DRN-5166102

The complaint

Mr and Mrs C complain that Royal & Sun Alliance Insurance Limited ("RSA") rejected a claim on their landlord's insurance policy and said the policy was void.

What happened

Mr and Mrs C own a property which was let to a tenant. They had insurance for the property with another insurer. In August 2022 they took out a new policy through their broker, which was underwritten by RSA. When the tenant left the property shortly after, they found there was some damage. In October 2022 they made a claim on the policy.

After looking into the claim, RSA said it had found that information provided by Mr and Mrs C when they bought the policy was not accurate – they had said the tenant was employed but that was not correct. RSA said if it had known the tenant was not employed, it would not have offered insurance to Mr and Mrs C. It declared the policy void and as that meant there was no cover in place, the claim was not paid.

RSA said it thought this was a careless misrepresentation and refunded the premiums.

Mr and Mrs C complained but RSA did not change its position. They sought further evidence about the tenant's employment but this didn't lead RSA to change its position.

When they referred the complaint to this Service, our investigator said it was fair for RSA to declare the policy void because:

- This was a commercial policy, so Mr and Mrs C had a duty to make a fair presentation of the risk.
- They had provided statements from the tenant and others about her employment, but this wasn't the sort of official evidence he would expect to see.
- Mr and Mrs C hadn't taken reasonable steps to check the information provided about the tenant was accurate.

The investigator noted that RSA had advised Mr and Mrs C of the sort of evidence it would expect to see about the tenant's employment and said if they provided this, it would reconsider the decision, which was a fair offer. Mr and Mrs C disagreed and requested an ombudsman's decision.

They later provided further evidence and RSA considered this but said it wasn't enough to change the decision, so they made another complaint. In response to the further complaint, RSA said:

- Having considered the further evidence, it's still unclear what employment the tenant had.
- Mr and Mrs C had previously said they were not aware of any employment and their letting agent had said the tenant was not employed.

- It was still of the view they had not provided accurate information when they bought the policy, and if the correct information had been provided, it would not have offered insurance.

When the case was passed to me to consider, I advised that intended to consider both the original decision to void the policy and the more recent decision by RSA not to change that, after reviewing the further evidence. Both Mr and Mrs C and RSA were happy for both complaints to be considered together, and provided some further comments for me to consider.

Mr and Mrs C said:

- The key point relied on is that their tenant was not employed, and RSA has said if it had known she was unemployed it would not have offered the policy.
- They have gathered evidence that shows the tenant was employed in August 2022 and RSA seems to have accepted that, but won't change its decision or enter into any further discussion about it.

RSA said it didn't believe the new evidence Mr and Mrs C had provided was conclusive evidence of employment, and the information it did have showed Mr and Mrs C were not aware of or concerned about her employment status when they took out the insurance.

I issued a provisional decision saying I intended to uphold the complaint and direct RSA to reinstate the policy, deal with the claim, remove any record of it being void and provide a letter confirming the policy is not void. I set out my reasons as follows

This was a commercial policy. Under the relevant law (the Insurance Act 2015) Mr and Mrs C had a duty to make a fair presentation of the risk. This means Mr and Mrs C had to provide either

- *disclosure of every material circumstance which they knew or ought to have known or failing that,*
- *disclosure which provided enough information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.*

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there's anything they ought to disclose.

If the information provided is inaccurate or incomplete and the insurer can show that, if the correct information had been provided, it either wouldn't have offered the insurance at all or would only have done so on different terms, that's a qualifying breach. The insurer then has certain remedies available to it, as set out in the Act.

So there are two key points to consider – whether inaccurate information was provided to RSA and if so, whether it would have done something different if it had been given the correct information.

Looking first at the original decision, Mr and Mrs C had not provided evidence confirming the tenant was employed, and there was evidence from their letting agent that the tenant was not employed, with the rent being paid by benefits. So the evidence indicated the tenant was not working.

Mr and Mrs C accepted they hadn't confirmed her employment status and couldn't say for sure whether she was working; it wasn't something they gave much attention to, as long as the rent was being paid.

At that point, I think it was reasonable for RSA to conclude Mr and Mrs C had not made a fair presentation of risk.

RSA has provided underwriting evidence showing that where a tenant is not employed, they would not offer a policy.

On this basis, it was reasonable for RSA to conclude there was a qualifying breach, and that the misrepresentation was careless (in other words, the breach of the duty wasn't deliberate or reckless). The remedy set out in the Insurance Act in these circumstances is for the insurer to void the policy and refund the premiums, which is what RSA did.

However, things have moved on since then. Mr and Mrs C have provided further evidence, including statutory declarations from the tenant herself and a number of other people confirming she was working in August 2022. They say she had two jobs – one as a carer for an elderly relative, and the other as a delivery driver.

