

## **The complaint**

Mr Z complains that Royal & Sun Alliance Insurance Limited trading as More Than ("RSA") rejected a claim on his home contents insurance and said the policy was void.

## **What happened**

Following a burglary at Mr Z's home he made a claim on his home insurance policy for items that were stolen, with a total loss of around £60,000. This included a number of items owned by his partner (Ms B), including a pair of sunglasses and a designer handbag.

RSA considered the claim but declined it. It said there were some concerns about the claim, in particular that it had found evidence the sunglasses and bag had been sold and so could not have been stolen in the burglary.

RSA said it would not pay any of the claim and would treat the policy as void from the date of the claim.

Mr Z complained but RSA didn't change its decision, so he referred the complaint to this Service.

Our investigator said RSA's decision was reasonable and in line with the policy terms. He didn't think Mr Z had shown that the sunglasses or the bag claimed for were different from ones that had been sold and so could not have been stolen.

Mr Z provided further comments. After considering these the investigator said he accepted it was possible Ms B could have confused the sunglasses she had sold for the ones that were stolen. But he didn't think this was relevant as RSA's decision to decline the claim and void the policy was fair because of the claim for the handbag.

Mr Z disagreed and requested an ombudsman's decision.

He has been assisted in the complaint by his solicitors. They have made detailed submissions on his behalf throughout the complaint. I won't set them out in full but the key points include:

- There was reference to a number of concerns about the claim, but these have not been made clear and should not be taken into account.
- RSA didn't carry out any real investigation or interview Mr Z or Ms B to give them the opportunity to clarify things, which would be required in the interests of natural justice.
- Fraud can't be committed by accident and requires some intent. RSA has not provided any evidence that Mr Z or his partner intended to make a fraudulent claim.
- Ms B simply made a mistake when she muddled up two different pairs of sunglasses and two different but very similar bags. This wasn't surprising given that she was upset and emotionally drained following the burglary.
- She was unable to provide a photo of herself with the bag but she has many other bags and frequently buys and sells items like this, so wouldn't have photos of everything. For the same reason, she wasn't able to recall exactly when she had

- bought the bag or how she had paid for it.
- Ms B signed a sworn statement as to the truth of her explanation, which has simply been ignored.
- Mr Z is of good character – in a previous insurance claim when he discovered an item claimed for had not in fact been stolen, he immediately told the insurers about this. It's most unlikely he would make a fraudulent claim for two items of relatively low value in a claim for around £60,000.

I issued a provisional view saying I was minded to uphold the complaint. I set out my reasons as follows:

*In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.*

*The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.*

*The policy provides cover for the claim Mr Z wished to make. But after looking into it RSA concluded that he had exaggerated his claim by including two items that could not have been stolen as there was evidence these were sold – one shortly before the burglary and the other shortly after.*

*Exaggerating the value of a claim does amount to making a fraudulent claim. So if Mr Z claimed for the sunglasses and handbag knowing they had not been stolen, it would be reasonable for RSA to treat this as a fraudulent claim.*

*The policy includes a fraud term, which says "Where fraud (which can include exaggeration) is detected, claims will not be paid, and we may refer the matter to the police for criminal prosecution. The policy may be rendered invalid, and we may take other action consistent with our legal rights."*

*I also need to consider any relevant law – in this case the Insurance Act 2015, which says if a claim is false or exaggerated, it's fraudulent and the insurer:*

- *is not liable to pay the claim,*
- *may recover from the insured any sums paid to them in respect of the claim, and may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.*

*The total value of the claim was around £60,000. RSA said it had a number of concerns about the claim but its decision was based on only two items – a pair of sunglasses and a handbag. So I don't consider any other concerns are relevant and haven't taken them into account.*

*Looking at the evidence provided in relation to the sunglasses, the photos show Ms B wearing different sunglasses which look very similar. I think she could easily have confused the glasses being claimed for with the glasses that she had sold. It doesn't seem to me that Mr Z knowingly claimed for the wrong glasses.*

*I note also that Ms B wasn't asked about this directly or given the opportunity to explain what had happened.*

Where fraud is suspected, good industry practice would be to gather evidence and interview those involved, putting relevant points to them and seeking their explanation. This gives them the opportunity to clarify any discrepancies and provide further evidence if necessary. (And if the claimants continue to maintain a version of events when all the evidence shows that version isn't true, a conclusion of fraud may be more reliable.) That didn't happen in this case. In fact the investigator initially decided not to challenge Mr Z about their concerns regarding the sunglasses and bags. Correspondence followed over a long period about other matters but concerns about the handbag were not put directly to Mr Z or Ms B until very late on, without the opportunity to be interviewed or discuss the allegations.

