

## **The complaint**

Mrs G and Mr M complain that Royal & Sun Alliance Insurance Limited (RSA) won't pay their home insurance claim for accidental damage and that it voided their policy for alleged breach of the fraud condition.

## **What happened**

Mrs G and Mr M reported a claim to RSA in September 2020. They said that in August 2020 Mrs G had spilt nail varnish on the carpet in the main bedroom. RSA arranged for its carpet expert (R) to investigate. Because of Covid, R wasn't able to visit the property so it asked Mr M to provide photos, which he duly did. R was concerned, as by looking at the photos the nail varnish couldn't have fallen in the way described by Mrs G and Mr M.

RSA arranged for the matter to be referred to a specialist investigator (C) as it was concerned about possible fraud. C contacted Mrs G and Mr M and set up a video interview with Mrs G. In that interview Mrs G described the circumstances of the claim, but was unable to demonstrate exactly what she was doing at the time because the furniture in the bedroom had been moved around since then. She was asked why no attempts were made to clean up the spillage and she explained that they had looked up on the internet and thought it was best to let it dry rather than spread the stain.

C advised Mrs G that in light of her explanation it wasn't satisfied that the spillage had taken place as she described. It advised her that it would be instructing a forensic expert to provide a report. It warned her that if the report wasn't in her favour RSA could pursue her for the expert's costs.

The forensic expert (L) reported back. He was of the view that the pattern of spillage did not concur with Mrs G's description of the event. He said it was more readily explained by the pouring of the nail varnish rather than a single accidental event.

RSA said that Mrs G was in breach of the fraud condition in the policy. It advised that it wouldn't be paying the claim and that the policy would be voided from the date of the alleged fraud. It also said it would be requiring Mrs G and Mr M to repay the costs of the forensic investigation.

Mrs G and Mr M objected, asking to see a copy of the forensic report. They also couldn't get RSA to tell them if the policy had actually been voided as its claim handlers didn't appear to know the result of the investigation. RSA declined initially to provide the report advising that it had summarised it in its letter to them. However, on review, it agreed to provide a redacted copy (with L's name and address removed). It further agreed not to pursue Mrs G and Mr M for L's costs.

I issued a provisional decision. I said the case turned on the expert evidence produced. And as the only expert evidence available supported RSA's position, I didn't uphold the complaint.

In reply Mrs G and Mr M produced further expert evidence, and a video showing how the nail varnish could have spilled in the way they described. That evidence contradicted the expert evidence produced by RSA. Mr M also criticised the methodology in R's forensic report.

RSA said it wouldn't challenge the matter any further. So I issued a further provisional decision, upholding the complaint. I proposed that RSA pay the claim, and remove any reference to the policy being cancelled, as well as paying Mrs G's and Mr M's costs of the forensic report, and £200 compensation.

Mrs G and Mr M responded to this second decision. I shall set out those comments and my responses below.

RSA didn't reply to my second provisional decision.

### **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.

#### the claim

In my second provisional decision I said:

*"Mrs G and Mr M instructed a forensic expert, H. I think that expert is sufficiently experienced and qualified to review the evidence and reach an expert opinion as to the likely cause of the damage. He reviewed a series of videos taken by Mr M, demonstrating the likely pattern of spillage if the bottle was knocked off the table. His main conclusions were:*

*"[L's] opinion makes no mention of the possibility of the bottle spinning owing to a vigorous sideways motion as it was knocked from the bedside table." and*

*"Assuming that the bottle was knocked off the bedside table with sufficient sideways force to set the bottle bouncing and spinning, then the spill pattern resulting from the incident is consistent with an accidental event as described by [Mrs G]."*

*The policy definition of accidental damage is:*

*"sudden, unexpected and visible damage which has not been caused on purpose."*

*Having shared the new evidence with RSA it has declined to challenge it any further. In light of this new evidence, I think it is likely that the spill was accidental damage in line with the relevant definition in the policy. I think that RSA should pay Mrs G's and Mr M's cost of the purchase and fitting of a new carpet in line with the remaining terms and conditions of the policy. It should also pay Mr M and Mrs G's costs of their forensic report, with interest."*

#### allegation of breach of the fraud condition in the policy

In my original provisional findings I said:

*"This brings me onto the question of fraud. I should emphasise that I don't decide whether fraud has been committed. Rather I have to decide whether RSA acted reasonably in deciding that Mrs G was in breach of the fraud condition in the policy."*

