DRN-5338495

The complaint

Ms T complains that Royal & Sun Alliance Insurance Limited ("RSA") avoided her policy and declined her claim for damage resulting from an escape of water, under her home buildings insurance policy.

What happened

In December 2022 Ms T contacted RSA to make a claim after a burst pipe caused extensive damage to her property. Some initial strip-out works were carried out. She says RSA then asked questions about her occupancy. She says she was aware that her policy terms require her to sleep in the property frequently. Ms T says she told RSA that she did sleep their frequently. However, it didn't agree and confirmed it was 'voiding' her policy back to the date she reported the damage and was declining her claim.

RSA sent its final complaint response in December 2023. In this it says its loss adjustor had some concerns about the occupancy of Ms T's property. Information was requested to support that it was occupied. On review of this information, which included energy and council tax bills, RSA didn't think the property had been occupied in accordance with its policy terms. It says this is why it 'voided' the policy and declined the claim.

Ms T didn't think she'd been treated fairly and referred the matter to our service in June 2024. Our investigator upheld her complaint. He says RSA hadn't shown the questions Ms T was asked about her occupancy, and the responses she gave, when the policy was incepted in February 2022. He didn't think RSA had shown that Ms T had misrepresented her occupancy of the property. This meant it wasn't fair to take the action it did.

RSA didn't accept our investigator's findings. As an agreement wasn't reached the matter has been passed to me to decide.

I issued a provisional decision in January 2025 explaining that I was intending to uphold Ms T's complaint. Here's what I said:

provisional findings

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

Having done so my intention is to uphold this complaint. But I think a higher compensation payment is warranted. Let me explain.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA a customer must take reasonable care not to make a misrepresentation when taking out insurance. If a customer doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, or it would only provide cover under different terms.

To understand whether Ms T made a misrepresentation I must consider the questions she was asked, and the answers she gave when applying for her policy online. We asked RSA for this information, but it wasn't provided. The business did, however, explain that Ms T also called at the time of her online application. It says it's listened to this call from September 2023 and noted that Ms T was asked if her home was left unoccupied for more than 60 days over a period of a year. RSA says she responded "no, never". It says its agent then advised Ms T that restrictions apply if it's left unoccupied, and that Ms T must let it know if this happens. RSA says Ms T responded to say that the property wouldn't be left unoccupied.

Our investigator asked for a copy of the call recording RSA has referred to. It replied to say it no longer has access to this information.

I've thought carefully about the information RSA provided. But this doesn't clearly show me what Ms T was asked about her occupancy of the property. I haven't been able to listen to the call recording when this was discussed either. I acknowledge what RSA says. But it should reasonably be able to provide the information it considered during its complaint investigation. Without this I can't reliably confirm what Ms T was asked about the occupancy of her property. This is important information to ascertain if RSA was clear in the questions it asked. Without this I can't fairly decide that Ms T made a misrepresentation.

In addition to this I've considered the occupancy term RSA relied on to avoid Ms T's policy and decline her claim. The policy defines an unoccupied property as:

"Not lived in by any of the insured or by any other person with the insured's permission. Lived in means slept in frequently."

Ms T says she did sleep at the property frequently, which is all the policy requires for her property to be considered occupied. I note her comments that RSA refers to other activities that are necessary to meet its occupancy requirement. To support its argument of unoccupancy it refers to there being no food in the fridge or freezer. And that no clothes were in the wardrobes. In addition, it says there was little energy used and the council tax bill indicated the property was unoccupied.

I acknowledge Ms T's comments that RSA's inspection didn't take place until sometime after the escape of water. She explains that clothes were removed in order to prevent them being damaged, given the dampness in the property. Ms T has also provided an emailed letter from her local council. This says the unoccupied status of the property was removed from her council tax account in light of the complaint she submitted. This was made effective from 1 July 2021.

I've considered this evidence. I agree the energy bills don't show much usage. But Ms T has given reasonable explanations concerning the absence of clothes and confirmed that the council tax record RSA saw was inaccurate. But essentially these are moot points as the business hasn't shown that it asked Ms T clear questions about her occupancy of the property. By not doing so it hasn't shown that a misrepresentation occurred.

RSA's definition of an occupied property is that it's slept in frequently. If it wanted this to have a wider meaning this should've been made clear. I don't think it did make this clear. So, I'm not persuaded that RSA has shown Ms T failed to meet its occupancy requirement. Having considered all of this, and for the reasons set out here, I don't think it was fair for RSA to avoid Ms T's policy and decline her claim. To put this right, it should now amend its internal and any external records to remove any reference to the avoidance and cancellation. It should also reconsider Ms T's claim under the remaining terms and conditions of her policy, without reliance on its unoccupancy term.

I've thought about the impact all of this has had on Ms T. She refers to the increased cost of insurance as a result of her policy being cancelled. I can see from the information she provided that her premium has increased significantly. However, if my decision is accepted, then once RSA has amended Ms T's records, she can contact her insurer(s) to see if any premium adjustment is due.

Ms T says she suffered from anxiety as a result of RSA's actions. She also experienced problems sleeping and says she was prescribed medication for this. I can understand why this experience caused Ms T distress. This has been ongoing for a significant period. Ms T's use of, and any plans for the property have also been limited by this situation. In these circumstances I agree with our investigator that RSA should pay compensation to acknowledge the distress and inconvenience it caused. However, I think a higher payment than £300 is warranted given the time period involved. I've taken into consideration that this isn't Ms T's main residence when deciding what this should be. Having done so I think £600 is fair.

I said I was intending to uphold Ms T's complaint and RSA should:

• remove any record of the avoidance and policy cancellation from both internal and external databases;
• reconsider Ms T's claim without reliance on the unoccupancy exclusion; and
• pay Ms T £600 compensation for the distress and inconvenience it caused her.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Ms T confirmed that she accepted my provisional findings.

RSA responded to say it was unhappy with my provisional decision and that it had now managed to obtain a copy of the call recording from when the policy was taken out.

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.

I've listened to the call recording RSA has now provided. This was recorded on 11 February 2022, which is the day before the policy incepted. The call lasts just under 22 minutes. After 15 minutes into the recording only Ms T's voice can be heard. However, the unoccupancy term is discussed eight minutes into the call. So, I was able to hear what was said between RSA's agent and Ms T on this point.

RSA's agent asks Ms T if her home was to be left unoccupied for more than 60 days in a year. Ms T responds to say it wouldn't. The agent then says if at any time it was unoccupied for more than 60 days restrictions would apply. Ms T says, "*no not at all, especially since the pandemic*". The conversation then moves on. I note that RSA's agent doesn't talk further about what an unoccupied property means.

In my provisional decision I referred to RSA's definition of an unoccupied property. It defines this as a property that isn't "*lived in"*. It confirms that "*lived in*" means slept in frequently. I said Ms T maintains that she did sleep at the property frequently. I have no reason to disbelieve what she says. RSA referred to other activities that are required for a property to be considered occupied. But this isn't set out in its policy terms.

In my provisional decision I said that RSA hadn't shown Ms T had failed to meet its

occupancy requirement. Having listened to the call recording my decision hasn't changed. RSA's agent doesn't tell Ms T what an occupied property means. So, I don't think it's unreasonable for her to rely on the definition set out in her policy terms.

Having considered RSA's comments and the call recording it provided, I'm not persuaded that a change to my provisional decision is warranted.

My final decision

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

- remove any record of the avoidance and policy cancellation from both internal and external databases;
- reconsider Ms T's claim without reliance on the unoccupancy exclusion; and
- pay Ms T £600 compensation for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 18 March 2025.

Mike Waldron
Ombudsman