It doesn't seem to be in dispute that the handbag included in the claim was in fact sold by Ms B around two weeks after the burglary. RSA says this shows the claim was exaggerated since it included an item that couldn't have been stolen in the burglary. That doesn't necessarily mean this was a fraudulent claim.

Mr Z's solicitors have provided photos of two handbags – the one claimed for and another which is of the same make but slightly different. Their case is that Ms B simply got these two bags muddled up.

The solicitors say Ms B couldn't find a receipt for the second bag but she has many clothing items and accessories, buys and sells these frequently, and so it's not surprising she can't trace every receipt.

In this context, I need to consider whether it was fair for RSA to conclude the claim for this one item was made fraudulently.

The onus is on RSA to show the claim was fraudulent. So it needs to show this wasn't simply an error and Mr Z claimed for something that he knew had not been stolen. This could simply have been a mistake – Ms B buys and sells items like this and could easily have got two of them muddled up, given how very similar they are. That's particularly so in the immediate aftermath of the incident, when she would have been very upset about having their home burgled.

This particular issue wasn't investigated properly and this made it harder for Mr Z. If it had been followed up properly at the time, the error would have come to light and it's more likely Ms B would have been able to locate documents relating to the handbags.

The value of these two items was very low in the context of claim for around £60,000. On a previous claim, when Mr Z realised an item hadn't in fact been stolen, he told the insurer about that. While not conclusive, it indicates that on this occasion, if he'd known the wrong item had been claimed for, it's likely he would have said something.

Taking all of these factors into account, on balance I don't think RSA has shown this was a fraudulent act rather than a mistake.

RSA said the policy was void from the date of the claim. If a policy is void, it's as if it never existed. It wouldn't be possible to void the policy from a later date. The Insurance Act would allow RSA to cancel the policy from the date of the claim – if it was fraudulent. But as I've explained, I don't think RSA has shown that it was. So the policy should not have been cancelled.

Having said all that, it was for Mr Z to prove his claim. If he hasn't been able to provide all the evidence RSA requires in respect of the handbag (such as proof of purchase) it may be reasonable for RSA not to pay for that item. But I don't think RSA has done enough to say the claim was fraudulent, refuse the whole claim and terminate the policy.

For these reasons, my provisional decision was that RSA should reinstate the policy; remove any record of fraud and policy cancellation from internal and external databases; and assess the claim in line with the remaining policy terms and conditions.

### **Replies to the provisional decision**

Mr Z's solicitors replied to confirm he accepted the decision and they had nothing to add.

RSA did not accept the provisional decision and provided further comments, which I'll summarise as follows:

- Following an investigation, a report was prepared which set out all of the concerns with the claim as a whole.
- All of their concerns were raised with Mr Z's solicitors at some point but the only items it could prove were not stolen were the sunglasses and handbag so, while other issues were questionable, it relied on these two items.
- There was a thorough investigation and the reason Mr Z was not interviewed was that he wouldn't agree to it and everything was dealt with by his solicitors.
- It has proved the sunglasses and handbag were not stolen and while it can't get inside Mr Z's mind and know for certain whether he meant it or not, this was an exaggerated claim.
- The image provided of the sunglasses had been cut from a larger photo Ms B had used on a website. This is not a standalone photo. It must have been a conscious decision to cut the image; it can't easily be excused by saying Ms B simply provided the wrong photo. She should have realised she no longer owned the sunglasses shown in the image provided.
- For the handbag, Mr Z's solicitors provided photos said to be proof of ownership for the claimed items. It has shown the bag could not have been stolen. Ms B said she had two similar bags and had provided a photo of the wrong one, but that had never been mentioned during the course of investigation. It understands the suggestion that Ms B couldn't provide proof of ownership for every item she had. But the grey woven one claimed for is not like the leather ones that photos have been provided for; you can clearly tell them apart. She hasn't provided evidence of the actual bag claimed for.
- In a previous claim, Mr Z did say that something claimed for had been found, but that was only after a long investigation where he eventually mentioned this in an interview.

