

The complaint

Miss T has complained that Red Sands Insurance Company (Europe) Limited have accepted liability on a claim against her without taking into account her view, that they have declined her claim for damage to her bike, and that their expert has caused damage to her bike.

What happened

In July 2022 Miss T had a cycling accident in which she collided with another cyclist whilst riding as part of a group.

Miss T made a claim on her insurance policy for damage to her bike as the rear derailleur was bent and she was unable to remove the rear wheel. She also passed her insurance details to the third party as she didn't want direct contact with him. Miss T believed that the third party was at fault for the collision.

Red Sands advised Miss T that the third party had made a claim on her policy for his bike repairs, and he had claimed that she was responsible for the collision. Red Sands accepted liability for the accident as they said that because Miss T went into the back of the third party, they couldn't object to the claim.

Miss T took her bike into her local bike shop for an assessment and received a written report which advised her bike was a write off.

Red Sands arranged for their own contractor to assess and repair Miss T's bike. Miss T packed the bike and it was collected by the courier.

The contractor examined the bike and advised that in their opinion Miss T's bike was not damaged.

When the bike was returned to her, Miss T says that the rear wheel had been removed and a shield was missing. She says that in order to remove the rear wheel the contractor will have to have bent the rear derailleur back, which would have put stress on the carbon frame.

So, Miss T doesn't accept the findings of the contractor and believes they have caused further damage. Miss T complained to Red Sands about this but they didn't uphold her complaint.

Miss T was unhappy with this response and brought her complaint to us. One of our investigators has looked into Miss T's complaint. He thought that Red Sands had acted fairly in terms of accepting liability, but he thought that in view of the conflicting reports from the experts, a third opinion should be sought and he recommended that Red Sands commission a further examination and report.

Miss T was unhappy with this outcome and has asked for a final 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.

I am upholding this complaint, and I will explain why below.

Liability

Miss T says that the third party should be held liable for the collision as he cut across her path which was why she collided into his rear wheel.

Red Sands have said that one of the dangers of riding in groups is wheels overlapping and that in such situations it can be hard to apportion blame. They have to rely on the location of the damage unless a witness statement is made to corroborate that the accident was intentional.

In this case, no witness statements have been provided, and so they have relied on the inspection of the both bikes by their contractor, which found rear damage to the third-party bike and no damage to Miss T's bike. On that basis, they decided to settle the claim in the third party's favour as they had no grounds on which to disprove the third party's claim.

At page 15 of Miss T's policy it says:

4. We will be entitled to take over and deal with, in your name, the defence or settlement of any claim at our discretion and to take proceedings at our expense to recover for our benefit the amount of any payment made under this policy.

This means that if Red Sands decide that they don't have a defence to the question of liability, they can settle the case as they see fit, including accepting liability, irrespective of the views of the policy holder.

In cases like this it's not for me to decide who is liable for an accident, but to consider whether Red Sands have acted fairly in applying the policy term which allows them to admit liability despite Miss T's objection.

There isn't any independent witness evidence available and so Red Sands have only been able to base their decision on the information they have about the damage to the bikes. The third-party bike has damage to the rear and Miss T doesn't dispute that she went into the back of him. However, she thinks he cut across her dangerously causing the accident. Unfortunately there isn't any witness evidence to support this and so I agree with the investigator that whilst I appreciate how strongly Miss T feels about not being responsible for the accident, it would be difficult for Red Sands to defend this and on the basis of the evidence they have, I don't think Red Sands have acted unfairly in accepting liability.

Damage and repairs

There are two issues here. The first is that Miss T doesn't agree with the contractor's view that there was no damage caused to her bike by the accident. She has provided a report from her local bike shop who examined the bike prior to it being sent to the contractor, which

says that there is damage which compromises the integrity of the carbon frame, and it should be considered a write off.

These reports are directly conflicting, and they are both provided by specialists, albeit in different fields. I'm not qualified to say whether one report should be preferred over the other as this is a specialist area, but I have seen photographs of the bike and of the injuries suffered by Miss T and I consider it likely that the bike may have suffered some damage in the collision, and so I agree with the investigator that a third independent report would be the best way forward. So, I am going to direct that Red Sands arrange and pay for a further report from a third independent expert. If the report determines that there is damage to the bike, I'd then expect Red Sands to act on the recommendations of the report.

The second and related issue is that Miss T claims that further damage has been caused to her bike whilst in the possession of the repairer or courier. I can't say whether this is the case, but a further examination of the bike by an expert would determine what damage there is to the bike and it may determine whether it was caused by the accident or subsequently. If any damage was caused by Red Sands contractor or the courier, I would expect Red Sands to rectify this in line with any recommendations in the report.

Putting things right

Red Sands should arrange and cover the cost of a third independent report from an independent expert who specialises in carbon frames.

My final decision

My decision is that I uphold this complaint and direct Red Sands insurance Company (Europe) to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 10 April 2023.

Joanne Ward
Ombudsman