

The complaint

Mrs P and Mr S have complained about the decision by Royal & Sun Alliance Insurance Limited (RSA) to settle a claim under their home insurance policy proportionately on the ground that they'd given it incorrect information when they took out the policy.

What happened

Mrs P and Mr S took out a home insurance policy through a broker in December 2021. They were asked how many bedrooms their home had. They said it had three bedrooms.

In November 2022 a bath overflowed causing a significant amount of damage. They made a claim under the policy. RSA accepted the claim. It appointed a restoration company to dry the property. At that stage RSA found out the property had at least four bedrooms.

RSA said it would only pay 75% of the claim on the basis that Mrs P and Mr S had made a careless misrepresentation when they had taken the policy out.

Mr S apologised for his mistake. He said he and his wife had suffered life-changing circumstances and so they hadn't thought about their insurance.

As RSA didn't change its decision, Mrs P and Mr S referred their complaint to this service. They requested RSA use its discretion to settle their claim in full.

Our Investigator didn't recommend the complaint be upheld. She thought RSA had treated Mrs P and Mr S fairly. As they didn't agree, the matter has been referred to me.

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.

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 Mrs P and Mr S made a misrepresentation when they said they had a three-bedroomed house.

On balance, I find that Mrs P and Mr S didn't take reasonable care when answering this clear question about the number of bedrooms. I say this because their home is spread over five floors. At the time they took out the policy there was a self-contained flat in the basement occupied by another family member with a living room, kitchen, bathroom and bedroom. On the second floor there were two bedrooms. The top floor attic was used as an office and storage space. In July 2022 the family member moved from the basement into the attic.

Taking a common-sense approach, I think most people would class top-floor rooms in a house (other than rooms obviously designed for another use such as bathrooms and kitchens) as bedrooms when answering a question like this even if the rooms were currently being used for other purposes, such as in this case, an office. I think Mrs P and Mr S were careless in not realising this. If they were in any doubt, they could have asked their broker for advice.

On balance, I think the most appropriate answer to this question would have been four bedrooms.

RSA has provided evidence that shows if the question been answered correctly, they'd still have provided cover but charged a higher policy premium.

This means I'm satisfied that the misrepresentation was a qualifying one.

RSA has classified the misrepresentation as a careless misrepresentation - rather than deliberate or reckless. I think this was correct because I believe it to have been a mistake by Mrs P and Mr S rather than an attempt to deliberately misrepresent the number of bedrooms.

I've then looked at the actions RSA can take in accordance with CIDRA. As a claim had been made here, under CIDRA, it was entitled to settle the claim proportionately, which is what it has done. I also note the Statement of Fact provided by RSA to Mrs P and Mr S says:

"This statement of insurance is a record of the information provided to your insurance intermediary or to us. Please check it is correct and keep this document in a safe place. You should tell us if any of the information in the document changes. Not doing so may invalidate the insurance or result in claims being rejected or reduced."

Mr S has accepted that the question wasn't answered correctly. I fully accept the very sad and difficult domestic situation he and Mrs P find themselves in. While I'm very sympathetic to their position, CIDRA allows RSA to settle the claim proportionately and I can't say it was unreasonable to do so.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr S to accept or reject my decision before 29 March 2024.

Elizabeth Grant
Ombudsman