### **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.

RSA has provided very detailed comments explaining its decision. I appreciate that it had concerns about various aspects of the claim, and of course would not wish to pay a claim where there has been any fraud. But it's not enough to say aspects of the claim make fraud a possibility; I need to be satisfied the evidence shows RSA can say it's more likely than not that fraud has occurred.

RSA has referred to a detailed report compiled as a result of its investigations. This wasn't shared with Mr Z's solicitors so I asked RSA if it was willing to share that now. It hasn't agreed but says while there were other concerns, the reason for its decision was the proven elements relating to the sunglasses and handbag and the relevant information was shared during the investigation. Ultimately, that's what its decision is based on. So I need to decide whether the evidence it has provided about these two items is enough to justify the decision to treat this as fraud, decline the claim and cancel the policy.

The sunglasses look very similar and it remains my view they could easily be mistaken. RSA's case is that Ms B didn't simply send the wrong photo – the image was cut from a larger photo, which must have been done deliberately, so this couldn't have been a mistake. If she thought they were the glasses that had been stolen, she would provide an image of them. Ms B says at the time, she was physically, emotionally, and mentally drained following the burglary. I can see how her thoughts may not have been entirely clear and she would simply have sought an image of the glasses she thought she was referring to..

RSA accepts it's understandable that she was physically, emotionally, and mentally drained but says she was nevertheless able to sell the handbag soon after. Mr Z's solicitors argue that doesn't mean she could not have been suffering any trauma and it was equally arguable that someone in her position might engage in what on first sight may seem a contradictory position. Being traumatised wouldn't necessarily have prevented Ms B from buying or selling something.

In any event, RSA has shown the bag was sold and that's not in dispute. The issue is that Ms B says she had two very similar bags and, as with the sunglasses, mixed them up. That doesn't automatically mean this was a fraudulent claim rather than simply a mistake.

What this boils down to is whether Ms B had another bag, very similar to the one that was sold. RSA questions whether there was another bag. She doesn't have a receipt for it, but people don't keep receipts for everything. Mr Z's solicitors have explained that she tried to contact the company from whom she'd bought the bag but it hadn't retained the records. She also searched her accounts but couldn't recall how she'd paid for it and in view of the number of items wasn't able to trace it.

I do think it's relevant that these points were not put to Mr Z and Ms B initially. RSA says Mr Z wouldn't agree to be interviewed. An appointment was arranged early on but was cancelled as he was unwell. These particular issues were raised January 2023, by which time it was well over a year since the burglary. And when this came to light, Ms B acknowledged the error. She has sworn a statement on oath explaining what happened, knowing the consequences of providing false evidence. I think that carries some weight. If it had been raised soon after, any discrepancies could have been cleared up at that point.

I've thought about the evidence from both parties very carefully. Bearing in mind the onus is on RSA to show there was fraud, on balance I don't think the evidence it has provided is enough, taking into account the explanations put forward in some detail by Mr Z's solicitors.

Having said that, RSA points out that Ms B hasn't provided proof of ownership of either item. I think it's reasonable to ask for that. While that doesn't mean the claim is fraudulent it may be reasonable to say in respect of these two items she hasn't proved the loss. But that's something RSA can consider when dealing with the claim.

### **My final decision**

My final decision is that I uphold the complaint and direct Royal & Sun Alliance Insurance Limited trading as More Than to:

- reinstate the policy;
- remove any record of fraud and policy cancellation from internal and external databases; and
- assess the claim in line with the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 25 April 2024.

Peter Whiteley  
**Ombudsman**