DRN-3542330

The complaint

Ms L and Ms L (mother and daughter) complain about their insurer, Royal & Sun Alliance Insurance Limited (RSA) declining a claim under their home insurance policy and avoiding the policy when they became aware a business was being carried out at their property.

This decision only covers those aspects of Ms L and Ms L's complaint relating to the avoiding of the policy and decline of their claim. It doesn't cover other issues concerning the cost of premiums they'd paid over the years, as those issues weren't part of their complaint to RSA made before their complaint to this service.

What happened

In December 2019 there was a leak in the bathroom of Ms L and Ms L's property, which led to the partial collapse of the ceiling of the kitchen below. They contacted RSA, who advised them to engage a plumber to fix the leak, which they did. RSA also advised them to obtain a quote for the work needed to repair the damage, which they did (for £3,400).

RSA didn't accept the quote as they considered it too high, so appointed their own contractor to carry out the work. The work was scheduled to start in March 2020, but due to the national lockdown (and a family member shielding) the work couldn't start until September 2020. When the contractor arrived, they removed the bath and other items from the bathroom, causing damage to tiles in the process.

However, work stopped when the contractor made RSA aware that Ms L (the daughter) was running a business from the property. As Ms L and Ms L hadn't told RSA about the business (which started in 2017) RSA appointed a claims firm (C) to investigate the claim. The repair work was paused while this took place. As C didn't receive replies to emails sent to Ms L and Ms L about the claim, they wrote to them in December 2020 to decline the claim because they hadn't cooperated with C's investigation. C also gave two weeks' notice of cancellation of the policy.

Ms L and Ms L then responded to C. RSA considered the responses, following which C wrote again to Ms L and Ms L to say that as RSA wouldn't have offered cover had they known about the business, the policy was avoided from the last renewal (November 2019). Based on this, RSA required the costs accrued under the claim (£1,691) to be repaid. But RSA decided not to retain the premiums paid from renewal (£615), leaving a net amount of £1,076 to be paid to RSA.

Unhappy at the avoidance of their policy, Ms L and Ms L complained to RSA. But they didn't uphold the complaint. In their final response, they confirmed the decision to avoid the policy, decline the claim, and require the net amount of £1,076 to be paid to them.

Ms L and Ms L then complained to this service, unhappy at the decline of their claim and avoidance of the policy. They acknowledged they'd made a mistake in not telling RSA about the business but thought it would have been covered under their policy.

Our investigator upheld the complaint, concluding that RSA hadn't treated Ms L and Ms L fairly. He concluded Ms L and Ms L hadn't made a misrepresentation, under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), about running a business from their property when they first took out the policy in 2010, given the business began in 2017. He also concluded (at the renewal of the policy in 2019) RSA hadn't asked a specific question about whether a business was being carried out at the property. Nor had they sent a statement of facts or other details of the information held about Ms L and Ms L under the policy. While RSA's renewal letter asked Ms L and Ms L keep them informed of any changes (and to refer to the policy booklet for details of what changes to notify RSA) this wasn't sufficiently clear and specific. Based on this, he concluded RSA's actions were unfair.

To put things right, given the impact of RSA declining the claim (and leaving the repair work unfinished) the investigator thought RSA should remove any record of the policy avoidance (both internally and externally). He also thought they should continue with the repair work and deal with the claim (but retain the premiums paid). RSA should also stop pursuing Ms L and Ms L for payment of the cost of work carried out and to pay them £800 for the distress and inconvenience they'd suffered.

RSA disagreed with the investigator's view and asked that an ombudsman review the complaint. They firstly referred to the policy schedule wording saying policyholders must tell them as soon as they were aware of any change in their circumstances. RSA also referred to the renewal notice stating that customers should keep them (RSA) up to date and if they (the policyholder) didn't let them know about changes in circumstances it could affect any claim made (or that the policy could be cancelled). RSA also argued a reasonable consumer would have consulted the policy booklet and contacted them to discuss any change in circumstances. They considered Ms L and Ms L made a misrepresentation under CIDRA and that they were entitled to apply the remedy under CIDRA (policy avoidance).

