

complaint

Mr S has complained about the cancellation of his home insurance policy by Royal & Sun Alliance Insurance Plc (RSA).

background

Mr S made a claim to RSA after an attempted break-in at his home. RSA accepted the claim and appointed a contractor to repair the damage.

Mr S wasn't happy with the way the contractor was going to repair his door. Eventually RSA said it would settle the claim in cash. Mr S obtained two quotes. RSA agreed to pay the amount of the lower estimate. It said it would pay the VAT element when Mr S sent it an invoice. RSA paid him just under £1,900.

Mr S created an invoice as a sole trader which referred to a cost of £2252.64 for "door installation". RSA asked Mr S to provide a VAT number and telephone number for the contractor. Mr S didn't provide these details. The works were carried out by Mr S and his friend.

RSA realised that Mr S had created the invoice for a firm which didn't exist. So it cancelled the policy from the date he'd made his claim. It said it didn't believe Mr S had presented his claim honestly and in good faith. It also said it wouldn't refund his premiums and that he should repay the money paid him earlier in respect of the claim.

Mr S said he didn't intend to mislead RSA. He felt this situation would never have arisen, if RSA's supplier had carried out the repair properly at the outset. This happened at a very difficult time for him and his family. He thought this might have affected his judgement. He said he's not in a position to repay RSA's money in full at present.

my provisional findings

I issued a provisional decision which set out the reasons why I was minded to uphold Mr S's complaint in part. In summary:

- I thought if RSA had accepted the fake invoice, it would have been induced into paying an additional 20 per cent of the claim in respect of VAT which wasn't actually due to Mr S.
- I appreciated that Mr S might have faked the invoice due to the delays and frustration he'd experienced with his claim. But this didn't justify him claiming money he wasn't entitled to. If he was unhappy with the service he'd received from RSA's supplier, he could have complained to RSA and asked them for compensation. I hadn't seen any evidence that Mr S was put under pressure from RSA to provide this invoice - on the contrary, it had already paid the amount of Mr S's quote less the VAT element. So I was satisfied that it was reasonable for RSA to cancel the policy on the ground of fraud.
- We normally say that if a policyholder breaches his duty of good faith in the course of making a claim (for example, by submitting a fake invoice, as Mr S did), the insurer's remedy is to forfeit the policy from the date of the breach. But in this case RSA cancelled the policy from the date when Mr S first made his claim. I didn't think this was fair because at that point there was no evidence that Mr S had done anything wrong.

- I didn't think Mr S should have to repay the money he'd already received from RSA in respect of this claim.

developments

RSA agreed that the policy should be cancelled from the date that Mr S sent the fake invoice. It said that it was legally entitled to recover all the money it had paid to Mr S in respect of this claim.

Mr S made no comment.

my findings

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

In the light of RSA's response I see no reason to change my view that Mr S's policy should have been cancelled from the date of the fraud.

The only outstanding issue is whether that fraud affects the whole claim and means that RSA shouldn't have to pay any of it. I can see it's harsh if an insurer rejects the whole claim where the fraud made no difference to the insurer's ultimate liability – for example, where a claimant forges a receipt because they've lost the original. But I accept that it's different in this case. That's because, if the fraud hadn't been discovered, RSA would have ended up paying more than Mr S was legally entitled to.

On reflection I now think the better view is that, even though part of the claim was genuine, the fraud "taints" the whole claim and so RSA doesn't have to pay any of it. That means I think RSA's entitled to recover the money which it's already paid Mr S in respect of this claim.

my final decision

I uphold this complaint in part. I require Royal & Sun Alliance Insurance Plc to reinstate Mr S's policy to the date on which he sent them the fake invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2017.

Elizabeth Grant
ombudsman