

## **The complaint**

Mr L and Miss W complain that Royal & Sun Alliance Insurance Limited (“RSA”) unfairly declined a claim for accidental damage to a mobile phone and voided their policy.

Although this complaint concerns a joint policy, I will refer to Mr L throughout as this service has mainly corresponded with him throughout.

## **What happened**

Mr L made a claim in November 2023 after his mobile phone sustained damage. He says he was advised to send his phone to a phone shop so they could analyse the damage and provide a report.

RSA declined his claim, on the basis that he’d given false information about how the phone had been damaged. And it voided his policy on the basis that he’d made a qualifying misrepresentation by not declaring his bankruptcy.

Mr L disagreed with RSA’s decision, saying he was unhappy with the claim experience from start to finish as he never received confirmation of the claim or any updates. He says he had to chase for information in order to find out the next steps, among other things. And that he hadn’t made any qualifying misrepresentations. So he referred his complaint to this service.

Our Investigator considered the complaint and thought it should be upheld. She recommended RSA put things right by accepting Mr L’s claim and removing the voidance record, as well as paying Mr L compensation. As RSA didn’t agree with our Investigator’s recommendations, the complaint has now 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.

Having done so, I’ve decided to uphold this complaint. I’ll explain why.

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 must 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 L failed to take reasonable care not to make a misrepresentation when he failed to disclose his prior bankruptcy and that he made a further misrepresentation when he told RSA that he had damaged his mobile phone by dropping it on to a wooden floor. RSA thinks this was a misrepresentation because the cause of damage report indicated that there was water damage to the phone.

I'll deal with the alleged bankruptcy misrepresentation first. In order for RSA to be able to take action under CIDRA, it must show that Mr L made a qualifying misrepresentation when he took out the policy without disclosing his bankruptcy. I can't see from the information RSA has provided whether Mr L was asked a clear question at the time he took out the policy. The statement of fact does indicate that Mr L had agreed to a statement that he hadn't been declared bankrupt or had any unsatisfied CCJs in the last 6 years – but Mr L says that the bankruptcy was discharged in 2020, which is why he wouldn't have ticked a box saying he'd been declared bankrupt. Whilst I understand why Mr L's point, I don't think he acted with reasonable care because he was made bankrupt in 2019 which was within the 6 years he would've been asked about.

But RSA hasn't shown that it wouldn't have offered Mr L the policy or offered the policy on different terms if Mr L hadn't made that misrepresentation. So I don't consider it to have been a qualifying misrepresentation and therefore there's no remedy for RSA to take any action under CIDRA, such as voiding the policy from inception.

Turning now to the claim, I accept that Mr L told RSA that his phone had been damaged when it was dropped, and the cause of damage report shows that there was water damage to the phone. But although there was a misrepresentation, I don't consider this to be a material or "qualifying" misrepresentation as RSA has suggested, because I don't think it made a difference.

RSA has sent us the policy terms and conditions and the policy schedule, which says Mr L has accidental damage cover and unspecified personal possessions cover. This means I'm not satisfied Mr L's misrepresentation was a qualifying one, because even if he hadn't made the misrepresentation, his claim should've been covered.

Whilst I agree that Mr L should've told RSA about the water damage, RSA hasn't been able to demonstrate that it would've taken any other action if Mr L hadn't misrepresented, so there's no remedy for it to take any action under CIDRA.

This means I don't consider RSA acted fairly when it voided Mr L's policy and declined the claim. RSA will need to remove any record of the voidance of the policy and it will need to deal with Mr L's claim in line with the remaining policy terms and conditions. I understand Mr L has a new insurance provider now, so if he wishes to switch back to RSA, then RSA will need to pay any cancellation charges which the new provider may charge. If Mr L does not wish to switch back to RSA, then RSA will need to pay any difference in premium if Mr L's new policy is more expensive.

I'll also require RSA to pay Mr L £200 in compensation for the service it provided. I say this because I can see Mr L was caused inconvenience as a result of not receiving updates and having to chase RSA during the course of the claim. And I'm also persuaded that RSA declined his claim and voided his policy unfairly, which caused him distress for which he should be compensated. I think a figure of £200 adequately reflects the level of frustration Mr L experienced, and the overall time the process took.

## **Putting things right**

Royal & Sun Alliance Insurance Limited must now:

- Remove any reference to or record of the voidance of Mr L's policy and confirm to Mr L when it has done this.
- Deal with Mr L's claim in line with the remaining terms and conditions of his policy.
- Reinstate the policy if this is what Mr L wants, paying the new insurer's cancellation charges if applicable. Or pay Mr L the difference in premiums between the new and old policies if Mr L does not want to switch back.
- Pay Mr L £200 compensation for distress and inconvenience.

## **My final decision**

My final decision is that I uphold this complaint and I direct Royal & Sun Alliance Insurance Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss W to accept or reject my decision before 19 September 2024.

Ifrah Malik  
**Ombudsman**