowledge it's unfortunate Mrs L's home was damaged while the leak was found. But I'm satisfied it's more likely than not the agents did what any agents would have done to identify

the root cause of the escape of water, whether instructed by RSA or not. I say this because I don't find agents would have gone to the lengths they did if the root cause was obvious.

I also acknowledge Mrs L is, understandably, frustrated with the condition her property was left in. But, given my findings above, I'm satisfied that is the result of the escape of water, rather than a failing on the part of RSA. And as RSA fairly and reasonably declined the claim, there is no fair and reasonable basis for me to require it to reinstate Mrs L's property.

Overall

While I accept Mrs L will be disappointed, I don't find RSA has treated her unfairly. Therefore, it follows, I don't uphold this complaint.

My final decision

I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 8 July 2024.

Liam Hickey
Ombudsman