

The complaint

Ms A complains about how Red Sands Insurance Company (Europe) Limited (Red Sands), handled a claim under her warranty insurance policy covering the installation of patio doors.

Any reference to Red Sands in this decision includes their agents.

What happened

Ms A had patio doors installed in 2014 by a firm (E). She was provided with a warranty insurance policy that, in the event E ceased to trade, would indemnify her for the cost of making good defective workmanship and/or faulty materials or (for windows and doors at a property in England or Wales) the cost of making good breaches of Building Regulations. The policy ran for ten years from the date of installation (six years for breach of Building Regulations) with a contract value (the maximum indemnity amount applicable) of £5,445 (being the cost of the installation by E). E ceased trading in 2020, so customers had to claim through the policy for any faults otherwise covered under E's original installation guarantee.

Ms A subsequently made a claim in 2021 for a replacement glass unit of one of the doors as the unit developed a crack in the inner pane. Ms A wasn't happy with the quality of the replacement unit glass and the contractor (EV) subsequently replaced it twice. But Ms A wasn't happy with the [third] replacement unit. EV weren't able to source replacement glass of the required standard so in June 2022 Red Sands arranged for a preferred contractor (P) to install a new unit in August 2022. Ms A signed a document indicating the installation had been completed to her satisfaction.

Ms A then contacted Red Sands in March 2023 to say she wasn't happy with the new unit as there was an obvious difference in the tint of the glass of the new unit compared to the other glass, most noticeable in sunshine. Ms A said she told P before they replaced the unit that it needed to match the other glass.

Red Sands asked Ms A to contact the new firm (E2) set up after E ceased trading to provide a quote for replacement of both patio doors (as E2 said they didn't replace only sealed glass units). The quote was for £9,964. The value of works previously carried on the doors by P was £2,964 which left a balance of indemnity of £2,481. Considering the quote and the remaining indemnity balance, Red Sands emailed Ms A (July 2023) saying she would be liable for £7,483 (the quote amount less the indemnity balance).

However, Ms A wasn't happy with the proposal. She thought Red Sands asking her to get a quote for replacement of the patio doors implied they would be covering the cost. She didn't think her accepting the work had been completed satisfactorily was relevant as it wasn't possible to ascertain the glass of the replacement unit was to the standard required to match the original glass.

She said Red Sands had, through their email, agreed to contribute the remaining indemnity balance of £2,481 towards the quoted cost of replacing the patio doors. On the strength of that, she'd accepted the quote from E2. She was surprised the policy (the indemnity) didn't cover the quoted cost of replacing the patio doors. But she was prepared to accept the

£2,481 as a contribution towards the cost of the replacement patio doors, in addition to 50% of the cost of P's replacement unit. But Red Sands declined Ms A's proposal.

Ms A complained to Red Sands about the decline, but they didn't uphold the complaint. In their final response they referred to Ms A accepting she was happy with the replacement unit when it was installed. They also said Ms A contacting them in March 2023 to make a claim was an excessive length of time given she described the difference in tint as 'very obvious'. Red Sands also noted the policy didn't provide for like for like replacement, but a substantially similar, functional product rectifying the fault identified. Red Sands also referred to the quote from P stating there could be colour variations in glass, due to aging and glass production. Red Sands considered the colour difference to be a minor variation from that in the initial unit installed, so there were no grounds for them to replace it.

Ms A then complained to this service. She said Red Sands accepted there was an issue with the glass in the replacement unit and should have paid her the remaining indemnity balance of £2,481 – as they initially said. She'd based her acceptance of the quote to replace the doors on the basis Red Sands would contribute £2,481. Their decision not to accept her claim had affected her financially through the loss of the indemnity balance, meaning she'd have to pay significantly more to replace the doors. She'd also had to spend a significant amount of time trying to get the issue resolved.

Our investigator upheld the complaint, concluding Red Sands hadn't acted fairly in declining Ms A's claim. The investigator didn't think there was anything in the policy that meant the time taken for Ms A to make a claim was excessive and should be declined on that basis. While Ms A signed a job ticket at the time of installation to say she was happy and the quote provided to her noted there could be differences in colour variation in glass, there was a policy term indicating where a contractor was appointed to carry out remedial works, a policyholder would have to pay any costs in excess of the limit of indemnity. The investigator concluded Red Sands should accept Ms A's claim and pay the remaining balance of the indemnity figure (£2,481). Red Sands' claim notes indicated this amount had been offered but then withdrawn without a reason being given.