*For an insurer to allege fraud by its policyholder is a serious matter. It means, as Mrs G and Mr M have discovered that the cancellation of the policy will be registered on an insurance*

*database and the fraud registered on a fraud database. For that reason RSA has to show that there is strong evidence that it is most likely that Mrs G breached the fraud condition in the policy before we could say whether its action was reasonable.*

*The fraud condition says:*

*“If dishonesty, exaggeration or false documentation is used by your family or anyone acting on behalf of you or your family to obtain or support:*

- a claims payment under your policy,*
- cover for which you do not qualify,*
- cover at a reduced premium,*

*all benefits under this policy will be lost, the policy may be invalid, you may not be entitled to a refund of premium and legal action may be taken against you.”*

*RSA said that it had “deemed that your claim was deliberately misrepresented”. Essentially it said that dishonesty was used to support a claims payment, so this was in breach of the above condition. And the condition allows RSA to take the action it took, namely, to void the policy so that all benefits under the policy were lost.”*

I said in my second provisional decision that, in light of the new evidence and RSA’s decision not to challenge it further, I didn’t think that there was now sufficient evidence to justify RSA invoking the fraud condition. I said that if RSA had registered Mrs G’s name on any fraud database it should now remove it, and confirm to Mrs G that this has been done.

#### *date of voidance/cancellation*

In my original provisional findings I said:

*“Mrs G and Mr M were notified of the voidance of the policy by letter of 29 December which they didn’t receive until 31 December. As a result they were without home insurance until they could arrange this in the New Year. Also they contacted RSA’s claims department who seemed to know nothing of the cancellation. I understand that this was because C had sent the voidance letter (albeit with RSA’s authority) but the claims file hadn’t been updated. Whilst I understand the need for a formal letter, I think sending it just before a bank holiday without also notifying Mrs G and Mr M by email or telephone or making sure the relevant departments were aware first, caused unnecessary difficulty. And as they seemed to get conflicting information from RSA I can understand that this added to the stress caused.”*

I said in my second provisional decision that as the effect would now be that that the policy should not have been cancelled, it means that RSA must also reasonably compensate Mrs G and Mr M for the upset they were caused by the cancellation itself. Additionally I said that if Mrs G and Mr M paid a higher premium on their new policy because of having to declare the cancellation, RSA should refund that difference in premium with interest for the policy years of 2021 and 2022. Mrs G and Mr M would need to provide the necessary information, i.e. evidence of the new premium, and that the policy was like the one with RSA. I assumed that Mrs G and Mr M didn’t want the RSA policy to be reinstated.

#### *release of forensic report*

In my original provisional findings I said:

*“When RSA reported back to Mrs G and Mr M it included a summary of L’s report, but refused to release a copy of it. This was on the apparent grounds that release of the report would allow a fraudster to change their story to accord with the forensic expert’s conclusions.*

*I would generally expect such a report to be released to the accused person where breach of the fraud condition is alleged. There may, on occasion, be exceptional reasons for not doing so, such as pending criminal proceedings, but, in this case, I think RSA acted unfairly in not releasing the report. It only did so after it was contacted by a consumer magazine. Having said that I do note that RSA agreed not to pursue Mrs G and Mr M for the costs of that report.”*

In respect of all the above findings, neither party has challenged those conclusions, so they are now final and form part of this final decision.

### compensation

In my second provisional decision I said that I had to take into account the effect this case had on Mrs G and Mr M for them to be unjustly accused of fraud, and having to find their own expert evidence. I said I thought the appropriate award of compensation was £200.

I'll deal with Mrs G's and Mr M's comments concerning compensation below.

### Mrs G's and Mr M's comments on the appropriate steps for RSA to take

- They request that RSA pay the full cost of buying and fitting a new flooring for the bedroom according to the price quotes they will obtain.

I've already said that RSA should now pay the claim and will direct accordingly.

- That RSA remove both Mrs G's and Mr M's name from any internal and external databases, confirm in writing that this has been done and provide a confirmation from the Insurance Fraud Database and other databases involved that all data held on Mrs G and Mr M has been removed.

With regard to removing Mrs G's or Mr M's name from any database, RSA has only ever mentioned putting Mrs G's name on such a database. It should confirm this to Mrs G and Mr M and notify them of the details of any such database it removes their name from.

- That RSA confirms in writing that Mrs G and Mr M don't need to declare to other insurers that their policy was voided or cancelled.

