complaint

Mr and Mrs B's complaint is about a home insurance policy they held with Royal & Sun Alliance Plc (RSA). They are unhappy that when they made a claim for subsidence damage to their home in 2018, RSA accused them of not having declared a previous subsidence claim when they took the policy out. RSA then voided (cancelled from outset) the policy and as there was no policy, declined to deal with the claim.

background

In 2001 Mr and Mrs B made a claim on their insurance policy with another provider for subsidence damage to their home. They maintained that policy thereafter. However, in 2016 Mr and Mrs B considered changing their insurance policy and provider. They arranged a new home insurance policy which is underwritten by RSA. The policy was applied for online.

As part of the quotation process Mr and Mrs B were asked to ensure they met RSA's '*Eligibility conditions*'. This was a list of statements, including confirmation that their home was '*NOT showing any signs of or ever had any damage caused to it by subsidence, landslip or heave.*' In requesting a quote, Mr and Mrs B were deemed to have confirmed they met the eligibility conditions. In order to read the eligibility conditions Mr and Mrs B had to click on a link. RSA has confirmed that Mr and Mrs B could move through the quotation form, submit it, receive a quote and confirm they wanted the quoted policy without opening the eligibility conditions link.

The policy documents were sent to Mr and Mrs B in July 2016. Included was a 'Home Statement of Insurance'. It was explained this document detailed the information provided to RSA and the assumptions agreed to. Mr and Mrs B were asked to make sure its content was correct. It included the statement '*The home is not showing any signs of, or had any damage caused by subsidence, landslip or heave.*' The policy started on 1 August 2016.

RSA has confirmed the statement of insurance was only given to Mr and Mrs B with the initial policy documentation. A copy was not included with subsequent policy renewals.

In May 2018 Mr and Mrs B made a claim on the policy because they had noticed they had begun to have difficulty closing some internal doors. Also, there were cracking above the doors and around window sills. RSA arranged for the property to be assessed. It was decided the damage was as a result of subsidence. During this visit Mr and Mrs B told the RSA representative about their previous subsidence claim and said that they'd told RSA about this in 2016.

RSA searched for telephone calls with Mr and Mrs B by reference to their telephone numbers. It found three calls; two from before the policy was arranged and one after. It said that none of these calls mentioned subsidence. It also said there was some discussion about the eligibility statement.

Mr and Mrs B weren't happy with RSA's investigation into the telephone calls made in 2016 in which they said RSA had been informed about the previous subsidence. They wanted further searches done as the relevant calls hadn't been found. When RSA said it had done everything it could to find calls between it and them, Mr and Mrs B complained.

RSA acknowledged it had taken too long to find the call recordings and then be able to listen to them. However, it was satisfied there were no other calls. RSA declined the claim on the

basis that there had been previous subsidence which was not declared at application. It said that had it been, cover wouldn't have been offered. So the policy was voided and the premium refunded.

Mr and Mrs B weren't happy with RSA's response to their concerns and referred their complaint to this service. When doing so they said that when arranging quotes from providers (including RSA) they telephoned and asked whether their previous subsidence claim would be a problem. They have said they informed RSA that they'd had a previous claim for subsidence twice before they submitted their application for the policy and a third time after their application was accepted. They say they were told that the claim wouldn't be a problem as it had been 16 years since the claim, but a note of the claim had been made on the file.

One of our investigators considered the complaint. She partially upheld the complaint and recommended RSA reinstate the policy from the 2017 renewal and consider the claim.

Mr and Mrs B didn't accept the investigator's conclusion that RSA could reasonably void the first year of the insurance policy. They maintained they had told RSA about the previous subsidence their home had suffered. They said it doesn't make sense for anyone who had experienced subsidence and knew the work and cost it takes to resolve, not to disclose previous subsidence. They confirmed they had managed to insure the property, but the new policy was more expensive and had a higher excess for subsidence.

Mr and Mrs B also said that, following RSA's rejection of their claim and voidance of their policy, they paid to have a surveyor assess the property. The surveyor was reported as having recommended further strengthening works be done to the walls in the areas of cracking. They had also confirmed that the replacement policy arranged in 2019 had cost £595.44.

