

The complaint

Mr W has complained that Royal & Sun Alliance Insurance Limited (RSA) unfairly declined a theft claim under his home insurance policy.

What happened

After an evening in a nightclub Mr W's mobile phone had run out of battery and his bank card had stopped working. He went to a fast-food restaurant to try to charge his phone but the restaurant wouldn't let him do that. In the restaurant he started talking to a group of two males and two females. He recognised one of the females as she worked in a restaurant near his home. They offered him a lift home in their taxi, saying that they lived near him. When they reached Mr W's property, they asked to come in for a drink. He ordered some drinks but said they failed to be delivered.

At about 6am the females asked if they could sleep in one of his spare rooms. Mr W agreed that they could have one room and the males another. He said he asked them to wake him up before leaving the property, so that he could lock up after them. He then locked up and retired to his own bedroom.

When Mr W woke up around midday, he realised that a number of goods had been stolen. The males were seen on CCTV leaving the property with some of his possessions. The matter was reported to the police. The males have since been charged and convicted.

Mr W made a claim to RSA. After investigation, it declined the claim on the basis that Mr W hadn't taken reasonable care to prevent the loss from occurring. It said he should have asked his guests to leave before going to bed.

Mr W brought his complaint to this service. Our Investigator recommended the complaint be upheld and that RSA should reconsider the claim under the remaining policy terms. He also thought it should pay Mr W £150 compensation for the distress and inconvenience it had caused him.

As RSA didn't agree, the matter has been referred 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.

When declining the claim, RSA referred to the condition in the policy that Mr W should take reasonable care to avoid incurring liability and prevent loss or damage to everything covered by the policy. It thought Mr W hadn't taken reasonable care because he'd allowed strangers to stay in his home although he wasn't comfortable with them being there and had gone to bed.

The policy doesn't define reasonable care. The test we use is the one set out in the case of *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep. 559. This says that if an insurer turns

down a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted in a way that amounted to recklessness. That means they must have recognised a risk but took it anyway by taking measures they knew were inadequate or by taking no measures at all.

It's up to the insurer to prove recklessness. Mr W says, and I accept that:

- He recognized one of the females;
- The atmosphere in the house was fine;
- They weren't intoxicated;
- By the time he went to bed, he'd spent a few hours in their company and come to the conclusion that they seemed "level-headed".

I've also watched the video interview with RSA's investigator and Mr W doesn't say that he was uncomfortable with the presence of these people in his house.

The risk he perceived was only that someone else might get into his house if the doors weren't locked. It doesn't seem as though he thought his possessions were at risk from the people he'd let into the house. As I think that Mr W didn't see the risk of his guests stealing from him, it follows that I don't think he ignored it or failed to take appropriate action to avoid it. That means I don't think RSA has shown he was reckless. So, it should now deal with the claim subject to the remaining terms of the policy, including any applicable excess.

I also don't think RSA has handled this claim well. It's now over two years since the claim was first made. Mr W went through a distressing experience with the theft and RSA made that worse by unfairly saying he'd been reckless. I think the sum of £150 is appropriate to compensate Mr W for the trouble and upset caused by that.

Putting things right

To put things right I think RSA should:

- deal with Mr W's claim in line with the remaining policy terms;
- add interest at the annual rate of 8% simple to any cash settlement payable, calculated from the date of the claim to the date of settlement; and
- pay Mr W £150 compensation.

My final decision

For the reasons set out above, I uphold this complaint and require Royal & Sun Alliance Insurance Limited to put things right as set out above.

If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 October 2024.

Elizabeth Grant
Ombudsman