

## **The complaint**

Mr and Mrs K complain that Red Sands Insurance Company (Europe) Limited unfairly avoided their home insurance policy and declined their claim.

Red Sands is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Red Sands has accepted it is accountable for the actions of the agents, in my decision, any reference to Red Sands includes the actions of the agents.

## **What happened**

In December 2022, Mr and Mrs K made a claim under their home insurance policy with Red Sands after discovering an escape of water had caused significant damage to their property.

In March 2023, Mrs K raised a complaint with Red Sands about the delay in progressing her claim. Red Sands hadn't made a decision about whether or not it would accept liability for the claim.

Red Sands didn't provide a response to Mrs K within the necessary timescale, so she referred the matter to our service.

In June 2023, Red Sands told Mrs K it was treating her policy as null and void because it was not satisfied with the information she'd provided to support her use and occupancy of the property as her joint primary residence. It responded to Mrs K's complaint shortly afterwards, confirming its position.

Our investigator thought Mrs K's complaint should be upheld. She didn't think Red Sands had demonstrated that Mr and Mrs K gave false information. She concluded that it wasn't reasonable for it to avoid the policy and decline the claim. She recommended Red Sands reinstate the policy and reassess the claim. She also recommended it pay Mr and Mrs K £350 for distress and inconvenience and remove information relating to the policy being avoided or cancelled from the Claims Underwriting Exchange database.

Red Sands disagreed with our investigator's outcome. It made a number of legal arguments and quoted case law it considered to be relevant. It felt that our investigator had disregarded the fraud report it had provided and referred to an article about the use of technology in insurance fraud prevention. So, the complaint has been 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.

Having done so, I've decided to uphold Mr and Mrs K's complaint. I'll explain why.

Red Sands says the declinature of Mr and Mrs K's claim was due to policy avoidance. It's told us that its decision was exclusively based on an objective assessment from a

professional screening firm who interviewed Mrs K. It says based on the screening firm's report, it determined that the claim, as submitted, demonstrated fraudulent behaviour.

It's important to explain that it isn't for me to decide whether Mr and Mrs K acted fraudulently. Instead, I've needed to consider if Red Sands decision to avoid their policy and decline their claim was reasonable. It's for Red Sands to show that Mr and Mrs K acted dishonestly, and did so with the view to gaining something they weren't otherwise entitled to under the policy, if it wants to decline their claim on the basis of fraud.

The report from the loss adjuster who visited Mr and Mrs K's property a couple of weeks after they made their claim says:

*"...we found the house generally in need of a complete refurbishment and there were no immediate signs that anyone had been living in the house with the exception of a wireless internet router."*

It also says that Mr and Mrs K advised that one of them had been staying over in the house, sleeping on the front room floor on a mattress, while the other lived with their children at their parents' home. It says they gave the reason for this as being *"concerned about squatters and the implications of insuring an unoccupied property"*.

The loss adjuster noted: *"we would not consider this to be the Insured permanently residing at the risk address"*. He also noted that he'd obtained utility bills showing electricity usage from 1 October to 30 November was very low and there had been no gas usage in two months.

Red Sands later appointed another loss adjuster to deal with Mr and Mrs K's claim. He visited the property in late March. I can see he was also concerned that Mr and Mrs K had given inaccurate information about the property being their main home when they took out the policy.

The loss adjuster suggested that a pipe froze and burst during a period of sub-zero temperature in December, and the water escaped after a rise in temperature allowed a thaw.

Red Sands instructed a screening firm to investigate its concerns that Mr and Mrs K hadn't given accurate information about their living circumstances.

Mrs K was asked to take part in an online test which required her to answer a number of questions. According to the screening firm's report, Mrs K was given an overall evaluation of *"high risk"* to the questions:

- *"Did you purposely provide any incorrect information in the insurance claim you submitted?"*
- *Did you purposely falsify your insurance claim in any way?"*

Following this, Mrs K was interviewed by the screening firm over the phone.

The report says:

*"We advised that our role during this call was to find the cause that produced the above alerts without judgement."*

*We explained that the technology is objective and measures the same aspects of speech in all people. Every human has these same aspects, just like a heartbeat. The technology serves to fast-track claims that present no risk, and to advise insurers to those that should receive further follow up”.*

It seems from the above, that the evaluation of Mrs K’s answers in the online test as “*high risk*” wasn’t enough to conclude she was being dishonest. Further follow up was required.

The screening firm then interviewed Mrs K over the phone and recommended Mr and Mrs K’s claim be declined. The report says:

*“It is our recommendation the claim is declined due to the residence by way of behaviours not being used as the main residence.”*

Having carefully considered the information in the report, I’m not persuaded that this shows Mrs K was being dishonest. I appreciate there were concerns about things such as a lack of furniture and clothing in the property, low energy consumption and her parents’ address being used for correspondence. However, Mrs K has given explanations for all of these things and her answers have been consistent throughout the claim.

