

The complaint

Mr and Mrs S complained that Royal & Sun Alliance Insurance Limited (“RSA”) unfairly declined their claim and voided their home insurance policy due to suspicion of fraud. Mr and Mrs S were represented during the claim, but for ease and simplicity, I’ll only refer to Mr and Mrs S.

What happened

Mr and Mrs S made a claim to RSA when they reported a theft at their home. A handbag was stolen which contained various items, including jewellery, a purse and a mobile phone.

RSA appointed a specialist contractor to validate and investigate the claim. Based upon the contractor’s report RSA declined the claim. RSA said the claim had been deliberately misrepresented from the outset. RSA decided to void the policy from the date the claim was made, which meant the claim was effectively declined or not considered. It didn’t refund any premium.

RSA said “your policy contains a specific fraud condition. This explains the consequences of any misrepresentation or failure to comply with the requirement for the claim to be presented in good faith. It is due to this breach in your policy condition that this action has been taken”.

Mr and Mrs S have provided their own evidence that contradicts what has been said by RSA’s contractor who carried out the investigation. They said RSA has been unwilling to consider or investigate the facts which have been provided to them. Mr and Mrs S don’t think they have been treated fairly. They want their claim settled and their policy reinstated.

Our investigator decided to uphold the complaint. She didn’t think RSA had acted reasonably. She didn’t think RSA had shown Mr and Mrs S had acted dishonestly, so she thought RSA should re-instate the policy and amend any records about the potential fraud. She also thought RSA should consider the claim in line with the remaining terms and conditions of the policy. RSA disagreed, so the case has been referred to an ombudsman.

My (first) provisional decision

I issued a provisional decision on this on 31 January 2023. I said:

“RSA said it acted as Mr and Mrs S breached the fraud condition within the policy. So, I have checked what the policy sets out in respect to fraud. It states:

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

- *a claims payment under your policy; or*
- *cover for which you do not qualify; or*
- *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”.

I think the actions RSA has taken are reasonable if it has shown fraud has occurred. It will have acted in line with the terms and conditions of the policy. However, I will review the evidence it has used to reach its decision that fraud occurred. I will look to see what I think is most likely to have happened on the balance of probabilities.

RSA appointed a specialist contractor that has expertise in claims where there is suspicion of fraud. I think this was a reasonable approach, I think the circumstances of the claim provided reason for suspicion. I have considered what the specialist contractor concluded in his report based upon the evidence he collected.

The report is detailed, and the specialist contractor concluded a fraud was proven – the report set out concerns about the claim. There were concerns in relation to facts presented – which included –

- the contractor couldn't verify the store where Mrs S said she intended to have her jewellery cleaned*
- the details of the phone that was stolen*
- an evolving story as to who bought and set-up the phone that was stolen.*

The specialist contractor thought these concerns were heightened as Mr and Mrs S had delayed reporting the incident to the Police. The specialist contractor used the report to set out other aspects of the claim where he thought there was unusual circumstances and inconsistencies in what had been said.

I have reviewed the report and the evidence that has been provided and I do find it persuasive. The evidence provided has supported what the specialist contractor concluded. It seems thorough. However, when RSA shared its decision with Mr and Mrs S, they provided some further evidence of their own, which provided additional information in relation to the stolen phone.

Mr and Mrs S provided a signed testimony from one of their employees. The testimony set out the employee was responsible for part of the activity which led to Mr and Mrs S been accused of fraudulent activity. Mr and Mrs S said they were completely unaware of the actions of their employee. They said the employee wasn't acting on their behalf. They also provided some additional information in relation to the jewellery being cleaned.

RSA's specialist contractor has doubted what Mr and Mrs S said in relation to the jewellery being cleaned. When RSA's specialist contractor checked the details of the jeweller that was given to them by Mr and Mrs S, it didn't exist. Then, Mr and Mrs S provided a new name for the jeweller and this was proven to exist – they said RSA's specialist contractor had taken the name down incorrectly. In addition, I've noted that when RSA has asked for proof of ownership for the jewellery – Mr and Mrs S hasn't been able to provide this. I think this provides support to RSA stance that the circumstances of the theft / claim were suspicious.

Mr and Mrs S didn't feel the new evidence provided by them was properly considered by RSA. So, I've looked at this. I can see RSA asked for its specialist contractor to provide a supplementary report in relation to the new evidence that had been submitted. I think this was a reasonable course of action. Therefore, I don't think it's fair to say this information wasn't considered. I have reviewed the supplementary report.

