DRN-2933727

The complaint

Ms C complains that Royal & Sun Alliance Insurance plc mishandled her claim on a motor insurance policy.

What happened

On 8 January 2018, Ms C got a new vehicle on a lease agreement with a lease company. She had to make lease payments of about £300.00 per month.

For the year from March 2020, Ms C used a comparison website and took out an RSA policy for the vehicle. She correctly stated that the owner of the car was a lease company. In answer to a question about the registered keeper of the car, Ms C incorrectly stated that she was the registered keeper.

On about 9 November 2020, Ms C reported that someone had taken her car. The lease company asked her for a lease settlement figure of about £25,000.00. Ms C made a claim to RSA for that amount (and for some personal belongings). In the meantime, she had to carry on making the lease payments even though she no longer had the vehicle.

On 18 November 2020, RSA declined the claim, saying that if it had known the lease company was the registered keeper, it wouldn't have given Ms C cover. Ms C complained to RSA. On 24 November 2020, RSA wrote a final response turning down the complaint. Ms C brought her complaint to us a couple of weeks later.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. He referred to Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). He thought that Ms C had taken reasonable care not to make a misrepresentation. He thought that there hadn't been a qualifying misrepresentation as he didn't think the incorrect answer was deliberate. He said that the car dealership had given Ms C a "*Keeper Input Form*" that asked her to complete her details under a section headed "*Registered Keeper Detail"*.

The investigator recommended that RSA should reassess the claim.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms C and to RSA on 6 July 2021. I summarise my findings:

> Following the theft of the car - Ms C has suffered financial loss and inconvenience. But – keeping in mind that RSA wouldn't have issued a policy at all – I wasn't minded to find that RSA treated Ms C unfairly by treating her policy as void from the start and declining to pay her claim.

Subject to any further information from Ms C or from RSA, my provisional decision was that I didn't uphold this complaint. I didn't intend to direct Royal & Sun Alliance Insurance plc to do any more in response to this complaint.

RSA hasn't responded to the provisional decision.

Ms C disagrees with the provisional decision. She says, in summary, that:

- Section 2(2) of CIDRA 2012 requires the consumer to take reasonable care not to make a misrepresentation to the insurer. Section 3 of CIDRA 2012 provides clarification as to what may, or may not, constitute reasonable care (emphasis added):

  "3 ***Reasonable care***
  (1) Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined ***in the light of all the relevant circumstances.***
  (2) The following are examples of things which may need to be taken into account in making a determination under subsection (1)-
  (a) the type of consumer insurance contract in question, and its target market,
  (b) ***any relevant explanatory material or publicity produced or authorised by the insurer,***
  (c) how clear, and how specific, the insurer's questions were,
  (d) in the case of a failure to respond to the insurer's questions in connection with the renewal or variation of a consumer insurance contract, how clearly the insurer communicated the importance of answering those questions (or the possible consequences of failing to do so),
  (e) whether or not an agent was acting for the consumer.
  (3) The standard of care required *is* ***that of a reasonable consumer:*** *but this is subject to subsections (4) and (5).*
  (4) If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual consumer, those are to be taken into account.
  (5) A misrepresentation made dishonestly is always to be taken as showing lack of reasonable care."

- She took reasonable care not to make a misrepresentation. The FOS website makes clear that:

  "Customers are only expected to answer questions to the best of their knowledge and belief. In some cases, it might not be reasonable to expect a customer to know the answer to a question at all. But the customer still has to take reasonable care not to make a misrepresentation. So, if a customer is unsure of the answer to a question, it's reasonable to expect them to find out the answer. "

- In assessing whether or not she took reasonable care, there was no burden on her as a consumer to make enquiries of a third party to identify who held the V5 in circumstances where:
  a. She had drawn a reasonable conclusion from the paperwork in her possession that she was the registered keeper;
  b. It does not follow that she would realise that a responsibility for taxing a vehicle was indicative of who held the V5: independent research (for example, via google) would have indicated to her that she was the registered keeper in circumstances where she was responsible for service and MOT of the vehicle.
  Further, it is a reasonable presumption that the lease company taxed the vehicle on her behalf as *owner* of the vehicle.

- There was therefore nothing to put her on notice that she might not be the registered keeper. She was not "unsure", all the information available to her indicated that she was the registered keeper. She had a reasonable basis for her belief and nothing to contradict it. The passage of time since she took out the initial lease agreement does nothing to alter this. In light of the information she had, and the circumstances she was in, it was the most reasonable conclusion to draw.

- Further, she did not make a qualifying misrepresentation because:
  a. Her misrepresentation was not in breach of the section 2(2) duty, as set out above; and
  b. The eligibility document disclosed by RSA was not a document available to her, or any consumer prior to taking out the insurance policy.

- Section 4 of CIDRA 2012 provides:
  "4 Qualifying misrepresentations: definition and remedies
  (1) An insurer has a remedy against a consumer for a misrepresentation made by the consumer before a consumer insurance contract was entered into or varied only if-
  (a) the consumer made the misrepresentation in breach of the duty set out in section 2(2), and
  (b) the insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms."

- Section 3 of the RSA policy document states (insofar as is relevant to this claim):
  "How we will settle a claim under Sections 2 and 3 ...
  C. *Hiring and other agreements*
  If we are aware that you are paying/or your car by hire purchase or under a leasing agreement we will either:
  Pay the cost of replacement to any company to which you are liable under the hire purchase or leasing agreement. "

- On a plain reading of Section 3 of the RSA policy document, no distinction can be drawn as to whether or not the leasing company was, or was not, the registered keeper, particularly when the specific questionnaire which she had answered on the comparison website asked for her confirmation that the owner of the vehicle was the lease company. A plain reading of the policy document provides for a pay out in the circumstances in which her leased vehicle was stolen.

