

The complaint

A company that I'll refer to as D has complained that Royal & Sun Alliance Insurance Limited (RSA) unfairly voided its policy and declined its property insurance claim.

Mr B, a director of D, has brought the complaint on D's behalf through a representative. For ease of reading, I will refer to D throughout.

What happened

D held a Business Combined insurance policy with RSA. In December 2021, D's premises were burgled which resulted in D claiming for its losses on its policy. D said its losses were just under £80,000.

RSA said that on 4 January 2022, D emailed a loss list for its claim detailing 66 items. D supported this loss list with receipts, invoices and a stock inventory. A video call to discuss the theft took place on 22 March 2022. The loss list was discussed and statement was drawn up from the call. This was sent to D with a request to confirm the accuracy of the information. D provided email confirmation of the accuracy of the list on 25 March 2022.

RSA initially accepted D's claim and made an offer to settle the claim for just under £50,000 due to D being underinsured. However, an allegation was made which suggested that Mr B was involved in the burglary. This was shown to be from a disgruntled ex-employee who Mr B reported to the police for harassment. But RSA said it wanted to carry out a more in depth analysis of the theft.

RSA obtained CCTV footage from the burglary and on 21 April 2022 told D that the footage indicated that, based on the weight of the items and the size of the bag used to steal them, the amount D had claimed was not feasible.

RSA appointed a forensic scientist, which I'll refer to as C, to look into the claim. C attended D's premises to measure and weigh items. D agreed that the claim did not appear to be accurate and provided RSA with a new loss list setting out losses of just under £65,000. D said that some of the items on the original list had been sold and shipped but this had not been initially apparent due to how the orders were shown on the system. The overall number of items which D listed as stolen reduced from 66 to 58. The number of larger and medium sized items claimed for reduced but the number of smaller sized items increased.

RSA said that D had exaggerated its loss and it did not believe that it was an innocent oversight. Therefore, it voided D's policy from 4 January 2021 under Part 4 of the Insurance Act 2015 (the Act), which was the date the original loss list was provided. This meant RSA refused to pay D's claim and said it reserved the rights to pursue D for £4,378.92 which was the cost of C's investigation.

D complained to RSA. It said the claim value was difficult to assess and at that time the inventory was "a mess" and Mr B wasn't in control of it.

RSA said D had submitted documentation in support of the items that it originally said had

been stolen and had confirmed that the amount was correct on more than one occasion. RSA said that as the owner, Mr B was solely responsible for knowing the stock levels and it did not believe that D did not know what had been stolen.

Unhappy with RSA's response, D brought its complaint to our service. It said there were minor inconsistencies in the value of the claim submitted which was due to an innocent mistake at a very stressful time. D said that its accounts executive had recently left and it had instructed another business, who I will refer to as N, to carry out tasks relating to the inventory and there was a period of "teething problems" during the transition. D said it had not realised that when an item showed on the system as "pending" it had actually been shipped.

D said it had worked with C to reassess the amount claimed once it brought its attention to the discrepancies but, prior to this, D had no reason to consider that the amount might not be correct. D said it was unreasonable for RSA to suggest that Mr B was solely responsible for knowing the correct stock levels.

D explained the significant impact the claim has had on Mr B personally. D asked that RSA pay the £50,000 it had previously offered, remove its details from any fraud databases and not seek to recover the amounts paid out in investigating the claim.

Our Investigator looked into D's complaint and recommended it be upheld. He didn't think RSA had shown that the claim was most likely exaggerated. To put things right he suggested that RSA reinstate D's policy and reconsider its claim. It said RSA should remove D from any fraud databases and provide a letter to say that the policy had been voided in error. He also said that RSA should be responsible for the costs of the investigation.

D accepted our Investigator's view and explained the impact of RSA's decision, such as not being able to get insurance elsewhere.

RSA did not agree and asked for an Ombudsman's decision. In summary it said:

- If it was required to pay the claim it would be on the basis of the reduced claim value rather than the original calculation.
- D confirmed on three occasions that the amount claimed was accurate and provided invoices/receipts for the stolen items.
- D informed C that: Mr B was not familiar with the stock recording system; the information on the system was incomplete and difficult to locate as it had been incorrectly recorded by ex-employees; some items had been sold and shipped but the transactions had been listed as 'pending' at the time the theft was reported and this led D to believe some additional items had been stolen when they had been sold.
- The number of larger items had reduced from 48 to 34. Medium sized items reduced from 11 to 10. Smaller items increased from 7 to 14. Overall, the number of items claimed for reduced from 66 to 58.
- It did not think the amount/volume of items on the revised list would have fitted into the bag and been pulled along the ground by the thief with the ease shown in the CCTV footage. It does not think that a bag which carried 120kg of items would bounce with such ease.
- D should have taken steps to ensure the accuracy of the claim being submitted even if the accounts were done by N.