The report provides a commentary that demonstrates the specialist contractor has considered the points that were raised by Mr and Mrs S. The contractor stated in his report that he maintained his view that a fraud had been committed. The report explained some of the background investigations he'd carried out. As part of his conclusions, he said: "we do have concerns with the statement provided as we have needed to challenge discrepancies within it" and "concerns are raised over the integrity of [employee] and the reliability of the

statement he has now provided”.

From reviewing the report, I think the specialist contractor has considered the information that has been provided. I appreciate Mr and Mrs S won't like the conclusions, but I can't say RSA has been unreasonable in asking its expert contractor to carry out these investigations. I think it has followed a reasonable process and based its decision on the reports carried out by the appointed specialist. I have assessed the evidence, including the expert reports and the testimonies provided by Mr and Mrs S. I have decided on the balance of probabilities that it's more likely a fraud has been committed. I think RSA has been fair in making its decision. So, I don't intend to uphold this complaint.

When making this assessment, I haven't considered one piece of evidence but all the evidence that has been put forward. I think the specialist contractor has highlighted numerous inconsistencies in the details that have been presented during the claim. I think the specialist contractor's report carries most weight. I appreciate the efforts Mr and Mrs S have made in getting their employee to make a statement. However, I don't think this evidence outweighs the evidence from the specialist contractor.

An accusation of fraud is very serious as it can have long lasting consequences on a policyholder. Mr and Mrs S could have difficulty with getting future insurance cover and it's likely to cost significantly more. It can cause other issues as well. Therefore, I haven't taken this decision lightly. However, I think RSA has been reasonable in concluding that a fraud has occurred and has taken the appropriate course of action. I think this is most likely what has occurred. Therefore, I don't intend to uphold this complaint”.

Responses to my provisional decision

Mr and Mrs S disagreed with my provisional decision, and they've provided an articulated response which I shall summarise.

During an interview with RSA's specialist contractor, Mr and Mrs S think the contractor misheard the name of the jeweller where they said they planned to get their jewellery cleaned. When RSA's contractor searched and couldn't find the jeweller, Mr and Mrs S thinks it should've checked it had captured the details correctly. Mr and Mrs S have explained the background to why they wanted the jewellery cleaned. They've also offered to ask for their jewellers to vouch for them as regular customers.

Mr and Mrs S made the same points they'd made before in relation to the phone that was stolen, so I won't repeat these.

Mr and Mrs S explained why they'd provided a testimony from their employee. They have explained how they informed RSA's contractor that he would be willing to be interviewed in relation to the claim, but RSA's contractor declined the offer.

Mr and Mrs S explained the loss was discovered around 10pm at night and they informed the Police the following morning, so didn't think they had delayed reporting the loss. They didn't think it was practical contacting the Police late at night and potentially receiving a visit from the Police with young children in the house.

Mr and Mrs S confirmed they had provided photographs of the stolen items which was contrary to what RSA had said.

RSA accepted my provisional decision and have provided further information in response to questions by our service.

RSA provided the recorded call of the interview it held with Mr and Mrs S. However, it said it didn't think *"any information provided by the [jewellery] cleaner would have any impact on the evidence obtained"*.

The photos of the stolen items were shared with RSA, and it was asked if these changed their viewpoint on the claim. RSA said *"whilst these images show jewellery and have EXIF data attributable to a timeframe spanning 7 minutes on 3 October 2021. This does not alter the fact that the insured has misrepresented the other part of the claim for the iPhone. Due to the timeframe involved, it is not outside the realms of possibility that these images could have been created with an edited time and date by someone who knows what they are doing. My question is why weren't these images provided when we asked for them? Although there is EXIF information for the date, there is no GPS data which is normally present in such images. In any event, I don't think this would alter the outcome, due to the general presentation of the claim"*.

My (second) provisional decision

I issued a second provisional decision on 8 March 2023, as the evidence changed my decision. I said:

"In my earlier provisional decision, I said my decision was based on the balance of probabilities. I can't be certain of what has occurred. I have weighed up the evidence and decided on what I think is most likely to have occurred. I said:

"When making this assessment, I haven't considered one piece of evidence but all the evidence that has been put forward. I think the specialist contractor has highlighted numerous inconsistencies in the details that have been presented during the claim. I think the specialist contractor's report carries most weight. I appreciate the efforts Mr and Mrs S have made in getting their employee to make a statement. However, I don't think this evidence outweighs the evidence from the specialist contractor".

Based on the information received in these responses, I think the number of inconsistencies in the details are significantly reduced. So, I think the balance of probability has swung towards Mr and Mrs S' account. Therefore, I intend to change my decision and I intend to uphold this complaint. I'll explain more why I think this.