Red Sands disagreed with the investigator's view and asked that an ombudsman review the complaint. They said the policy was designed to remedy faults and the glass in the patio doors had already been replaced twice before due to Ms A's dissatisfaction with previous glass. Due to this, the possibility of a colour difference was brought to her attention before the most recent replacement and she accepted, in writing, this possibility. And at the time of the replacement she signed to indicate she was happy with the replacement. But it was seven months before she contacted them regarding the difference in colour.

Red Sands also said the policy didn't provide for a like for like replacement, referring to a clause in the policy wording about mismatch of colour. While another policy term was referenced in the investigator's view, the remaining indemnity under the policy had no bearing on their decision as there was no fault with the replacement glass. And the quote she'd received was for the replacement of both patio doors, to make the panes match. This also wasn't covered under the policy term they referenced about mismatch of colour.

In my findings, I concluded it was reasonable to conclude that a difference in colour (tint) wasn't a defect or faulty material, and the policy terms and conditions specifically excluded mismatch of colour. I also thought if the colour difference was as obvious as Ms A said, I would have expected her to have raised it at the time of installation, or shortly thereafter. But of itself, I didn't think the time taken to raise concerns was a valid reason to decline the claim.

I concluded Ms A was aware of the possible colour variation of the replacement unit glass and that the terms and conditions of the policy mean a variation wouldn't be considered a defect in workmanship and/or materials. So, the cost of replacing a unit because of colour mismatch wouldn't be covered. So, I concluded Red Sands applied the policy terms and conditions fairly and reasonably in not applying the balance of indemnity and not accepting the claim for the cost of replacement.

I recognised Red Sands' initial email in July 2023 meant it was reasonable for Ms A to think Red Sands would contribute the remaining indemnity (£2,481). However, given my conclusion it was fair and reasonable for Red Sands to change their position and decline to cover the replacement unit, I didn't think the email was a binding commitment.

But as I thought it reasonable for Ms A to think the cost (the limit of indemnity amount) would be applied, I concluded Red Sands' change of position meant a significant loss of expectation for her and significant distress and inconvenience. So, I concluded Red Sands hadn't acted fairly and reasonably towards Ms A. I thought £500 for loss of expectation, distress and inconvenience was fair and reasonable in the circumstances of this case.

Because I reached different conclusions to those of the investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

My role is to decide whether Red Sands have acted fairly and reasonably towards Ms A.

Looking at the circumstances of the case, the key issue is Red Sands declining to cover the quoted cost of replacing Ms A's patio doors, at least to the degree of the remaining balance of the indemnity. Ms A says they should do so, given the issues with the replacement unit installed by P. Red Sands say Ms A accepted the replacement unit; waited seven months before raising concerns about the replacement unit differing from the other glass; and the quote from P said there could be differences in the glass colour.

In considering the issue, I've considered the evidence, information and representations made by Ms A and by Red Sands, including the exchanges between them and Red Sands' case notes. Given the reference in Red Sands' final response, I've first looked at the policy documents. First the contract value is clearly stated in the Certificate of Insurance as £5,445 which was the original cost of the installation in 2014 by E. The Certificate also makes it clear the limit of Indemnity is the lesser of either the contract value, or £25,000. Which means the limit is £5,445.

It's therefore clear that any amount for repair/replacement work carried out under the policy that exceeds the contract value won't be covered.

I've then looked at what the policy covers. The Policy Document – Terms and Conditions states that it covers, under Section 3 Cover provided and paragraph 3.1:

“For all types of insured works:

- The cost of making good defective workmanship and/or faulty materials.”*

Paragraph 3.4 states:

“In the event we appoint an alternative contractor to carry out remedial work and the costs involved exceed the limit of indemnity, you must pay the costs in excess of the limit of indemnity.”

Taken together, these terms make it clear the policy covers making good defective workmanship and/or faulty materials. So, the issue is whether Ms A's concerns about the difference in colour of the replacement unit installed by P can reasonably be considered to involve 'defective workmanship and/or faulty materials'. From what I've seen, the previous replacements of the unit (the glass) were due to cracks, scratches and other issues that I think it reasonable to conclude were defects and/or faulty materials.

However, the issue with the replacement unit fitted by P in August 2022 would seem to be with the colour (the tint) of the glass, compared to the other glass in the doors.

In considering whether this can reasonably be held to be a defect or faulty materials, I've also had regard to the policy exclusions, set out in Section 4 Exclusions. The section includes the following:

"4.8 any costs beyond the limit of indemnity;...

4.20 any mismatch of color, design or function after the repair of a damaged area or part, examples include, but are not limited to the repair of paved areas, paint, rendering, flooring and tiled roofs';"

The latter paragraph is that referred to in Red Sands' final response. From what I've seen, the reference to mismatch of colour describes Ms A's issue with the replacement unit fitted by P. While not mentioned or referred to by Red Sands in their final response, I've also noted the policy goes on to state, under Section 5 General Conditions:

"5.17 Where the insured works is sealed unit replacement, the insurance only covers you for the replacement glass (the sealed unit) and not any other part of the window or associated product."