Mrs K says her husband would sleep at the property most nights and she would sometimes join him. Their energy usage was low because they mainly only went to the property to sleep. They didn’t use the central heating because they didn’t want to heat the whole house. They slept on a mattress on the floor in a room downstairs, with an oil heater.

The report says:

*“At the time of the incident with the policy address being less than 3 miles away. Mr K had not returned for 17 days. We would reasonably think he would have had to return to the main residence for clothing and personal belongings. He has not had to do so although they only expected to be away for 1 night.”*

However, it also says that both Mr and Mrs K eat and shower at her parents’ address. So, I think it’s likely that clothing and personal effects were kept at Mrs K’s parents’ home.

Mrs K also explained that correspondence was still being sent to her parents’ address because they hadn’t got around to updating their contact details. This wasn’t a priority as they have access and always pass by there.

The first loss adjuster who visited noted the presence of a wireless internet router, and Mrs K has provided broadband bills to show this was there prior to the escape of water event. I’ve also seen evidence to show that Mr K’s bank statements were being sent to the property address for several months prior to the insured incident. So, while some of the evidence arguably supports Red Sands’ concerns about occupancy, there’s also some evidence to support Mr and Mrs K’s testimony that they considered the property to be their joint main residence.

Ultimately, the screening firm’s report, which appears to be the primary evidence Red Sands is relying on, doesn’t seem to conclude that Mrs K was lying. It says Mr and Mrs K’s behaviour does not support the property being their main residence.

I appreciate Red Sands might not agree that the insured property should be considered Mr and Mrs K’s main residence, given what they’ve said about their living arrangements. But I’m not satisfied, from what I’ve seen, that Red Sands has done enough to show that Mrs K acted fraudulently.

Red Sands has suggested that the Financial Ombudsman Service should independently question Mr K as to whether he occupied the insured property in quite the manner his wife suggests. To be clear, it isn't our service's role to carry out a fraud investigation. It's for Red Sands to show that a consumer has committed fraud if it wants to rely on this to decline their claim.

Red Sands has suggested Mrs K is trying to claim over £250,000 she isn't entitled to from the alleged fraudulent act. However, I can see from Red Sands' notes that it had considered whether it should settle the claim proportionately on the basis that the property was unoccupied. An internal email says: *"I've requoted risk as unoccupied, and the premium difference is circa 2%. We wouldn't look to adjust settlement given minor difference."* This suggests that even if it could be shown that Mrs K was lying about the property's occupancy, which I'm not persuaded that Red Sands has sufficiently evidenced, she wasn't claiming for more than she was entitled to under the policy.

Having carefully considered all of the information provided by both parties, I'm not persuaded that Red Sands has shown that Mr and Mrs K's claim was fraudulent. I don't think it's done enough to show that Mr and Mrs K lied or that the alleged lie was made to gain something they wouldn't have otherwise been entitled to under the policy. It follows that I don't think it was fair to avoid their policy and decline their claim on the basis that their claim was fraudulent.

In its letter advising Mr and Mrs K of its decision to decline their claim, Red Sands also referred to a term in its policy which says:

*"It is also only valid if You ensure the building is properly maintained. This means the roof should be watertight, gutters clear and working and the walls straight with any brick or blockwork fully pointed. This also means You will need to pay for any wear and tear and specifically anything that causes damage over a period greater than 7 days. You should take care to prevent or minimise any loss, damage or injury."*

Red Sands said the policy could not provide liability due to Mr and Mrs K's failure to address the onset and development of such a degree of mould at the insured address as to jeopardise the level of maintenance it requires for any property it insures.

I appreciate Red Sands doesn't believe that Mr and Mrs K did enough to mitigate their loss. However, their claim relates to the insured peril of *"water escaping from pipes, tanks or appliances, including finding and accessing the leak causing the damage"*. The proximate cause of the damage Mr and Mrs K are claiming for appears to be the burst pipe, which was a sudden and unexpected event. Red Sands' letter refers to the growth of mould in the property, which seems to have happened *after* the escape of water incident. It hasn't suggested that the pipe burst due to a lack of maintenance. So, I don't think it would be fair for Red Sands to decline Mr and Mrs K's claim based on this exclusion.

Mr and Mrs K also complained about the delay in Red Sands' progression of their claim. They were worried about further damage and said it was impacting their mental health. I think Red Sands' decision to decline Mr and Mrs K's claim and the length of time it took to do so has caused them unnecessary distress and inconvenience. So, I think it would be fair for Red Sands to pay Mr and Mrs K the £350 our investigator recommended.

## **Putting things right**

Red Sands should:

- Reinstatement of the policy and reassessment of the claim, in line with the policy's terms and conditions.
- Pay Mr and Mrs K £350 for distress and inconvenience.
- Remove any information reported to the Claims Underwriting Exchange relating to the policy being avoided or cancelled.

### **My final decision**

For the reasons I've explained, I uphold Mr and Mrs K's complaint and direct Red Sands Insurance Company (Europe) Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 8 December 2023.

Anne Muscroft  
**Ombudsman**