- D said that items showed as 'pending' until they had been approved. However, its earlier statement indicated that the system was updated on a daily basis.
- CCTV footage indicates that the bag was only half full. The volume of the items on the revised list would be more than the volume of the half full bag.

I issued a provisional decision on this complaint on 20 April 2023 explaining why I did not intend to uphold it. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It is not for me to decide whether D submitted a fraudulent claim. Instead, I have to decide whether RSA made a decision which was fair and reasonable in all of the circumstances.

Under [Part] 4 of the Act an insurer is entitled to void a policy from the date of a fraudulent act. If an insured makes a fraudulent claim an insurer does not need to pay that claim. When deciding whether it is fair and reasonable for an insurer to decline a claim for a fraudulent act I also consider whether any false information given is material. This is because it has been established in case law that if false information provided is not material to a claim then the insurer can't decline the claim. If a claim amount was deliberately exaggerated that would be considered material to the claim as the insured would be trying to get a benefit they weren't entitled to.

I've started by considering the information D provided in support of its claim. This included an inventory list, a loss list and receipts and invoices to support its claim for the stolen items. D also explained how orders were processed. Within its statement taken in March 2022 D explained that N loads the inventory on a daily basis and if there is a purchase on the website the details are sent to the inventory system.

I've also considered D's reasons for how it claimed the wrong amount. D provided the following explanation from N about the system it uses: "If a sale/customer order remains in draft it won't be taken out of stock. When the website takes an order it will automatically send to zero but it will remain in draft until approved. When approved it will take out of the inventory stock levels."

D said that when making the claim it would have used the figures that were showing in stock as it had not previously been made aware of how the system handles stock. D also said that there had been "teething problems" with N and the amount originally claimed was an innocent mistake.

Having carefully thought about D's explanation of how it claimed for the wrong items, I don't think its reasons are sufficient to satisfy me that it was unreasonable for RSA to say that it was unlikely to be a genuine error. When making a claim the onus is on the insured to set out what it has lost. When making its statement D did not give any indication that it didn't know how the system operated or that N was new to the system. Instead, D set out how the system and website operated to record the stock levels and said that the inventory was updated on a daily basis.

I have taken into consideration that D took on board RSA's concerns and revised the loss list when alerted to the CCTV footage. I have also noted D's point that it did not have any reason to think that the loss list might not be accurate before this. However, I don't believe that it has sufficiently explained how the list of items stolen changed from those set out on the original list. The number of items did not only reduce but also many of the items claimed for changed e.g. the number of smaller items claimed for increased from 7 to 14. In view of

this, I don't intend to interfere with RSA's decision to find that the original claim was fraudulent.

I have considered RSA's point that the claim remains exaggerated but I can also see that C provided a report which concluded that the 58 items on the resolved list could plausibly have been put into the bag and dragged by one person. C also said the items could have given the bag the appearance of being half full. However, I don't think this makes a difference to the outcome of this decision because in line with the Act, RSA is entitled to void the policy and decline the claim due to it finding that the original claim was exaggerated. I also think RSA is entitled to recover the cost of instructing C as it would not needed to have paid for this this if the claim was accurate.

I am aware of the significance that my decision will have on D, and on Mr B personally, but, based on the information provided, I do not think it would produce a fair and reasonable outcome for me to uphold D's complaint."

RSA did not provide any further comments.

D was unhappy with my provisional decision. It reiterated the impact of RSA's actions and the impact of my not upholding this complaint. D said that it had not seen the CCTV footage and that the door to its premises had been left open all night after the theft. D provided a copy of an email to RSA dated 1 February 2022 to support that it had accepted RSA's initial offer.

D said that it was for RSA to prove that D had been fraudulent, as set out in 'Derry v Peek – 1889', and not for D to prove that it hadn't been. It said the information put forward by RSA which cast doubt on D's honesty was not sufficient to prove fraud.

In response, I said that I was required to reach a decision based on what I thought was most likely to have happened. I clarified that when considering the information submitted by both parties I thought RSA had done enough to show that the claim was most likely exaggerated and therefore it could decline D's claim due to a fraudulent act.