I don't think this is necessary. If they accept my decision Mrs G and Mr M will have the necessary evidence to show this.

- That RSA sends a written apology with an admission that it got it wrong and wrongly accused them of fraud, as well as a commitment to undertake an independent review of what went wrong with recommendations to ensure that customers are treated more fairly in similar situations.

I don't think it's appropriate for me to require RSA to send such an apology. In fraud cases Insurers often rely on special investigators who recommend whether to pursue the question of fraud. That's not unreasonable, here on the basis of the expert evidence and the recommendation of its investigator RSA decided that it had sufficient evidence of fraud. However experts do disagree, as they did in this case. I should advise that my role is to deal with the complaint, not to make any recommendations about RSA's future handling of such cases.

- RSA pay compensation of around £1,500.

I can understand that Mrs G and Mr M feel that they should be awarded more compensation. I summarise their points as follows:

- Being wrongly accused of fraud and put on a fraud register has affected their ability to obtain insurance.
- They were left without home insurance cover from Sep 2020 to Jan 2021 due to the retroactive voiding of the RSA policy. This could have had very serious consequences if there had been a fire during that time.
- Being wrongly accused of fraud caused massive stress and anxiety for Mrs G as it can have serious consequences for her employment.
- Additional stress and anxiety was caused because RSA threatened to share their details with fraud prevention agencies.
- More stress and anxiety was caused when RSA threatened legal action for not contacting them about payment which they had already done multiple times.
- The ordeal stretched for 16 months from Nov 2020 to Feb 2022.
- The ordeal added to anxiety issues for Mr M and delayed his return to work.

I do have to take into account decisions we've made in similar cases. And I also have to consider that RSA took what would be the normal steps to take in such cases, including voiding the policy and entering a name on a fraud register. And from its point of view, it had an expert's report with no counter expert's evidence to suggest it was wrong. When I originally considered this case I explained that I thought the forensic expert's evidence could only reasonably be challenged by another expert.

I understand that the matter caused Mrs G and Mr M anxiety and stress and I have taken that into account. But I can't award compensation for what might have happened. Nor can I award it for the length of time the complaint has been with the Financial Ombudsman. I stand by my view that the appropriate award of compensation is £200.

- RSA pay their expenses, including their time in preparing video evidence.

I note costs of £480 for the forensic report. I think that's reasonable. They've also incurred costs from a legal advice service of £54. We don't normally award such costs but as they were incurred in helping Mrs G and Mr M appoint the appropriate expert, I will award them.

In respect of their costs of preparing video evidence I will award the cost of 2 bottles of nail varnish - £12 and 2 dust sheets - £20. I won't award Mr M the costs of his time in preparing such evidence. We don't generally award the cost of a consumer's time in dealing with their complaint and I don't think it's right to do so in this case.

- RSA make a donation of £800 between the two advice services they used.

I can only award compensation to Mrs G and Mr M, though of course if they accept my decision, they will be free to do what they think fit with that compensation. I've already said that fair and reasonable compensation is £200. I can't reasonably make RSA pay more than that.

## **Putting things right**

RSA should:

- pay Mrs G's and Mr M's costs of buying and fitting a new carpet, in line with the remaining terms and conditions of the policy.
- remove any reference to the policy having been cancelled for fraud (it may record the policy as being cancelled voluntarily by Mrs G and Mr M) and remove Mrs G's (and, if appropriate Mr M's) name from any internal or external fraud databases. It should confirm in writing that this has been done, and notify Mrs G and Mr M of the details of any such database.
- pay Mrs G's and Mr M's costs of their forensic expert's report, of £480, their £54 advice service costs and £32 for materials, together with simple interest\* at 8% per year from the date they paid any invoices for this, or receipt dates for items purchased, until repayment
- pay, for the policy years 2021 and 2022 the difference (if higher) between the premiums Mrs G and Mr M paid for a new policy and the premiums that would have been charged had the policy not been cancelled for fraud. It should add simple interest\* at 8% per year from the dates any premiums were paid until repayment.
- pay £200 compensation.

\*HM Revenue & Customs requires Royal & Sun Alliance Insurance Limited to take off tax from this interest. It must give Mrs G and Mr M a certificate showing how much tax it's taken off if they ask for one.

## **My final decision**

I uphold the complaint and require Royal & Sun Alliance Insurance Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr M to accept or reject my decision before 12 April 2022.

Ray Lawley  
**Ombudsman**