

The complaint

Mr T complains Red Sands Insurance Company (Europe) Limited unfairly declined his motor warranty claim.

What happened

In August 2021 Mr T made a claim against his Red Sands motor warranty. His vehicle's engine had suffered significant engine damage following piston failure. Following an inspection by its engineer, Red Sands declined the claim. It said the failure of the piston didn't fit the policy's definition of mechanical breakdown (included below), so the claim wasn't payable.

Mr T provided Red Sands with a report from his own engineer. It stated the breakdown to be sudden and unforeseen mechanical failure. Red Sands considered it, but felt the evidence supported a long-term wear and tear issue. So it continued to decline the claim. Mr T wasn't satisfied so came to this service. He's asked that Red Sands pay the claim up the policy limit of £5,000.

Our investigator felt damage to the piston was sudden and unforeseen. So she said Red Sands had declined the claim unfairly. She recommended it reimburse Mr T costs he had incurred as a result – plus £300 compensation. He accepted the outcome. As Red Sands didn't, the complaint was passed to me to decide.

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.

As this is an informal service I'm not going to respond here to every point or piece of evidence from Mr T and Red Sands. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

Mr T's policy covers all mechanical and electrical parts (including labour to fit them) of his car against mechanical breakdown. The policy terms explain '*Mechanical Breakdown means the failure of a mechanical or electrical component, causing a sudden stoppage of its function, for a reason other than wear and tear, deterioration or negligence. Damage caused by the effects of overheating or abuse is not regarded as a mechanical breakdown under the terms of the Policy.*'

Red Sands referred to a lack of 'sudden and unforeseen mechanical failure' – but that's not found in the policy terms. I've considered the evidence against the actual term in the policy.

It's accepted by both Red Sands and Mr T's engineers that a piston fractured. So I'm satisfied there was a '*...failure of a mechanical or electrical component...*' as required by the terms. There's no requirement for the failure itself to be 'sudden' or 'unforeseen'.

Red Sands has said the piston didn't suffer a '*sudden stoppage of function*'. It says the failure only occurred due to the 'deterioration' of the piston material. But I'm satisfied there was a sudden stoppage of the piston's function. Even Red Sands' engineer says '*...the structure (piston) will suddenly fracture as has happened in this case*'. I think it's likely the sudden failure (fracture) of the piston caused a sudden stoppage of function – in my experience that's to be expected.

That means Red Sands can only fairly decline the claim if it can show the reason for the failure was '*wear and tear, deterioration or negligence*' – or that the damage was caused by the effects of overheating or abuse.

In a recent email to this service Red Sands said it wasn't relying on wear and tear as a reason for declining the claim. It hasn't, as far I'm aware, claimed negligence was involved. Neither has it referred to, or provided persuasive evidence of, overheating or abuse.

So only 'deterioration' remains. Deterioration isn't defined by the policy terms. So I've used what I consider an ordinary everyday understanding – 'the process of becoming worse'. That could have quite wide coverage or application. It might be argued every failed component had deteriorated – or had experienced 'deterioration'. So I've considered if it's fair to decline this claim on the basis the piston had deteriorated.

Red Sands' argument is - as the piston deteriorated over a period of time the claim shouldn't be paid. It refers to its engineer's opinion the vehicle was experiencing incorrect combustion for hundreds or thousands of miles. His report cites thermal discolouration on the piston compression ring as evidence. The engineer explains incorrect combustion will have caused excessive loads. This will lead to microscopic cracks. And they will eventually reach a critical size resulting in sudden fracture. Mr T's engineer, in contrast, identifies material defect as the cause of piston failure.

Either way I don't feel it's fair for Red Sands to rely on 'deterioration' to decline this claim. The policy is intended to cover unexpected mechanical breakdowns – and that's what seems to have happened here. The piston failed sooner than would ordinarily be expected.

I haven't seen anything to show the piston failed because it had reached the end of its normal or expected working life. Instead both Red Sands and Mr T's engineers appear to take the position the piston failed sooner than might be expected – either through material defect or the effect of incorrect combustion.

I've no reasons to believe Mr T was, or should have, been aware of the possibility of the failure – or any incorrect combustion. Indeed Red Sands' engineer feels it's likely he wouldn't have been aware of the impending breakup of the piston rings. So Mr T wasn't in a position to take action to avoid the breakdown occurring. I'm not aware of any failure, like a lack of maintenance, servicing or lack of reasonable care, by Mr T that may have contributed to the failure.

Based on this, Red Sands' decision to decline the claim was unfair. So I agree with our investigator it should reimburse Mr T the costs he's incurred because of that decision.

As Red Sands unfairly refused the claim Mr T had to pay his garage for the stripping and diagnosis costs. I've seen the invoice for the £621 he paid in January 2022 (the invoice says £745 – but Mr T says he only paid £621). He paid for the repairs in March 2022. The invoice shows the cost at £3,706. I'm satisfied these costs should have been covered by the claim. So Red Sands will need to reimburse him – the total of these amounts is below the policy limit. Red Sands missed its opportunity to apply the policy's labour rate limit. So it will need to reimburse these costs in full regardless of the hourly rate charged.

If Red Sands hadn't unfairly declined the claim, he wouldn't have incurred the engineer report cost of £199. This was paid in November 2021. So it will need to reimburse him this cost as well. The same applies to fuel costs for recovery of the car (removing it from the garage that stripped it down) of £80 incurred in January 2021.

Mr T's been unfairly without these funds or incurred borrowing fees to cover the costs. To make up for this Red Sands will need to add simple interest at 8% to each of these three reimbursements. The interest should be added from the date Mr T paid the cost until the date of settlement. As an example 8% simple interest should be applied to £621 stripping out costs from January 2022 until the date Red Sands pays the redress to Mr T.

Our investigator also recommended Red Sands pay Mr T £300 compensation. I agree that's a fair amount. Mr T's had to spend a fair amount of time getting this issue resolved. He was unfairly left without the use of his car for several months. As a result he had to make alternative transport arrangements. Its reasonable that he receives some compensation to recognise the inconvenience, and additional expense, he experienced as a result.

My final decision

For the reasons given above, I require Red Sands Insurance Company (Europe) Limited to:

- reimburse Mr T the following costs £621 stripping out, £3,706 repairs, £199 engineer report and £80 recovery. Simple interest at 8% is to be added to each of these payments as set above*.
- pay Mr T £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 July 2023.

**If Red Sands considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Daniel Martin
Ombudsman