Secondly, without prejudice to the remedy of policy avoidance under CIDRA, RSA referred to a policy condition requiring the policyholder to tell the policy administrator as soon as they were aware of any part of their home was going to be used for trade, professional or business purposes. As Ms L and Ms L hadn't told them of the business, this was a breach of the condition. As RSA wouldn't have provided cover had they known, this caused them financial prejudice as they wouldn't have paid the claim. RSA said the remedy for breach of condition would be a counterclaim in damages (from RSA) equivalent to the value of the whole claim.

Thirdly (again without prejudice to the remedy of policy avoidance under CIDRA) RSA said Ms L and Ms L had deliberately misrepresented the facts during the course of the claim, as they'd denied their property was being used for business purposes. RSA thought this would fall under Part 4 of the Insurance Act (where a policyholder presents a fraudulent claim). In those circumstances, RSA would not be liable to pay the claim and could avoid the policy (from the date of the fraudulent act) and retain the premiums.

In my findings, I considered the central issue in the complaint that RSA acted unfairly when avoiding the policy and declining the claim (and asking for repayment of the cost of work carried out, net of the premiums paid). Ms L and Ms L believed they made a mistake but were covered under the policy (and Ms L had separate insurance for her business). I also considered RSA's views. In doing so, I noted they avoided the policy and declined the claim by relying on the first of the three grounds they set out in response to our investigator's view. They didn't mention either the second or third ground. Looking at the second and third grounds, the second was, in substance, like the first - albeit by reference to a different condition of the policy. Given this, I thought it reasonable to consider the second ground.

However, the third ground referred to a separate piece of legislation and a different basis for the actions RSA said they could have taken. But RSA didn't raise this point in their final response to Ms L and Ms L. Nor did they seek (as they maintain they could have done) to retain the premiums paid under the policy. If RSA thought they had sufficient evidence to avoid the policy and decline the claim on these grounds, I thought they would have done so at the time. In raising this ground without raising it with Ms L and Ms L (and giving them the opportunity to respond) I didn't think that either fair or reasonable. So, I based my consideration on the first (and then the second) of the three grounds.

On the first ground, I didn't think RSA had asked a sufficiently clear and specific question about Ms L and Ms L's business. I also considered that the business was started some seven years after the policy was first taken out. In the absence of a clear and specific question (or provision of a statement of fact or other summary of circumstances on which cover was being provided) during that period, I concluded that it wasn't reasonable for RSA to say Ms L and Ms L made a misrepresentation.

On the second ground (breach of the policy condition requiring the policyholder to tell them as soon as they were aware of any part of their home was going to be used for trade, professional or business purposes) I wasn't persuaded that to apply it was fair or reasonable. That's because the specific condition RSA referred to is one I considered when deciding whether Ms L and Ms L made a misrepresentation (the first ground). Having concluded Ms L and Ms L didn't make a misrepresentation (so it was unfair for RSA to avoid the policy and decline the claim) then it wouldn't be fair or reasonable for RSA to use the second ground (breach of condition) or to apply the remedy they said they could apply.

I then considered what RSA should do to put things right. I thought they should remove all record of the policy avoidance from both internal and external databases. Secondly, they should assess the claim in line with the remaining terms and conditions of the policy. Thirdly, concerning the premiums paid under the policy, as I concluded RSA acted unfairly in avoiding the policy, the premiums paid should be retained by RSA, given I've concluded they should assess the claim in line with the remaining terms and conditions of the policy. I also considered the question of compensation. I agreed with our investigator's view that £800 would be fair and reasonable compensation for distress and inconvenience.

Because I considered different issues to those considered by our investigator (being the additional grounds put forward by RSA) and was proposing what I thought would be a fair and reasonable outcome to the case, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered 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 have acted fairly towards Ms L and Ms L.

The central issue in Ms L and Ms L's complaint is that RSA acted unfairly when avoiding the policy and declining their claim (and asking them to repay the cost of work carried out under the claim, net of the premiums paid). They believe they made a mistake, but they were covered under the policy (and Ms L had separate insurance for her business).

