DRN-3903262

The complaint

Mr A has complained that Royal & Sun Alliance Insurance Limited (RSA) avoided his buildings insurance policy and refused to pay his claim.

What happened

Mr A took out a buildings insurance policy with RSA. Mr A's property was damaged by a fire, so he contacted RSA to make a claim. RSA said Mr A had answered the question it asked about who lived at the property incorrectly when he took out the policy. It said it considered this to be deliberate or reckless misrepresentation, which entitled it to avoid the policy and decline the claim.

Mr A brought his complaint to this service. Our investigator upheld it. He said RSA hadn't shown the misrepresentation was deliberate or reckless. So, he said it should be treated as careless misrepresentation. He said RSA should reinstate the policy, remove any record of the policy voidance from databases, proportionately settle the claim and pay Mr A £400 compensation.

RSA didn't agree that it could be regarded as careless misrepresentation, so the complaint was referred to me.

I issued my provisional decision on 14 December 2022. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

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.

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 thinks Mr A failed to take reasonable care not to make a misrepresentation when he stated that only he lived at the property, as tenants also lived there.

I've looked at the information Mr A provided about who lived at the property and the assumptions he was asked to confirm. I've also seen the findings from RSA's investigation. The policy documents showed Mr A had been asked to confirm "Everyone that resides at your home is a family member" and that Mr A had said one adult lived at the property. RSA's claim investigation found evidence that the property seemed to be multi-occupancy and that several people had lived at the property over a period of a few years.

I think the information Mr A needed to confirm was clear. Mr A said he was the only person living at the property. Based on all the evidence I've seen, I think it's likely there were tenants, or other people who weren't family members, who lived at the property over a number of years. Mr A has also said a tenant had recently moved into the property. I think this means Mr A failed to take reasonable care not to make a misrepresentation when he said who lived at the property.

So, I need to consider whether Mr A's misrepresentation was a qualifying one. In other words, look at whether it made a difference. RSA has told this service "If the property was tenanted but had 6 people or less in it, we would have quoted so long as the [policyholder] was resident for a web quote. We would have offered full cover." RSA confirmed it hadn't tried to argue there were more than six people at the property. It also provided information to this service that said: "…due to the minimal difference in premiums and no terms applying, we had no underwriting concerns for this".

When RSA wrote to Mr A to say he had made a misrepresentation it said it wouldn't have offered him the policy. As this was different to the information RSA provided to this service, which was that it would have provided full cover, I asked RSA to clarify this. I also asked RSA to provide the underwriting details showing what difference it would have made to the terms it would have been willing to offer Mr A. When RSA replied, it didn't respond to either of these issues and instead focussed on why it thought Mr A had made a deliberate misrepresentation and what action it thought it could therefore take.

Based on what I've seen, despite what it told Mr A, it's my understanding that RSA would have offered Mr A a policy. RSA hasn't provided evidence to show how this would have affected the terms on which it offered the policy, if at all. So, I don't think RSA has provided sufficient information to show it would have made a difference if it had known there were tenants at the property.

This means I'm not currently satisfied that Mr A's misrepresentation was a qualifying one. It also means there is no action than can be taken under CIDRA, such as voiding the policy. Although RSA has said it thinks the misrepresentation was deliberate, I don't need to consider this, as the type of misrepresentation isn't relevant when it isn't a qualifying one.

As a result, I currently intend to uphold this complaint and to require RSA to reinstate the policy, remove any record of the voidance from internal and external databases and reconsider the claim based on the terms and conditions of the policy.

I've also thought about compensation. It's my understanding that Mr A's property was significantly damaged by the fire and that he had to move in with his parents. He has also said the way the claim was dealt with has impacted his mental health. Although I think Mr A was likely to have been caused distress and inconvenience by the fire itself, I think the way the claim has been handled caused additional stress and upset to Mr A. As a result, I currently intend to say RSA should pay Mr A £100 compensation.

I asked both parties to send me any more information or evidence they wanted me to look at by 11 January 2023.

Mr A said he had paid for work to repair the property as RSA hadn't dealt with the claim. Mr A queried whether RSA reinstating the policy meant he could claim through them for the damage. He said £100 wasn't enough compensation.

RSA acknowledged receipt of my provisional decision and the date it needed to respond by. It said it would consider if it wanted to provide any comments. The deadline passed and RSA didn't provide anything further.

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.

Having done so, I've decided to uphold the complaint and for the reasons given in my provisional decision. Mr A has queried what RSA is required to do. RSA needs to reinstate the policy and assess the claim. As Mr A has already had work carried out, he can provide the details of that work, and the costs, to RSA so it can consider them and whether it should pay for that work or any other damage. Given what happened with the claim, I don't think I can fairly say what should or shouldn't be covered as part of the claim. If Mr A isn't satisfied with how RSA assesses the claim or any settlement offered, he can raise that as a new complaint with RSA. The £100 compensation wasn't to cover the costs Mr A paid towards repairing the damage, it was because of the distress and inconvenience caused by issues with the claim. I remain of the view that £100 compensation is appropriate.

Putting things right

RSA should reinstate the policy, remove any record of the voidance from internal and external databases and reconsider the claim based on the terms and conditions of the policy. It should also pay £100 compensation.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Royal & Sun Alliance Insurance Limited to:

- Reinstate the policy.
- Remove any reference to the voidance from internal and external databases.
- Reconsider the claim based on the terms and conditions of the policy.
- Pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 February 2023.

Louise O'Sullivan
Ombudsman