

The complaint

Mr S complains about Royal & Sun Alliance Insurance Limited (RSA) avoiding his home contents insurance policy after he told them (when he found out) his partner previously had an insurance policy avoided.

References to RSA include their agents who administer the policy.

What happened

Y Mr S had a home contents insurance policy with RSA, which he took out in September 2020. At the time he received the renewal notice in September 2021, his partner (with whom he lived) told him they'd previously had a motor insurance policy avoided in 2015. He immediately contacted RSA to tell them about the avoidance.

Mr S didn't hear further until December 2021, when RSA wrote to say they were avoiding his policy from its inception in September 2020 but refunding the premiums he'd paid (£65.79 for the policy year to September 2021). RSA said when he took out his policy, he was asked whether he or his family (which would include his partner) had any insurance refused, cancelled, declined or declared void. He'd answered 'no'.

Unhappy at the avoidance, which would appear on his insurance record, Mr S complained to RSA. But they didn't uphold it. In their final response they restated the question he was asked when he took out his policy and his answer of 'no'. They accepted he wasn't aware of his partner's previous policy avoidance. But had they been when he took out his policy, they wouldn't have offered cover. Based on this, RSA confirmed their decision to avoid the policy, as they didn't think they'd done anything wrong.

Mr S then complained to this service. He didn't think RSA had considered what he told them about his partner's insurance being avoided. He also thought he'd answered truthfully when he was asked whether he 'knew' of any previous insurance being refused, cancelled, declined or declared void. He knew the importance of being transparent, which is why he contacted RSA immediately to tell them of the avoidance. He wanted the record of the avoidance of his policy to be removed.

Our investigator didn't uphold the complaint. She concluded Mr S hadn't been aware of the avoidance, but he should have asked his partner whether they'd previously had insurance avoided. As the question about previous avoidance had been answered incorrectly, the investigator thought Mr S hadn't taken reasonable care when answering. So, he'd made a qualifying misrepresentation when taking out his policy. She thought the misrepresentation was careless, as Mr S wasn't aware of the avoidance. So, RSA acted reasonably in treating the misrepresentation as careless and avoiding the policy from its inception (as they wouldn't have offered cover had they known) and return the premiums paid.

Mr S disagreed with the investigator's conclusions and requested an ombudsman review the complaint. He said he'd been honest in telling RSA about his partner's avoidance. Having worked in finance, he knew the importance of the previous avoidance and telling RSA as

soon as he became aware. He thought he'd been penalised for being honest and (through his policy being avoided and recorded) this would encourage consumers to be dishonest. Mr S's partner confirmed they thought the previous avoidance wasn't significant given how long ago it was, so hadn't mentioned it to Mr S when their relationship began in 2018. It was seeing the renewal letter and the question about previous avoidance that prompted them to tell Mr S. The partner also thought Mr S had been penalised for his honesty.

In my findings I thought Mr S had been asked for a clear confirmation about insurance being refused, cancelled, declined or declared void. However, the confirmation was open-ended, so wasn't subject to any time limit – unlike the confirmations about being declared bankrupt and (arguably) the confirmation about criminal convictions that aren't spent. I also noted that previous claims were also asked for within the last five years. What this meant was the question relies on the consumer knowing about all instances, however long ago they occurred. Whereas other elements are time limited. I wasn't persuaded this was fair or reasonable.

I also considered what Mr S said about being asked if he 'knew' about any previous avoidances. The confirmation asked was that the statements were true *"to the best of your knowledge"*. Given what Mr S said about not being aware of his partner's previous avoidance until they told him, I thought it reasonable for him to think he answered the question (confirmed the statement) 'to the best of his knowledge'.

I also considered the other, specific circumstances of the case. That the previous avoidance occurred five years before Mr S took out his policy (and six years at the time of its renewal). The avoidance was also three years before Mr S and his partner began their relationship, meaning he wouldn't have been aware of it when it happened.

Taking all these points into account, in the specific circumstances of the case, I concluded Mr S didn't make a careless misrepresentation when he took out his policy.

While I concluded Mr S didn't make a careless misrepresentation, as RSA wouldn't have offered the policy had they known about the previous avoidance, then avoiding the policy from inception (and refunding the premiums) was reasonable. As Mr S hadn't asked for his policy to be reinstated, I concluded RSA didn't need to take any action on this point.

But I considered what I thought RSA should do, given my conclusion about Mr S not making a careless misrepresentation. Mr S declared the previous avoidance of his partner's policy, and it would be reasonable for him to declare it to future insurers when applying for cover (if required). That could affect his ability to obtain cover, or the terms offered. To have to declare a second avoidance (of his policy by RSA) would, given my conclusions above, be unreasonable. He would, in effect, be having to declare two avoidances for, in essence, the same reason (the avoidance of his partner's policy).

Taking all these factors into account, I concluded a fair and reasonable outcome would be for RSA to remove all record of their avoidance of Mr S's policy, both from any internal or external databases.

Because I reached a different conclusion to our investigator, 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 has acted fairly towards Mr S.