- Neither Section 3 of the RSA policy document, which is the consumer-facing document, nor the comparison website platform made clear that RSA would not offer insurance in circumstances where the policy holder was not the registered keeper.

- The investigator/ombudsman was shown the underlying eligibility criteria, which is a document she had never seen before. It is not available to consumers, nor was it clear within the consumer RSA documentation, or the comparison website documentation, that it was a fundamental requirement that the policyholder should be the registered keeper. This creates an unfairness to the consumer. The materiality of the registered keeper question (i.e. it not being an acceptable risk "full stop") was never made clear. If this were a fundamental term to the cover being provided, that should have been made clear within the process of applying for insurance. RSA' s failure to do so has exposed her to huge financial loss and, at the time the policy was taken out, denied her and other consumers the opportunity to take out insurance cover from a provider who would have offered cover in both situations. This

unfairness is particularly pronounced in circumstances where she took out cover via a comparison website. If this information had been made clear a reasonable consumer would have made a different choice of cover.

- Finally, RSA have said that it would be unfair for them to pick up the claim for something they would not have offered cover for in the first place, and that therefore the risk was not acceptable to them. By any objective standard, the risk to the insurer in relation to this claim is no different in circumstances where she is, or is not, the registered keeper. She insured the correct vehicle, against the correct loss, at the correct address, under the correct name, declaring that the lease company owned the vehicle. She made an innocent and reasonable misrepresentation about who holds the V5 form, which does not bear on the risk underwritten by the insurer, i.e. the risk of theft of the vehicle in question.

- In these circumstances, it is unfair to deny her the remedy set out m the initial recommendation of the investigator.

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.

I've taken into account the relevant law (including CIDRA), regulation and good practice.

I accept that in 2018, the car dealer had given Ms C a "…*Keeper Input Form*" that required her to give her personal details.

I accept that Ms C was responsible for paying a garage to service the car.

The comparison website asked Ms C questions including the following:

> "*Whose name is on the registration document?*"

And an information button made clear that the registration document was the V5 issued by DVLA. So I'm satisfied that the question was clear and specific.

Ms C answered that her name was on the registration document. That wasn't correct. The V5 said the lease company was the registered keeper.

Ms C later said she hadn't seen the V5. But she'd had the vehicle for over two years during which DVLA must've sent the registered keeper (the lease company) reminders about road tax for the vehicle.

Notwithstanding the "…*Keeper Input Form*", I consider that Ms C had had ample time to realise that she wasn't the registered keeper. So I find that – in all the relevant circumstances - Ms C didn't take reasonable care to avoid making a misrepresentation.

Section 3 of the policy dealt with claims for fire and theft. The policy terms included the following:

> "*How we will settle a claim under Sections 2 and 3…*
> *C. Hiring and other agreements*
> *If **we** are aware that **you** are paying for **your car…** by hire purchase or under a leasing agreement **we** will either:*
> *• pay the cost of replacement to any company to which **you** are liable under the hire*

purchase or leasing agreement.
*If **you** have the right to keep **your car** at the end of the agreement and the amount **you** owe is less than the proceeds of **your** claim, **we** will pay **you** the difference.*
*• replace **your car…** if **we** have the permission of the company from which **you** are buying or leasing **your car** to do so*."

From that, I find that RSA had written its policy contemplating that the policyholder might be leasing the insured car from a leasing company. But I don't find that a lease agreement meant that the leasing company would be the registered keeper.

RSA has said that if Ms C had correctly answered the question about the registered keeper, it wouldn't have offered cover at all. Its final response included the following:

"*The eligibility criteria clearly show that we do not provide cover where policies are in the name of companies or lease companies. These vehicles are deemed as unacceptable risk to be covered meaning that we do not cover this type of vehicle ownership. Based on this we have acted according to our underwriting criteria*."

So the investigator asked to see the RSA's eligibility criteria or underwriting criteria. In response, RSA has shown us an extract as follows:

"A risk will be acceptable where the vehicle is owned and registered for licensing purposes:-
1 in the name of the Policyholder, or in the name of the Policyholder's Spouse, Civil Partner or Life Partner (NB the Spouse, Civil Partner or Life Partner does not have to be a named driver on the policy), or in the name of the Policyholder's Parent, Step Parent or Foster Parent (NB the Parent, Step Parent or Foster Parent does not have to be a named driver on the policy), or in both the names of the Policyholder and the Policyholder's Spouse, Civil Partner, Life Partner or Parent, if the vehicle is jointly owned
Where lease company is the owner of the vehicle but the keeper is one of the acceptable options above N.B Policies in the name of a company remain unacceptable. Vehicles owned or registered in the name of 'Other' will not be acceptable. Vehicles on contract hire or rental will be considered, but must be referred to Motor U/W."

I don't think those criteria were available – or intended - for consumers to read. On balance, I consider that the criteria support RSA's position that it wouldn't have offered a policy to a driver of a vehicle of which a lease company was both the owner and registered keeper. So – notwithstanding that Ms C didn't know of the criteria - I find that Ms C had made a "*qualifying misrepresentation*" under CIDRA Section 4.

I acknowledge that – following the theft of the car - Ms C has suffered financial loss and inconvenience. But – keeping in mind that without the misrepresentation RSA wouldn't have issued a policy at all – I don't find that RSA treated Ms C unfairly by treating her policy as void from the start and declining to pay her claim.

RSA has said that it refunded the premium. Ms C hasn't said otherwise. So I don't find it fair and reasonable to direct RSA to do any more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Royal & Sun Alliance Insurance plc to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 24 August 2021.
Christopher Gilbert
Ombudsman