RSA didn't accept the investigator's conclusions. It said Mr and Mrs B's obligation was to declare the subsidence at inception and at renewal, to advise of any changes. It pointed out there had been no changes at renewal.

As agreement couldn't be reached the complaint was passed to me to consider. I requested further information and evidence from RSA. It provided two of the three call recordings it had relied on when stating Mr and Mrs B hadn't declared the previous subsidence in 2016. One of the call recordings was no longer available – one from before the policy was applied for. In addition, RSA confirmed that when the application was submitted, Mr and Mrs B were not required to look at the assumptions they were deemed to have accepted by making their application.

The two call recordings provided were from 8 July 2016. I have listened to both. The first call mainly discusses policy limits and optional extras. The only mention of claims was in relation to the protected no-claims cover available, which Mrs B said they weren't interested in as '*we haven't made any claims for years*'.

The second call on that day was made after Mrs B had completed the application and paid the premium. She called to check if the payment had gone through. It was confirmed RSA's system was showing that the payment was in progress, which meant the payment hadn't gone through. The member of staff advised her to call back the following day and the payment could be made over the phone.

RSA has been unable to provide a copy of the other call it found during its investigation. I believe this call was from before the policy application. There are no contemporaneous notes giving details about the call, but RSA has said its case-handler listened to the call and noted that there was no mention of the previous subsidence.

I issued a provisional decision on 18 January 2020, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'*RSA has concluded that Mr and Mrs B misrepresented their property history when applying for the policy because they agreed to a statement saying,* 'The home is not showing any signs of, or had any damage caused by subsidence, landslip or heave.'

If Mr and Mrs B read this statement and agreed to it, I would agree with RSA. However, having carefully read all the evidence on this case, I am not satisfied that is the case. Firstly, all of the submissions Mr and Mrs B have made are very clearly about their understanding of the questions they were asked and how they believe conversations with RSA went. There doesn't appear to be any consciousness from the application stage of the eligibility conditions.

I also note that RSA has now confirmed that Mr and Mrs B didn't have to look at the eligibility conditions to take out the policy. It has also been unable to provide any evidence that they clicked on the link and looked at the criteria. As RSA is aware, this service has provided guidance to the insurance industry that where it can't evidence a consumer opened the page on which such statements were contained, they can't be deemed to have accepted them. I see no reason to depart from that approach in this case; as I have said above, I am not persuaded Mr and Mrs B have indicated any awareness of the content of the eligibility criteria.

I note that RSA has said that Mr and Mrs B were provided with a copy of the statement of insurance that contained the statement about subsidence and that there was an obligation on them to tell RSA about the subsidence. As RSA is aware, for consumer contracts an insurer is required to ask clear questions to elicit the information it wishes to know. Whilst statements that a consumer can accept are acceptable alternatives to questions, a consumer must be prompted to provide that information in some format and the communication must be clear. So Mr and Mrs B were only obliged to provide the information if RSA prompted them to do so. In this case it did not.

Furthermore, it is generally accepted that consumers are not good at reading documentation they are provided with following being accepted for a policy, which is why insurers highlight unusual, onerous or very important terms. So I don't consider RSA can rely on having proved the statement of insurance in 2016, and asked for it to be checked, to negate it having not made Mr and Mrs B review the eligibility criteria and confirm they were accurate for their situation. Furthermore, if RSA didn't remind Mr and Mrs B of what they had said/accepted in 2016 at subsequent renewals, that would make it somewhat unlikely a consumer would notify it of any changes.

In light of this, I don't consider RSA's decision to void Mr and Mrs B's policy was reasonable. As such, they should be placed back in the position they would have been in, but for that mistake. That would be to have had an insurance policy with RSA since 2016, which covered them for subsidence damage to their home – in order for the policy to be reinstated, Mr and Mrs B will need to return the refunded premiums. As Mr and Mrs B would have had a

valid insurance policy at the time they made their claim in 2018, RSA should now consider the claim for damage to their home.