The key issue concerns RSA avoiding Mr S's policy, after he told them (when he found out) about his partner's previous avoidance. Mr S says he was penalised for being open in telling RSA as soon as he found out. He says he was asked whether he 'knew' of any previous avoidances and other facts. And he didn't know about his partner's previous avoidance when taking out the policy (and when invited to renew it). RSA say Mr S answered the question about previous avoidances incorrectly, so made a careless misrepresentation. They wouldn't have offered the policy had they known about the avoidance, so they acted fairly in avoiding the policy from inception (and refunding the premiums).

In considering the issue, I've first looked at the relevant law in this case. This 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 must 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 a 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.

Given its importance (and the answer of 'no') I've considered the question Mr S was asked when he took out his policy (which he did online). RSA say Mr S was presented with the following statement, which he was asked to confirm:

"Our home insurance is issued on the basis that you can confirm that the following statements are true, to the best of your knowledge:

You and your family HAVE NOT:

- Got a criminal record for anything (except driving or speeding) that you are still required to disclose.*
- Had any insurance refused, cancelled, declined or declared void.*
- Been declared bankrupt in the last 5 years.*

I've noted the statement is clear in the confirmation being required, as one of three statements (rather than a specific question). However, the element about insurance being refused, cancelled, declined or declared void is open-ended. That is, it isn't subject to any time limit – unlike the following element about being declared bankrupt (and arguably the first element, which only requires disclosure of criminal convictions that aren't spent). Separately, I've also noted that previous claims are also asked for within the last five years.

What this means is that the question about insurance being refused, cancelled etc relies on the consumer knowing about all instances, however long ago they occurred. Whereas other elements are time limited. I'm not persuaded that this is fair or reasonable.

Mr S says he was asked if he 'knew' about any previous avoidances. While the statement above isn't worded specifically in that way, it does ask whether the statements are true "to the best of your knowledge". Given what Mr S has said about not being aware of his partner's previous avoidance until they told him, I think it's reasonable for him to think he answered the question (confirmed the statement) 'to the best of his knowledge'. Particularly as it's not disputed (by RSA) he wasn't aware of the avoidance until his partner saw the renewal notice and told Mr S about the previous avoidance.

I've also considered the other, specific circumstances of this case. These are that previous avoidance occurred five years before Mr S took out his policy (and six years at the time of its renewal). The avoidance was also three years before Mr S and his partner began their relationship, meaning he wouldn't have been aware of it when it happened. And Mr S complied with the policy terms and conditions with respect to "Changes in your circumstances" that:

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

- Any changes to the information you've previously provided to us and shown on the most recent Statement of Facts document sent to you."*

Taking all these points into account, in the specific circumstances of the case, I've concluded Mr S didn't make a careless misrepresentation when he took out his policy.

While this conclusion means RSA haven't acted fairly and reasonably in avoiding his policy, I've considered what RSA have said, that they wouldn't (under their own underwriting guidelines) have offered the policy to Mr S had they known of his partner's previous avoidance. In support of this, they've provided an extract from their underwriting manual that states:

"Action taken by previous insurer

Policy cancelled or void due to non-disclosure of material facts such as claims history or previous convictions history

Underwriting action

Decline"

While this extract doesn't specifically mention non-disclosure of insurance having been refused, cancelled, declined or declared void, I'm prepared to accept RSA wouldn't have offered the policy because of this (as a 'material fact').

While I've concluded Mr S didn't make a careless misrepresentation for the reasons set out above, as RSA wouldn't have offered the policy had they known about the previous avoidance, then avoiding the policy from inception (and refunding the premiums paid for the policy year to September 2021, as no premiums were collected for the policy renewal from September 2021) is reasonable. And neither has Mr S asked for his policy to be reinstated (he may have taken out cover with a different insurer). So, I won't be asking RSA to take any action on this point.

But I've considered what I think RSA should do, given my conclusion about Mr S not making a careless misrepresentation. In making his complaint, Mr S has asked for his insurance record to be amended to remove record of RSA's avoidance of his policy. By implication this would also mean not having to declare the avoidance of his policy to future insurers. I've thought about this in the specific circumstances of the case. Mr S has declared the previous avoidance of his partner's policy (which led to RSA's avoidance of his policy). And it would be reasonable for him to have to declare it to future insurers when applying for cover (if required). That may affect his ability to obtain cover, or the terms under which cover is offered (including the premium). Which is what happened when RSA avoided his policy. To have to declare a second avoidance (of his policy by RSA) would, given my conclusions

above, be unreasonable. He would, in effect, be having to declare two avoidances for what is in essence the same reason (the avoidance of his partner's policy).

Taking all these factors into account, I've concluded a fair and reasonable outcome would be for RSA to remove all record of their avoidance of Mr S's policy, both from any internal or external databases.

My provisional decision

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

- *remove all record of their avoidance of Mr S's policy, both from any internal or external databases.*

Neither Mr S or RSA provided any additional comments by the date requested for responses.

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 Mr S.

As neither Mr S or RSA provided any additional comments by the date requested for responses, then my final decision remains the same as my provisional decision, for the reasons set out above.

My final decision

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

- remove all record of their avoidance of Mr S's policy, both from any internal or external databases.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 January 2023.

Paul King
Ombudsman