I've also considered RSA's views. In doing so, I've noted that when they avoided the policy and declined the claim, they relied on the first of the three grounds they set out in response to our investigator's view. They didn't mention either the second or third ground. I've thought about this in the context of what I think would be fair and reasonable in the circumstances of

this case. Looking at the second and third grounds, the second is, in substance, similar to the first - albeit by reference to a different condition of the policy. Given this, I think it's reasonable to consider the second ground.

However, the third ground refers to a separate piece of legislation and a different basis for the actions RSA say they could have taken. But RSA didn't raise this point in their final response to Ms L and Ms L. Nor did they seek (as they maintain they could have done) to retain the premiums paid under the policy. If RSA thought they had sufficient evidence to avoid the policy and decline the claim on these grounds, I would have expected them to have done so at the time – not in response to our investigator's view. In raising this ground now, without raising it with Ms L and Ms L (and giving them the opportunity to respond) I don't think that's either fair or reasonable.

So, I've based my consideration on the first (and then the second) of the three grounds.

The first of those grounds (which seems the principal one in RSA's final response, although it isn't spelt out in detail) is that Ms L and Ms B should have been aware of the need to tell them about the business. Had they told them, they wouldn't have provided cover. Therefore, Ms L and Ms L made a misrepresentation by not telling them. As such, RSA say they were entitled to apply the remedy of avoiding the policy from the last renewal, declining the claim and asking for repayment of the costs incurred under the claim (net of the premiums paid). Ms L and Ms L say it was a mistake on their part, that they thought they were covered under the policy and that Ms L had separate insurance for her business.

As noted above, the relevant law here is CIDRA. It 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 several 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 Ms L and Ms L failed to take reasonable care when they didn't tell them about the business. I've considered the circumstances and evidence on this issue. From the information provided by Ms L and Ms L when the policy was first taken out in 2010, it's clear they answered 'no' to the question "Is your property used for business or professional purposes other than clerical work undertaken by you and your family?" Both the question and the answer are clear. However, at the time the business didn't exist (it was started in 2017) so the answer was correct and there was no misrepresentation.

That being the case, the key issue is Ms L and Ms L subsequently not telling RSA about the business (either at the time it started, or when the policy was renewed). So, I've considered the issue. Looking at the documents sent to Ms L and Ms L for the renewal of the policy at the date from which RSA avoided the policy, there isn't a specific question about whether the property is being used for business purposes (or a question asking for specific confirmation it continues not to be used for business purposes). There is section on the front page of the covering letter headed "Don't forget to keep us up to date" that states:

> *"Please remember to keep us informed about any changes in your circumstances so we can update your cover and premium accordingly. If you don't let us know about changes to your situation it could affect any claim you make or your policy may even*

be cancelled. Your policy booklet provides full information on what changes insurers need to know about and what information you must tell us."

I've looked at the renewal documents, including the Insurance Product Information Document (IPID) and there's no reference to either cover not being provided (use of the property for a business isn't listed under the What is not insured?" section of the IPID). Nor any statement of fact or other detail that sets out that the property isn't being used for business purposes. There is a general reference in the IPID (under the heading What are my obligations) to the policyholder telling RSA as soon as they are aware of any changes in circumstances. But there isn't any indication of what kind of changes should be notified.

I've also looked at the policy booklet, given the reference to it as set out above. Section K – General conditions includes a section headed Changes in your circumstances which states:

"You must tell the Administrator within 30 days as soon as you know about any of the following changes:…

- *Any part of your home is going to be used for any trade, professional or business purposes. There is no need to tell us about trade, professional or business use if:*
  - *The trade, professional or business use is only clerical; and*
  - *You do not have staff employed to work from your home; and*
  - *You do not have any visitors to your home in connection with your trade, profession or business; and*
  - *You do not keep any business money or stock in your home."*

I've considered carefully whether mention on the front page of the covering letter of the renewal, together with reference to the policy booklet and the inclusion of business use in the booklet as one of the changes that should be notified, is sufficiently clear and specific. On balance, I've concluded it isn't, particularly as the policy booklet wasn't (as I understand it) provided as part of the renewal documents. I've also considered that the business was started some seven years after the policy was first taken out. In the absence of a clear and specific question (or provision of a statement of fact or other summary of circumstances on which cover was being provided) during that period, I've concluded that it wasn't reasonable for RSA to say Ms L and Ms L made a misrepresentation.