I don't consider her caring role to be paid employment; she was not employed and the only payments made were carer's allowance, which is a benefit, not a wage or salary. But the evidence does show the tenant was working as a delivery driver.

RSA says this evidence doesn't show enough details about her employment. However, the underwriting criteria simply refer to whether her status was employed/self-employed. That's a question of fact – either she was working or she wasn't. I'm satisfied the evidence shows the tenant was employed in August 2022.

On this basis, the information Mr and Mrs C provided was correct. They may not have taken steps at the time to ensure it was accurate, but they have now shown it was.

RSA's position is that if it had known the tenant wasn't employed, it would not have offered the policy – but the tenant was employed.

A misrepresentation happens where information is given to the insurer that is not correct. Since the information provided was correct, there was no misrepresentation, so no remedy is available to RSA.

While its original decision was fair, based on the information available at the time, it would not be fair to maintain that decision now that new evidence shows the tenant was employed. So it would not be fair to void the policy.

RSA should reinstate the policy and deal with the claim, in line with the policy terms. If the policy had remained in force, Mr and Mrs C would have paid the premiums, which have been refunded to them. So if any payment is made on the claim, RSA may deduct the premiums from the settlement.

There will be a record of the fact this policy was voided and Mr and Mrs C have to disclose this to any new insurer. RSA should delete any records it holds of this and provide a letter to Mr and Mrs C confirming the policy is no longer considered void.

Mr and Mrs C have explained how distressing this matter has been for them, I don't doubt that, but they didn't take care to ensure the information provided at the time was accurate; had they done so, this situation would not have arisen and they would not have had to go to

the trouble of obtaining further evidence. In these circumstances I don't intend to make any award of compensation for distress and inconvenience.

Replies to the provisional decision

Both parties have provided further comments.

Mr and Mrs C accept the findings, but have provided further comments on the impact on them of having the claim declined and the policy declared void. They say

- They have had insurance for many years and never made a claim, but when they made this claim they were made to feel like criminals.
- RSA's representative concluded the tenant was unemployed without asking them to provide evidence of her employment status.
- They found it very difficult to obtain alternative insurance and when they did, it was more expensive. The situation caused a lot of distress and anxiety, and they had to spend a great deal of time obtaining evidence to challenge the decision.

RSA doesn't accept the provisional decision. In summary, it says:

- It's difficult to see how the evidence proves the tenant was employed.
- The tenant's own statement confirms they worked as a carer, which the provisional decision accepted is not paid employment. There's no mention by the tenant themselves that they worked as a pizza delivery driver.
- The statutory declarations written by the neighbours do not amount to evidence of fact – they are based on the opinion of third parties. The fact these have been presented as a signed statement of truth or declaration does not make them any more true or factual.
- If the tenant was employed as a delivery driver there should be clear evidence of this, such as an employment contract, wage slip or clear dates of employment.

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 considered the further comments, I see no reason to change my provisional decision. To void the policy, RSA needs to show information was provided that was incorrect. In this case, it says the inaccurate information was that Mr and Mrs C's tenant was employed. If she was employed, then the information provided was correct.

RSA doesn't accept the evidence that has been provided shows the tenant was employed and says it would require more detailed evidence. The issue is whether, on the balance of probabilities, the tenant was employed and I'm satisfied the evidence does show that. There are statutory declarations from the tenant herself and three others. The tenant's statement says where she was working. The other statements are consistent with this and confirm where she was working. One individual confirms the tenant made deliveries to them of orders they had placed. That's not an opinion; it's evidence of something that happened.

RSA says making a statutory declaration doesn't make something factual rather than an opinion. I don't consider the statements are merely opinions. The fact the individuals have gone to the trouble of making a formal declaration in front of a solicitor is relevant to the weight to be given to their evidence.

Taking all of these factors into account, I'm satisfied Mr and Mrs C have shown the tenant as employed. So the information provided was accurate.

Having said all that, it's also true that Mr and Mrs C hadn't confirmed that at the time; they only did so later. So while I appreciate the difficult situation they found themselves in, I think that could have been avoided had they (or their agents) confirmed the tenant's position before they took out the policy. In these circumstances I don't consider it fair to direct RSA to pay compensation.

My final decision

I uphold the complaint and direct Royal & Sun Alliance Insurance Limited to:

- reinstate the policy and deal with the claim in line with the policy terms, subject to payment of the premium;
- remove any information recorded on any internal or external database that Mr and Mrs C's policy is void; and
- provide a letter to Mr and Mrs C confirming the policy is not void.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 24 December 2024.

Peter Whiteley
Ombudsman