

## **The complaint**

Mr P complains that Red Sands Insurance Company (Europe) Limited (“Red Sands”) has unfairly declined a claim for damage to his conservatory.

## **What happened**

In December 2022, Mr P noticed a leak in the roof of his conservatory, which had been built in 2017. The builder of the conservatory had provided a warranty, underwritten by Red Sands, which provided cover in the event that the builder ceased trading.

As the original builder was no longer trading, Mr P contacted Red Sands to make a claim under the warranty. Red Sands asked Mr P to obtain a quote for repair, which he did. The claim was subsequently accepted.

However, Red Sands’ contractors wrote to Mr P, explaining that the roof had been inspected and the damage was consistent with wear and tear. They produced a report saying there were no obvious signs of damage to the roof and the seals had likely deteriorated due to the guttering being full of leaves, causing standing water to accumulate. Unhappy with this assessment, Mr P made a complaint.

In its response to the complaint, Red Sands said the claim had been approved in error, but that given its contractor’s report, it was satisfied that the damage was as a result of a lack of maintenance of the roof following installation. Red Sands also said the builder was still trading and may be able to repair the issue.

Mr P didn’t accept Red Sands’ response, so he referred his complaint to this service. Our Investigator considered it and said he wasn’t of the view that the builder was still trading, because from the evidence he’d seen, it looked like the company was in the process of being wound up. And he also said he found Red Sands’ contractor’s report to be more persuasive than anything provided by Mr P, because it gave a more detailed assessment on the cause of loss, which was said to have been wear and tear. As this was a valid exclusion under the policy, he didn’t think Red Sands had declined the claim unfairly.

Mr P didn’t agree with our Investigator. He said, among other things, that the report provided by Red Sands’ contractor was biased, that it wasn’t possible for the roof to have failed due to wear and tear within six years of the conservatory being built, and that many conservatory providers offer ten year guarantees for their work. Our Investigator reconsidered the complaint, but ultimately said that none of the evidence showed that there was a manufacturing or installation defect. He recommended £100 compensation for the loss of expectation caused by Red Sands accepting the claim in error.

Because Mr P didn’t accept our Investigator’s recommendations, the complaint has now 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 this complaint in part, and in line with our Investigator's recommendations. I'll explain why.

The warranty says it provides cover "in the event that the member company has ceased to trade" and Red Sands has suggested it still may be active and able to affect the repair. But from conducting a search on the Companies House government website, I can see that the original company that installed the conservatory was dissolved in July 2024 and had likely ceased effectively trading some time before that. So I'm satisfied that pursuing the issue through the warranty is the right course of action for Mr P to take in the circumstances.

In relation to the claim itself, the policy says it covers:

- *The cost of making good defective workmanship and/or faulty materials*
- *The cost of making good breaches of Building Regulations*

When making a claim, it's for the insured to demonstrate that the damage they're claiming for is covered by the warranty. So if it can't be shown that the leak is as a result of defective workmanship, faulty materials, or a breach of building regulations, then the claim cannot succeed.

Red Sands declined the claim because of an exclusion in the policy, which says it won't cover:

*"Any damage or defect caused by fair wear and tear, discolouration, subsidence, earth movement, climatic conditions such as sunlight or storm, environmental factors such as tree or hedge roots"*

So there are two issues here; one is whether the leak is caused by defective materials, workmanship or a breach of building regulations, and therefore covered by the policy. And the second issue is whether there's a valid exclusion in the policy that applies, such as the exclusion pertaining to wear and tear, which would allow Red Sands to fairly decline the claim. If, in relation to the first issue, there's insufficient evidence of a breach, defective workmanship or faulty materials that would give rise to a successful claim under the warranty, then Red Sands doesn't need to rely on an exclusion to decline the claim.

So in order to make my decision, I've looked at the evidence available in relation to the cause of the leak. But, as our Investigator pointed out, the reports Mr P provided didn't provide much detail about the cause. I'll refer to each of the reports in turn.

The first report dated 8 March 2024 confirms there were no cracks or faults within the external radius end caps (on the top ridge, below which the leak was found to have started) and it also confirms that the end cap appears to have been appropriately sealed and positioned. It goes on to say Mr P didn't want the cap detached without prior approval from the insurer and so comments were based on Mr P's descriptions and general observations, rather than a more thorough exploration of the problem. It doesn't specify any particular defect in workmanship or materials.

Having considered the second report, dated 12 March 2024, I'm of the view that this also doesn't provide much detail about the suggested failure in manufacture or installation. Although the expert says he doesn't agree that the failure is due to wear and tear, and that organic material in the gutter doesn't demonstrate inadequate upkeep, he also isn't able to identify any defect in workmanship or materials. So whilst the claim was declined on the

basis that a valid exclusion applies, I'm not satisfied that Mr P has been able to demonstrate a defect that would be covered by the warranty in the first place.

And I've considered all the photo and video evidence Mr P has provided, but I'm afraid this also doesn't persuade me that there's a defect that would be covered by the warranty. For example, the videos show standing water in the guttering, without any leaves present. But this only confirms there's an issue such as a blockage somewhere in the system which has yet to be identified. It doesn't necessarily demonstrate a defect in materials or workmanship.

I understand from what Mr P has said, that he believes it wouldn't be possible to obtain further evidence without voiding his warranty in the process. I appreciate his concerns, though I'm afraid this isn't something we can generally advise on. It's up to a consumer to decide whether to proceed with further investigations if they feel it will help their case. And as our Investigator has said, this would be at their own cost and there's no guarantee the cost would be recoverable.

I've thought about Mr P's point regarding the ten-year guarantees that are offered by many conservatory companies. But all guarantees come with exclusions and limitations, so I can't safely conclude that the building work must've been defective for the leak to have happened within the usual guarantee timeframe. And there's nothing to say that what happened here would be covered by most guarantees.

So, whilst I can certainly appreciate Mr P's frustration that the leak has occurred within six years of the completion of his conservatory, I don't think it's unreasonable for Red Sands to require an actual cause of damage to be identified, and to require the cause to be one which is covered by the warranty, before accepting the claim.

It follows therefore, that I won't be asking Red Sands to cover the claim. But I do think Mr P has been caused unnecessary distress and inconvenience, for which he should be compensated. This is because he was advised initially that the claim had been accepted, before it was declined, so I think there has been some loss of expectation here. I accept what Mr P says about the levels of disruption this matter has caused, but I have to consider what part of that was as a result of the declinature of the claim itself, and how much of the impact was avoidable.

I've no doubt this matter has caused Mr P a great deal of stress, and I'm extremely sorry to also hear of the toll the matter has taken on Mr P's mother. However, ultimately, I haven't found Red Sands to have unfairly declined the claim, so I don't consider it to be at fault for all the trouble and upset this matter has caused. But I still think Red Sands should pay £100 compensation for the part it's responsible for playing in the situation. An award of this amount reflects an error which led to more than the usual levels of frustration and annoyance one might reasonably expect from day-to-day life, and I can see that the impact here was more than just minimal, and has required reasonable effort on Mr P's part to try to sort out. But I also consider the majority of the distress and inconvenience here to be as a result of the damage itself, rather than anything Red Sands has done.

I'm sorry to disappoint Mr P, but for the reasons I've explained, I don't consider Red Sands has declined the claim unfairly, and I think £100 is a fair and reasonable amount of compensation in the circumstances of this case.

### **My final decision**

My final decision is that I uphold this complaint and I direct Red Sands Insurance Company (Europe) Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 November 2024.

Ifrah Malik  
**Ombudsman**