Having reached that conclusion on the first ground put forward by RSA, I've then considered the second ground, breach of the policy condition requiring the policyholder to tell them as soon as they were aware of any part of their home was going to be used for trade, professional or business purposes.

I've thought about this carefully, but I'm not persuaded that to apply it is fair or reasonable. I say this because the specific condition RSA refer to is the one I've set out above in the extract of the policy booklet, when I considered whether Ms L and Ms L made a misrepresentation under CIDRA. So, it's essentially the same point (although RSA refer to a different remedy). It follows that, having concluded Ms L and Ms L didn't make a misrepresentation under CIDRA (so it was unfair for RSA to avoid the policy and decline the claim, being the remedy under CIDRA) then it wouldn't be fair or reasonable for RSA to use the second ground (breach of condition) or to apply the remedy they say they could apply.

Given my conclusions on the two grounds put forward by RSA that I've considered, I've thought about what RSA should do to put things right. Having concluded that it wasn't fair or reasonable for RSA to say Ms L and Ms L made a misrepresentation, then if follows that they didn't act fairly or reasonably in applying the remedies available to them for

misrepresentation under CIDRA. So, they didn't act fairly and reasonably in declining their claim and avoiding the policy from the last renewal.

To put things right, I think RSA should, firstly, remove all record of the policy avoidance from both internal and external databases. Secondly, RSA should assess the claim in line with the remaining terms and conditions of the policy. Thirdly, concerning the premiums paid under the policy, RSA proposed returning the premiums (by netting them off against the costs incurred on the claim to the point they avoided the policy and declined the claim). However, as I've concluded they acted unfairly in avoiding the policy, the premiums paid should be retained by RSA, given I've concluded they should assess the claim in line with the remaining terms and conditions of the policy.

I've also considered the question of compensation. Our investigator, in upholding Ms L and Ms L's complaint, thought £800 would be fair and reasonable compensation for the distress and inconvenience they'd suffered. Given my conclusions above, I've thought about this given the circumstances of the case. I agree they've suffered the distress and inconvenience of having their bathroom removed before work was stopped and I think £800 would be a fair and reasonable sum in compensation.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Ms L and Ms L's complaint. I intend to require Royal & Sun Alliance Insurance Limited to:

- *Remove all record of the policy avoidance from internal and external databases.*
- *Assess Ms L and Ms L's claim in accordance with the remaining terms and conditions of the policy.*
- *Pay Ms L and Ms L £800 in compensation for distress and inconvenience.*

Royal & Sun Alliance Insurance Limited must pay the compensation within 28 days of the date on which we tell it Ms L and Ms L accept my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Ms L and Ms L responded to say they agreed with the provisional decision.

RSA responded to say they didn't have anything to add.

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 have acted fairly towards Ms L and Ms L.

As Ms L and Ms L and RSA have responded to say, respectively, they agreed with the provisional decision and they didn't have anything to add, I haven't changed my mind on my conclusions. So, my final decision remains unchanged, for the same reasons set out in my provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Ms L and Ms L's complaint. I require Royal & Sun Alliance Insurance Limited to:

- Remove all record of the policy avoidance from internal and external databases.
- Assess Ms L and Ms L's claim in accordance with the remaining terms and conditions of the policy.
- Pay Ms L and Ms L £800 in compensation for distress and inconvenience.

Royal & Sun Alliance Insurance Limited must pay the compensation within 28 days of the date on which we tell them Ms L and Ms L accept my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Ms L to accept or reject my decision before 26 July 2022.

Paul King
Ombudsman