DRN-3860919

The complaint

Mr and Mrs M are unhappy with Royal & Sun Alliance Insurance Limited's (RSA) decision to avoid their buildings and contents insurance policy.

Any references to RSA include its agents.

What happened

Mr M and Mrs M held a combined buildings and contents policy with RSA. They took the policy out in 2016 and renewed it annually. In spring 2022, Mr M was contacted by his water provider. They told him following the most recent meter reading for the property, they thought there may be a leak. Mr M contacted RSA but was told trace and access cover wasn't provided under his policy. A private inspection took place, and a leak was identified under the floor of the utility room. Mr M and Mrs M logged a claim.

RSA arranged for a loss adjuster to come out and inspect the damage. The loss adjuster did so, but also told RSA they considered the value of Mr M and Mrs M's contents to be closer to £150,000, rather than the £75,000 declared when the policy was taken out. In May 2022, a third-party company appointed by RSA wrote to Mr M and Mrs M to confirm the policy had been voided from when it was last renewed. This was because RSA says in relation to this policy, it was only able to offer cover for contents valued at a total of either £50,000 or £75,000. RSA considered Mr M and Mrs M had misrepresented the value of their contents.

Mr M and Mrs M complained, and RSA issued their final response letter in June 2022. RSA acknowledged Mr M and Mrs M may not have intentionally misrepresented their position, but the overall outcome would not be changed.

Mr M and Mrs M referred their complaint to this service. It was considered by one of our investigators who said she didn't consider RSA had asked Mr M and Mrs M a clear question about the level of cover, rather that Mr M and Mrs M had been asked to decide between two levels of cover for the contents part of the policy. She recommended the policy be reinstated and the claim considered, subject to the remaining policy terms. She also recommended RSA pay Mr M and Mrs M £150 compensation.

Mr and Mrs M accepted the investigators' conclusions. RSA didn't, so the case has been passed to me.

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 relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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.

And 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 it 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 say Mr M and Mrs M failed to take reasonable care not to make a misrepresentation when they selected the limit of £75,000 for their contents. This is because Mr M agreed with the third-party company appointed a more accurate value for their contents was £150,000.

I've looked at the screen prints provided from when Mr M and Mrs M took out the policy. This shows there were two levels of cover offered. The key differences were between the sum insured for the buildings and the sum insured for contents.

Specifically, there were two options offered under the policy Mr M and Mrs M took out. For the contents, there was a limit of either £50,000 or £75,000. What the screen print doesn't show is any information accompanying the different levels, setting out what selecting either option for contents cover meant for a customer. It also doesn't show an explanation of what customers needed to consider when selecting either limit or, for example, didn't clarify if the contents cover needed to be sufficient to replace their items as new.

Nor were there any questions asked when Mr M and Mrs M selected the upper limit. As I've said, there was only a choice between the two levels of cover offered under the policy. I can't see there was any information or guidance provided to help customers understand what selecting either option would mean before they took the policy out, or when they went on to renew their policy.

RSA says it provided reminders to Mr M and Mrs M in their policy renewal documents to consider their level of cover. It says:

> *"Need to change your cover?*
> *You might have bought some more items for your home and garden or had an extension in the last year, it's surprising how quickly spending adds up. Make sure you check your policy still offers the right cover for you…"*

While I acknowledge the wording in the policy renewal documents includes a reminder to the policy holder to check if the cover limit is sufficient, the policy still only offers two levels of cover. It doesn't set out on what basis the contents cover should be taken (as I've said, for example, did it need to be sufficient to replace their contents as new). And Mr M and Mrs M decided that of the two options available to them, the limit of £75,000 was sufficient.

In this instance, I don't consider there was any guidance provided by RSA that advised or required Mr M and Mrs M to select a level of cover to replace their contents as new or set out what the consequences of not doing so might be. There was no explanation available about what might happen if they selected an insufficient level of cover for their contents.

In considering the information provided, I don't consider Mr M and Mrs M were asked clear questions when selecting their level of cover for their contents. It follows, I don't agree they misrepresented their position and or that RSA acted fairly in voiding their policy.

To put things right, RSA should reinstate the policy, and consider their claim subject to the remaining policy terms. It should also remove all records of the voidance and pay Mr M and Mrs M £150 for the trouble and upset caused as a result of the voidance.

My final decision

I uphold this complaint. To put things right I require Royal & Sun Alliance Insurance Limited to:

- Reinstate Mr M and Mrs M's policy and consider their buildings claim (subject to the remaining policy terms).
- Remove all records of the voidance
- Pay Mr M and Mrs M £150 compensation for the distress and inconvenience they experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 5 April 2023.
Emma Hawkins
Ombudsman