

The complaint

Miss W complains about Royal & Sun Alliance Insurance Limited (RSA) declining her motor insurance claim and avoiding her policy, in respect of a stolen vehicle.

References to RSA include their agents who administer the policy.

What happened

Miss W took out a motor insurance policy on a vehicle with RSA in September 2019, renewing the policy in September 2020. Unfortunately, the vehicle was stolen in May 2021 during a burglary. Miss W contacted RSA to lodge a claim for the theft. It then came to light, when Miss W provided the Registration Documents for the vehicle, that she wasn't the registered owner or keeper of the vehicle, though her policy stated that she was. Given this, RSA told Miss W that they were declining her claim and avoiding her policy from the date of its renewal. RSA returned the premiums paid by Miss W.

Miss W complained to RSA about their decision, but they didn't uphold it. In their final response they said she'd been asked clear questions about the registered owner and keeper of the vehicle when she took out her policy and she'd answered that she was (or intended to be). The policy documents were issued with Miss W listed as the registered owner and keeper, as were the policy documents issued at the renewal of the policy. RSA said that as Miss W wasn't the registered owner or keeper of the vehicle, they didn't consider her to have an 'insurable interest' in the vehicle. As such, had they known this, they wouldn't have offered to cover the vehicle (or at least not offered cover at renewal). They confirmed their decision to decline her claim and avoid the policy from its renewal.

Miss W was unhappy at RSA's response and complained to this service. Her main concern was that RSA shouldn't have declined her claim. As a result, she'd had to buy another vehicle and in doing so had gone into debt. She wanted RSA to settle her claim fully.

Our investigator didn't uphold the complaint. He concluded that while Miss W had told RSA when she took out the policy that she wasn't the owner of the vehicle. She was planning to purchase it from her boss but couldn't obtain finance. But her boss said she could continue to use and insure the vehicle. As the policy documents had Miss W listed as the owner and keeper of the vehicle – and she hadn't told RSA that this was incorrect - she'd made a misrepresentation when taking out the policy and at its renewal. Based on this, the investigator concluded RSA had acted fairly in declining her claim and avoiding her policy.

Miss W disagreed with the investigator's conclusions and requested an ombudsman review the complaint. In asking for a review Miss W said it was a genuine oversight on her part not to have noticed the error in the policy documents about her being the registered owner and keeper of the vehicle.

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.

My role here is to decide whether RSA has acted fairly towards Miss W.

The key issue here is whether RSA acted fairly in declining Miss W's claim and avoiding her policy. RSA's view is that Miss W gave incorrect information when she took out the policy and at its renewal (that she was the registered owner and keeper of the vehicle, when in fact it was her boss). Miss W maintains it was a genuine oversight on her part that she didn't notice the policy documents listed her as the registered owner and keeper, and that she's been unfairly penalised as a result of her oversight.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. 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 has to show they 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 think Miss W failed to take reasonable care when she didn't notify them that she wasn't the registered owner and keeper of the vehicle. I've considered the circumstances and evidence relating to Miss W not notifying RSA that she wasn't the registered owner or keeper. I think several points are relevant. First, I've considered the terms and conditions of Miss W's policy, specifically those that relate to information provided by the policyholder. The Schedule of Insurance issued both at the time of the policy being taken out and its subsequent renewal states, under the heading "IMPORTANT NOTES":

- *"This Schedule is a record of the information provided to us. Please check it is correct and keep this document in a safe place. You should tell us if any of the information on the Schedule changes. Not doing so may invalidate the insurance, or result in claims being rejected or reduced. We may reassess your cover, terms and premiums when we are told about changes in your circumstances.*
- *If you knowingly provide us with false information to influence our assessment of any of the following:*
 - *your eligibility for this policy...*"

I've noted that the Schedule when the policy was taken out states, for both the 'Owner of vehicle' and 'Registered keeper' headings, the answer is 'Policyholder' (Miss W). For the heading 'Owned car for' the answer is 'Not bought yet, or <6 months'. This reflects the intention of Miss W when she took out the policy to buy the vehicle. This didn't happen. The Schedule at the policy renewal states the same answer of 'Policyholder' for the first two headings, whereas the answer to the third question is listed as '12 months'. That reflects what would have been the case had Miss W bought the car as she had intended.

Miss W says that she didn't make any amendment to the answer for the third question. While that's true, I don't think it's relevant as it simply rolls forward the answer given to the question when the policy was taken out.

I accept that Miss W's intention when she took out the policy was that she would buy the vehicle (and so become the registered owner and keeper). But this didn't happen. At that

point I think the wording of the Schedule above should have led Miss W to tell RSA that she hadn't carried through with the purchase of the vehicle, so she wasn't the registered owner or keeper. That should also have been the case at the policy's renewal. While I accept it may have been a genuine oversight on Miss W's part in not telling RSA, I've concluded that Mrs B didn't take reasonable care and misrepresented the circumstances when not telling RSA that she hadn't completed the purchase of the vehicle.

RSA say she didn't have an insurable interest in the vehicle and, had they known, they wouldn't have offered cover. I've also seen the evidence that RSA wouldn't, under its own underwriting guidelines, have offered to cover the vehicle if Miss W wasn't the registered owner or keeper. That means I'm satisfied Miss W's misrepresentation was a qualifying one. As I accept that Miss W may have made a genuine oversight, I think her misrepresentation was careless (rather than deliberate or reckless).

As I'm satisfied Miss W's misrepresentation should be treated as careless, I've looked at the actions RSA can take in accordance with CIDRA. CIDRA states that when there's a careless misrepresentation the insurer may still avoid the policy where it wouldn't have offered the cover at all, but it should refund the insurance premiums for the relevant period of the cover. As I've noted, had RSA been informed that Miss W wasn't the registered owner or keeper then it wouldn't have provided cover at all. Given this, then I've concluded that RSA acted fairly, in accordance with CIDRA, in avoiding the policy (from the date of policy renewal) but returning the premiums. As such, I've also concluded that RSA acted fairly in declining Miss W's claim.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 10 January 2022.

Paul King
Ombudsman