DRN-5172501

The complaint

Mrs M complains that Royal &Sun Alliance Insurance Limited have avoided her policy and declined her claim.

What happened

Mrs M took out a buildings policy with RSA through a price comparison website.

Mrs M made a claim following an escape of water, and during their validation checks RSA discovered that Mrs M had an outbuilding which she used for business purposes.

RSA said Mrs M had answered the question it asked about whether any part of the premises were used for business incorrectly when she took out the policy and it considered this to be a reckless qualifying misrepresentation, which entitled it to avoid the policy and decline the claim.

Mrs M brought her complaint to us and our investigator didn't uphold her complaint because he agreed there had been a qualifying misrepresentation and agreed it was reckless, which entitled RSA to avoid the policy and retain the premiums.

Mrs M doesn't agree with the investigator and has asked for an ombudsman's decision.

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.

And 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.

Reasonable care

RSA thinks Mrs M failed to take reasonable care not to make a misrepresentation when she answered the question about whether the property was used for any trade or business purposes.

I've looked at what RSA asked Mrs M and how she responded when she took out the policy.

Mrs M took out the policy in 2023 and on the comparison website page, it says

> *"Do you or anyone living in your house use it for business purposes?*
>
> *If you think you'll be working from your property even just once during the year select the option that best describes your role.*

It provided the following further information:

> *What if I work in my garden, shed, detached garage or outbuilding?*
>
> *These may be considered as working from home spaces because they are all part of your surrounding property. Check the policy documents to see what's covered before you choose your policy."*

Mrs M selected "*No business or professional use"* as her response to this question, which was incorrect in the light of the use of the outbuilding as a beauty business,

Mrs M has since told us that she did disclose the use of the outbuildings in a phone call with the broker.

I requested a copy of this call from RSA and I've listened to it. In the call, Mrs M discloses that she has two outbuildings, one of which is a log cabin, and she asks if they are covered. She tells the call handler that the outbuildings and contents are worth £80k in total and is advised that the policy only covers up to £3k or £5k depending on the policy. She doesn't tell the call handler what the outbuildings are used for nor explain why they are valued so highly.

And so I'm satisfied that Mrs M was asked a clear question when taking out the policy, which she answered incorrectly, and in addition, when she rang to discuss the policy with the broker, she didn't disclose that she ran a business from one of the outbuildings despite discussing the outbuildings specifically, and trying to ascertain if the high value contents were covered.

Following her taking out the policy, Mrs M was sent the policy documents in which, based on Mrs M's responses when she took out the policy, stated:

> *"Business use with regular visitors to the property – No"*

The policy documents ask Mrs M to check over the responses she had given in the quotation process and let them know if anything is incorrect. Mrs M has confirmed that she runs a beauty business from the outbuildings and she has visitors to the property for that purpose, but she didn't make contact with RSA to correct this error about business use.

And so I'm satisfied that Mrs M failed to take reasonable care to provide correct information during the quotation process.

Qualifying misrepresentation

RSA has provided us with evidence to show that that if the beauty business being conducted in the outbuilding had been disclosed to them, they would have declined to provide cover.

As they would have done something differently, this means I'm also satisfied that Mrs M's misrepresentation was a qualifying one under CIDRA.

Was it reckless?

RSA say that Mrs M's misrepresentation was reckless and that's why they have avoided the policy and refused to refund the premiums. They are also asking for repayment of £4506.01 paid out on a previous claim in this policy year.

Mrs M told RSA that her estranged husband previously didn't disclose the business use to a different insurer and so she would not have made the same mistake twice, and she was sure that she had disclosed it in discussions. However, she did admit that she hadn't read the policy documents, and so RSA consider this was reckless.

So I've thought about whether the misrepresentation is deliberate, reckless or careless.

I've taken into account that Mrs M has confirmed that she didn't read the policy documents in which there is clear reference to there being no business use on the premises, and I can't see that despite the previous issues with her husband, she made any special effort to ensure that an error didn't occur again, even when in a discussion about the outbuildings she didn't mention that they were used for business purposes.

Mrs M has tried to argue that she has separate business insurance and that the outbuildings are not part of her property. However, the policy clearly defines the residence as including outbuildings in the boundaries of the property, and it's clear from the phone call that Mrs M made that she wanted them included on her policy, and so I don't think this assists her. In view of that I'm satisfied that this was a reckless misrepresentation.

As I'm satisfied Mrs M's misrepresentation should be treated as reckless, I've looked at the actions RSA can take in accordance with CIDRA, which means that RSA are entitled to avoid the policy which means that – in effect – the policy never existed, and so they don't need to deal with the claim for escape of water.

I also understand that there was a previous claim in the policy year which Mrs M is being asked to repay. I can appreciate how upsetting this is for Mrs M but given that the policy would not have been offered if she had disclosed all the information correctly, I can't say that RSA are acting unfairly in asking for this money back.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing RSA to rely on it to avoid Mrs M's policy produces the fair and reasonable outcome in this complaint.

Mrs M's representative has asked us to consider additionally that Mrs M didn't realise she was taking out a policy with RSA, as she was taking it out through a broker and doesn't think this was made clear to her. Brokers selling policies on behalf of underwriters is a normal situation, and it was clear in the schedule that RSA were the underwriters. This doesn't affect the operation of the policy, and in this situation it wouldn't have made any difference to the outcome, as the misrepresentation was made to the broker, who were acting on behalf of RSA.

My final decision

My final decision is that I'm not upholding Mrs M's complaint about Royal & Sun Alliance Limited and so they don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 February 2025.

Joanne Ward
Ombudsman