Mr and Mrs B told us they managed to replace the insurance policy, but that it was more expensive. There is an industry agreement relating to insuring domestic properties that suffer from subsidence – the ABI Domestic Subsidence Agreement – which has been accepted by most insurers and its provisions are now considered to represent good industry practice. Among other things this agreement requires, in most situations, an insurer to continue to provide insurance for a property that has suffered from subsidence. As such, I consider RSA should continue to offer cover to Mr and Mrs B if they want it to. They can, however, choose to keep their current policy if they wish. If they make that choice RSA won't be responsible for any additional costs they incur in the future.

In either situation, Mr and Mrs B will be due a refund of the premiums they have paid to the new insurer if they have been charged more for their insurance than they would have been if the RSA policy had remained in force. Mr and Mrs B will need to provide RSA with evidence of the cost of their new insurance policy for this assessment to be made.

Although not important to the outcome of the complaint, for completeness I will comment on the matter of the telephone calls. Mrs B has been adamant that she told RSA about the previous subsidence claim. That was not the case in the two call recordings I listened to. However, RSA was unable to provide one recording from before the policy application that we know existed. Although it has provided notes about this call, made during its complaint investigation, there is nothing contemporaneous detailing the content of the conversation. In addition, I note that RSA has said it has only been able to locate three calls being made to it by Mrs B, but the recording of the call after the policy application indicates Mrs B made at least one more telephone call to RSA that its searches didn't locate. In light of this I can't be certain what Mrs B did or didn't tell RSA.

Mr and Mrs B have clearly been distressed by being told they had misled RSA when Mrs B is sure she didn't. This resulted in the policy being voided and, given they have said they were only able to obtain insurance in 2019, there would have been the worry of being uninsured and the additional costs associated with the new policy. Some of that cost is likely to be because they had to declare the voidance. In light of this I consider RSA should pay Mr and Mrs B £750 compensation.

my provisional decision

My provisional decision is that I am minded to uphold this complaint. If my conclusions remain the same following any further comment or evidence from the parties, I will require Royal and Sun Alliance Insurance Plc to:

- *Reinstate Mr and Mrs B's policy from inception in 2016. They will have to return the refunded premiums to RSA for this to happen.*

- *Consider the subsidence claim in line with the policy terms and conditions.*

- *As RSA would have continued to insure Mr and Mrs B under the ABI domestic subsidence agreement, it should calculate what premium it would have charged them at the 2019 and 2020 policy renewals and any excess premium paid by Mr and Mrs B should be refunded to them.*

- *If Mr and Mrs B wish to move their insurance policy back to RSA, it should provide the cover via the reinstated policy going forward.*

- *Pay Mr and Mrs B the sum of £750 for the upset and inconvenience this matter has caused them.*'

Mr and Mrs B acknowledged receipt of the provisional decision. They said they had no further points to make and no other information to provide.

RSA also confirmed it had received the provisional decision. It asked for an extension of time to provide a response, which was granted. However, it didn't provide any comment on the provisional decision by the extended deadline, and so the complaint has been passed back to me to consider further.

my findings

I have considered all the available evidence and arguments from the outset to decide what's fair and reasonable in the circumstances of this complaint. Given neither party has provided any further evidence or comment, I see no reason to change my conclusions.

my final decision

My final decision is that I uphold this complaint. I require Royal & Sun Alliance Insurance Plc to:

- Reinstate Mr and Mrs B's policy from inception in 2016. They will have to return the refunded premium to RSA for this to happen.

- Consider the subsidence claim in line with the policy terms and conditions.

- As RSA would have continued to insure Mr and Mrs B under the ABI domestic subsidence agreement, it should calculate what premium it would have charged them at the 2019 and 2020 policy renewals. This sum should be compared with the cost of the new insurance Mr and Mrs B arranged for the same period. Any excess amount paid should be refunded to them.

- If Mr and Mrs B wish to move their insurance policy back to RSA, it should provide the cover via the reinstated policy going forward.

- Pay Mr and Mrs B £750 for the upset and inconvenience this matter caused them.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 2 April 2021.

Derry Baxter
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