D said that there was a higher standard required for fraud and said that in 'Hornal v Neuberger Products Ltd' Lord Denning MR said, "the more serious the allegation the higher the degree of probability that is required."

As D said it had not had an opportunity to view the CCTV footage our Investigator asked RSA to provide D with a copy.

D expressed concerns that the footage had been amended as some images had been 'zoomed in' and date and time stamps removed. D said that RSA had not accounted for the items which were carried rather than being in the bag, and that RSA had underestimated the time the thieves were in the building. D said that CCTV showed that the thieves had difficulty carrying the bag which indicated that there were a lot of items in there and that items could also have been stashed and returned for later. D said, having viewed the CCTV, it appeared that its original loss list could have been correct and if it had reviewed the CCTV sooner it would not have doubted its inventory.

RSA did not agree that the footage had been amended.

D's broker also provided comments for my consideration in support of D. The broker thought that RSA should have paid D's claim on a reduced basis if it had concerns, rather than accusing it of being fraudulent.

To address the further information that had been provided I sent both parties an email via our Investigator on 17 July 2023. In that email I said:

"I have noted D's points about 'Derry v Peek – 1889' and Lord Denning's comments about the higher degree of probability that is required by a court. The Financial Ombudsman Service is an alternative to the courts and while I take account of the law, I am required to make a decision based on what I consider to be fair and reasonable in all of the circumstances. I recognise the impact of RSA's allegation of a fraudulent act but it remains that my role is to reach a decision based on what I think is most likely.

As D has said, the onus is on RSA to show that the claim has most likely been exaggerated. RSA also needs to show that it is more likely than not that this was done for financial gain.

I understand that D's position is now that it thinks its original list was accurate and would not have queried it if it had seen the CCTV footage.

When bringing its complaint to us, D said that it accepted the revised figures, having engaged with its third party accounts executive. It said that the teething problems of adopting the system had become clearer. D said it accidentally claimed for items that had not been stolen. In particular, it said it originally claimed for items that were showing on its system as pending, as it did not think these items had been sent out. It said this was due to a lack of understanding of its accounting system.

However, given that D had twice confirmed that the loss list was accurate, had explained how the inventory system worked, not given any indication that it was not aware of how the system worked and changed a number of items on the loss list, I think it is reasonable for RSA to decide that the original loss list was most likely deliberately exaggerated for financial gain.

D has expressed concerns about the CCTV footage and believes this has been cropped by RSA to trick him. It said it was unfair for RSA to not share that there was a second person in the building for an additional minute, to say the bag was half full and could be pulled with ease and to not mention the stock carried in the hands of one of the thieves.

I specifically asked D to explain in as much detail as possible about how it produced the different loss lists. I have listened to a call where Mr B explained how he produced the loss lists. He has also provided a helpful video to show how the system works. Mr B said that the accounting was done by a separate company (N) and, after the theft, he used the inventory to create the loss list, although given the amount of stock it is difficult to be 100% accurate. However, after RSA raised concerns about the amount of items stolen, he looked at this again and produced a different list. Mr B said that if he had realised the length of time the thieves had been in the building, and that there could have been items removed which weren't shown in the CCTV, he would have stuck with his original list.

Mr B's explanation has not persuaded me to depart from the outcome I reached in my provisional decision. Mr B has not said this, but it would be reasonable to expect for a stock take to be completed to compare the items that were left in the premises to those on the inventory in order to create the original loss list. He then produced a different list after RSA raised concerns.

Mr B said he had noticed that some items which were showing as pending had been dispatched and so shouldn't have been on the original loss list. However, the second loss list is not just the original list minus the items showing as pending as other items were added to it. Mr B has now told us that he would have stuck to the original list. However, this would also have been incorrect because he has told us that some of the items on this list had been

dispatched. So I'm not persuaded this was an accurate list either.

D has shown why it believes the footage has been cropped and has provided an email from the premises' security company which says it would not provide cropped CCTV.

RSA has said that it has not cropped the footage. I appreciate D's concern about this because I accept that the footage appears to have been 'zoomed in'. I am not sufficiently persuaded that RSA has cropped the footage as it said that it was forwarded the footage by the police. But it is not the CCTV which has led me to reach the decision I have so this does not make a difference to the outcome of my decision.

