DRN-1557448

The complaint

Mr D is unhappy Royal & Sun Alliance Insurance Plc ('RSA') avoided his motor insurance policy. This meant his claim for theft wasn't covered.

What happened

Mr D bought a car insurance policy with RSA in February 2019. He bought the policy online through a price comparison website. In March 2019 Mr D contacted RSA to make a claim for theft. He said the vehicle had been stolen from his drive.

RSA investigated, and after gathering some more information, told Mr D it was going to avoid the policy back to the start date. This meant no cover was in place at the time of the theft. RSA said it did this because Mr D had told it he was the registered keeper of the car when he bought the policy. But RSA had found the registered keeper was the business Mr D works as a consultant for, which I'll refer to as 'B'. RSA said if it had known Mr D wasn't the registered keeper of the car it wouldn't have offered cover at all.

Mr D brought his case to our service. An investigator looked at what had happened. She didn't recommend that the complaint should be upheld. She considered whether Mr D had taken reasonable care to provide correct information to RSA when he bought the policy. She didn't think he had. She said she was satisfied Mr D wasn't the registered keeper or the legal owner of the car. RSA had provided evidence to show it wouldn't have offered cover if Mr D wasn't the legal owner or the registered keeper, so she thought it had been reasonable for RSA to avoid the policy.

Mr D disagreed. He remained unhappy RSA avoided the policy. He said he had an agreement with the director of B that the vehicle was his. He explained that he was the person making finance payments towards the car. In his mind, the car was his. He also said he was never sent a policy document, so he couldn't see if anything stopped him insuring the car if he wasn't the registered keeper.

The investigator reconsidered, but she didn't change her mind. She was still satisfied RSA wouldn't have offered insurance if it had known Mr D wasn't the legal owner or registered keeper. Because an agreement couldn't be reached Mr D asked for an ombudsman's final decision, so the complaint has been passed 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.

Given RSA has said it wouldn't have offered cover to Mr D if it had known he wasn't the registered keeper I've considered what the relevant law, the Consumer Insurance (Disclosure and Representation) Act 2012 ('CIDRA') says. CIDRA makes clear that insurers need to ask clear questions, and consumers have a responsibility to take reasonable care when answering.

This is so consumers take care not to make a 'qualifying misrepresentation' when buying an insurance policy. A 'qualifying misrepresentation' can be either deliberate or reckless, or careless.

Mr D bought the policy online using a price comparison site. I've considered the question Mr D was asked and the answer he gave when applying for cover.

Mr D was asked "*Are you (or will you be) the registered keeper and legal owner?".* I think the question is clear enough for him to know he would need to consider both *a)* the registration of the car, and *b)* its legal owner, when answering.

I've been provided with a copy of DVLA documentation, specifically the V5 Certificate, which shows B is the registered keeper. I've not seen anything to suggest a transfer of registration was made or attempted. So, based on what I have, I'm satisfied that B was the registered keeper, not Mr D.

Mr D says he owns the car. The car was being paid for through a finance agreement. Mr D said he paid the initial deposit and the subsequent monthly repayments. Mr D has also provided a letter signed by B's director, which states that Mr D is the owner. I've checked the finance agreement. It shows the finance was taken out by B, for B. The finance agreement doesn't mention Mr D in any capacity.

When a car is acquired through a hire purchase agreement (as in this case) the finance company owns it until full repayment has been made. Under the terms of this finance agreement, a final balloon payment of around £19,000 was due 42 months after it was signed. B's director signed the finance agreement in April 2016, so the balloon payment was still outstanding at the point the car was stolen. On that basis, I'm satisfied that neither Mr D, nor B, was the legal owner when the policy was taken out (or when the theft occurred). Instead, the finance company was.

Even if I accept that Mr D believed he was the legal owner because of his agreement with B's director and the repayments he'd made toward the car, I'm satisfied that he wasn't the registered keeper. When he bought the policy Mr D was asked if he was the car's legal owner *and* registered keeper. If Mr D had been taking care when buying the insurance policy, I think he ought to have known he wasn't the registered keeper, and therefore answered the question he was asked accurately. I can't see that he did.

Overall, I think there was a 'qualifying misrepresentation' under CIDRA due to a lack of reasonable care. On that basis, I think RSA was entitled to do what it would have done if Mr D had taken reasonable care. Had it been provided with the correct information, and thereby known that Mr D wasn't the registered keeper and legal owner, RSA has said it wouldn't have offered cover. I've seen its underwriting guide which satisfies me that's the case. So, I'm satisfied RSA has acted in-line with the law, and I don't think it's treated Mr D unfairly.

As RSA has said it wouldn't have offered cover at all I think it's fair that it should return the premiums Mr D paid. From RSA's notes I can see this has happened, so I don't think RSA needs to do anything more.

Mr D's said he didn't receive the policy documents, so he didn't know if anything precluded him from insuring the vehicle if he wasn't the registered keeper. But it was for Mr D to provide accurate information at the point of sale, not afterwards. Additionally, it doesn't appear that Mr D chased RSA for the policy documents, which it's reasonable to think he would've done if he was concerned about not receiving them. Mr D has also said RSA didn't carry out due diligence. But it's entitled to rely on what a customer says in response to the questions asked when the policy is taken out. It's also entitled to more thoroughly investigate matters if a claim is made if it wants to do so. That's what RSA did in this case.

Mr D's also asked that this case be decided in favour of B if it's found that he's not the legal owner or registered keeper. But it's not B's case that I'm deciding here, it's Mr D's. B isn't RSAs customer and, in any event, it wouldn't be able to complain to RSA about a policy in Mr D's name.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 July 2020.

Simon Louth
Ombudsman