I have listened to the recorded interview that RSA's contractor had with Mr and Mrs S about the claim. I think Mr and Mrs S do provide the correct name of the jewellers. I think RSA may have misheard this name or noted it down with an incorrect spelling. I can also hear Mr and Mrs S providing further information about the jeweller and they mentioned that they weren't sure whether the jeweller was registered. Mr and Mrs S also explained the reasoning for having the jewellery cleaned. I know RSA has said this doesn't have a bearing on the claim, but I disagree. This has cleared up one of the inconsistencies in their account. Mr and Mrs S have also said their jeweller would vouch for them as regular customers. I don't think RSA should ignore this information.

RSA commented that they'd received no proof of ownership. However, Mr and Mrs S have provided photos of the lost items (they said these had been provided before). RSA has made comments that further testing may prove these photos to be unreliable. However, they haven't shown any outcome of any tests. I don't think this is a reasonable way to operate. If RSA has discounted these photos, I think they should've explained why and supported this with appropriate evidence.

Given RSA's contractor didn't properly investigate these areas, I find the credibility of the report less reliable. I appreciate RSA has explained why they think the claim was

misrepresented (regarding the phone). However, I think Mr and Mrs S have explained why this happened. On its own, I don't think this (the phone) is enough to say a fraudulent activity has occurred. I don't think it has been proven. Therefore, I intend to uphold this complaint. I haven't seen evidence to suggest what Mr and Mrs S has said is inaccurate. So, I intend that RSA re-instate the policy and move any markers from Mr and Mrs S' account in relation to fraud. I also intend for RSA to consider the claim in line with the remaining terms and conditions of the policy".

Responses to my (second) provisional decision

Mr and Mrs S accepted my decision and clarified some further points on the circumstances of the claim.

RSA didn't accept my provisional decision. RSA asked for me to confirm whether I'd considered information provided about who set-up the phone – it said Mr and Mrs S had provided false information.

RSA repeated its point about discrepancies in Mr and Mrs S' account in relation to the invoice produced and where the phone was bought from.

RSA also said "the insured has never been able to provide any iCloud account information for the device, nor has she provided any evidence that the phone was blocked or blacklisted. It isn't possible to set up or use an iPhone without such an account. I'm also mindful that the insured has been the director of five companies, so this also calls into question how she receives or sends emails on a daily basis".

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.

As I've stated before an accusation of fraud is a serious allegation, and it can have widespread implications for Mr and Mrs S. Therefore, I would expect the evidence to support the allegation to be strong. I don't think RSA has proven on the balance of probabilities that a fraud has been committed. There remains a significant doubt in mind. Therefore, I don't think it's fair that this claim has been declined on the basis the fraud condition has been breached. So, I will be upholding this complaint.

I have considered that Mrs S initially said her husband set-up the phone when she was interviewed about the claim. Mr and Mrs S later confirmed the phone was set-up by their employee. Whilst there is a difference in account, I don't find this significant, and I think it carries less weight. I think it's likely Mrs S just assumed her husband had set-up the phone as she hadn't. I don't think this is an unreasonable assumption.

Mr and Mrs S have confirmed they didn't have an icloud account, which is why they didn't provide this information to RSA. I've considered this as unusual. But as Mr and Mrs S have explained why they purchased the phone – they wouldn't need the full functionality of the phone for this purpose, so it's plausible they didn't need an icloud account. RSA has said the phone can't be used without an account, but I've checked this point, and I don't agree. In terms of blocking their phone, Mr and Mrs S said they asked their employee to do this.

RSA also questioned how Mr and Mrs S would use the phone for sending emails with so many companies. Mr and Mrs S has explained how three of these businesses are dormant and Mrs S completes most of the administration for the two businesses on her computer.

I think Mr and Mrs S have tried to answer the questions that RSA has put to them. Whilst, RSA may think the circumstances are suspicious, I don't think it has done enough to evidence a fraud has occurred. I think if it had doubts about the employee's testimony, it should've interviewed the employee as part of its investigation when it had opportunity to do so. I don't think it's then reasonable for RSA to suggest the signed written statement from the employee is false. I think the investigation was flawed in relation to the jewellery cleaning company. So, for the reasons, I've set out in my decision I uphold this complaint. As I haven't received any new information, I see no reason to change my decision.

My final decision

My final decision is that uphold this complaint. I require Royal & Sun Alliance Insurance Limited :

- re-instate the policy
- amend any records about the potential fraud
- consider the claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 26 April 2023.

Pete Averill
Ombudsman