This is because it is difficult to know exactly how many items the bag can hold and the initial list provided by D is unlikely to be correct given that it has told us some items it listed were still showing on the system as pending. RSA's forensic accountant (C) said in its report that the 58 items on the second loss list could plausibly have been stolen when considering that some items were also carried. Please note this is a correction of my provisional decision where in error I stated that C said the 58 items could plausibly have been in the bag. C also said the items could have given the bag the appearance of being half full. However, this does not change that the loss lists provided by D were inconsistent.

It is unhelpful that RSA did not tell D that one of the thieves was carrying items as I can see that it took this into account when considering the value of the items which had been stolen. But, irrespective of how long the thieves were in the premises, in my view this does not change that initial loss list was most likely exaggerated and I am persuaded by RSA that this was not a genuine mistake.

D is also unhappy that RSA said it [D] had not accepted RSA's settlement offer prior to the allegation being made. I can see that D accepted RSA's offer on the same date that RSA was made aware of the allegation made by D's employee. [While] I can understand this would be frustrating for Mr B, I do not think that this means that RSA had to pay D the amount it offered as it was entitled to investigate the allegation [of Mr B's involvement]."

In response, D said that my decision missed that the sole reason this happened was because RSA had not been honest. D said RSA had lied about D not accepting the claim, about the time taken for the theft and about a second thief remaining in the building. D also said RSA had lied about and amended the CCTV footage.

D said it was happy with its original loss list but RSA said that it was not possible that those items had been stolen. D said it provided its best explanation of what could have happened and if RSA had been honest and not edited the CCTV the outcome of the claim would have been very different.

D said it was RSA who had pointed to *Derry v Peek*.

D said that there had been a genuine theft and the only issue was the quantum of the loss. It said that if I did not think that RSA should pay the sum that was originally offered a reasonable middle ground would be for RSA to pay D a reduced value. It said it seemed this is what RSA had in mind as it was referred to in my provisional decision. D does not think it would be fair for RSA to be allowed to renege on its agreement, void the policy and leave Mr B on the fraud register. It added that, given the discrepancies in RSA's evidence, to not uphold this complaint would be to hold Mr B to a higher standard than RSA.

D did not think it was reasonable that I did not intend to uphold its complaint and requested that a different Ombudsman consider its complaint.

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 carefully considered the information provided by both parties, I am not persuaded to depart from the outcome I reached in my provisional decision and email on 17 July 2023. I will explain why.

D has made a number of detailed points throughout this complaint. While I have considered them all, I have not addressed each point within this decision. Instead, I have focused on what I consider to be the central issues to this complaint. This reflects the informal nature of our service and my role.

I recognise that there was a genuine theft at D's premises, but RSA is entitled to void D's policy from the date of any fraudulent act; and, where there has been a fraudulent act, can refuse to pay the claim. I have to make a decision based on what I think is more likely than not to have happened.

Given the inconsistencies in the information provided by D, for the reasons set out in my provisional decision and email of 17 July 2023, I believe that RSA has shown that it is more likely than not that the original loss list submitted by D was exaggerated and that it was not an innocent mistake. I have considered D's point that if it had sight of the CCTV sooner it would have stuck with its original loss list. But that list would also not have been correct due to the 'pending' items which had been dispatched. I also haven't been provided with any persuasive evidence to explain why the two lists differed to the extent that they did and to persuade me that it's more likely than not that the original list was accurate.

I can understand D's frustration that some of the CCTV footage has been 'zoomed in' and that it was not informed about a second thief carrying items in their hands. But I can see that RSA's forensic expert took account of the items being carried when reaching its conclusions and it remains that there are sufficient inconsistencies in the information provided by D to persuade me that it was fair and reasonable for RSA to void D's policy, refuse to pay its claim and to record this information on a fraud database. Therefore, I do not think it would produce a fair and reasonable outcome for me to require RSA to pay a reduced amount towards the claim.

For completeness, I would like to address Mr B's point where he said I had made an error because it was RSA who referred to 'Derry v Peek'. The reference was contained in an email from D's representative, dated 3 May 2023, which said:

"Lord Herschell in the important case of Derry v Peek 1889 said "Firstly, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice.." It is submitted that the information advanced by RSA to cast doubt on the honesty of our client's claim falls far short of proving fraud"

As I have referred to the actions and comments of D's representative as being those of D, I believe that I was correct to state that D referred to 'Derry v Peek'.

I recognise my decision will be a considerable disappointment to Mr B, but having considered things very carefully, I do not uphold this complaint.

My final decision

For the reasons set out in my provisional decision and subsequent emails, my final decision

is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 15 September 2023.

Sarann Taylor
Ombudsman