Taking these points together, I've concluded it's reasonable to conclude that a difference in colour (tint) isn't a defect or faulty material, and the policy terms and conditions specifically exclude mismatch of colour.

Looking at the other points made by Red Sands, I've seen the job ticket for P's replacement of the unit in August 2022. It sets out the work completed, and Ms A has signed a statement headed Works completed to my satisfaction. While I haven't seen any photographs of the replacement unit, which might indicate the degree of difference in colour, Ms A describes the difference as 'very obvious'. That being the case, it's not totally clear why Ms A didn't raise concerns earlier than she did. I've seen reference to her being busy and being reluctant to raise concerns with Red Sands. But if the colour difference was as obvious as she has said, I would have expected her to have raised it at the time of installation, or shortly thereafter. But of itself, I don't think the time taken to raise concerns would be a valid reason to decline the claim – the policy doesn't set a specific time limit (other than paragraph 4.14 which sets a limit of five years for a defect in a sealed unit to become apparent after the insurance cover start date). Which I think would reasonably be held to also apply to a replacement of the original unit.

On the point about the tinting of the replacement unit being different due to the aging of the other glass, P make this observation before they replaced the unit. It's also contained in their quote provided in July 2022 to replace the unit (addressed to Ms A) which contains the following statement:

*"**Please note that if this unit is sitting in a sequence we do need to advise that there can be colour variations in glass, due to aging and batch production**"*

Taking all these points into account, I've concluded Ms A was aware of the possible colour variation of the replacement unit glass and that the terms and conditions of the policy mean a variation wouldn't be considered to be a defect in workmanship and/or materials. So, the cost of replacing a unit because of colour mismatch wouldn't be covered. So, I've concluded Red Sands have applied the policy terms and conditions fairly and reasonably in not applying the balance of indemnity and not accepting the claim for the cost of replacement.

I recognise Red Sands initially stated, in an email in July 2023, the contract limit of indemnity (£5,445), the value of work carried out by P (£2,964) and the consequent indemnity amount remaining (£2,481). Taking account of the quote from E2 (£9,964) and the remaining indemnity, Red Sands ask Ms A to confirm she agrees to pay for the difference (£7,483). I think it reasonable for Ms A to have taken this to mean Red Sands would contribute the remaining indemnity (£2,481).

However, given my conclusion that it was fair and reasonable for Red Sands to then change their position and decline to cover the replacement unit, I don't think the initial email can be taken to be a binding commitment.

But as I think it reasonable for Ms A to have thought the cost (the limit of indemnity amount) would be applied, I've concluded Red Sands' change of position meant a significant loss of expectation for her, given the exchanges indicate she accepted the quote from E2 on that expectation. I think that would have also meant significant distress and inconvenience. So, in this respect, I've concluded Red Sands haven't acted fairly and reasonably towards Ms A.

Having reached this conclusion, I've considered what Red Sands should do to put things right on this aspect. As I've said, I think Ms A has experienced significant loss of expectation and distress and inconvenience. I've considered this against the published guidelines on our approach to awards in these circumstances, and I've concluded Red Sands' actions have caused Ms A substantial loss of expectation, distress and inconvenience with a substantial short-term impact, but also an ongoing financial impact. Taking all these factors into account, I think £500 for loss of expectation, distress and inconvenience would be fair and reasonable in the circumstances of this case.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Ms A's complaint in part. I intend to require Red Sands Insurance Company (Europe) Limited to:

- Pay Ms A £500 compensation for loss of expectation, distress and inconvenience.*

Red Sands Insurance Company (Europe) Limited must pay the compensation within 28 days of the date on which we tell it Ms A accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Ms A responded to make several points about the provisional decision. First, she hadn't been told by Red Sands the length of time for her to raise the issue of the glass would be an issue and it took time and effort to contact them, at a time she was working long hours.

Second, it was their suggestion she got a quote to replace the doors to fix the problem, implying they would cover the cost. Had she known Red Sands wouldn't cover the cost, she wouldn't have gone ahead with replacement of the doors.

Third, they had clearly indicated (in writing) they would pay the balance of the indemnity, even though they wouldn't cover the full cost of replacement of the doors. But they changed their mind.

Fourth, she was also told the difference in tint (colour) wouldn't be noticeable and she shouldn't have signed off the statement indicating her satisfaction with the work. She also provided photographs of the doors, showing the difference in tint (colour) and the glass being 'cloudy'.

Red Sands didn't respond by the deadline requested for comments on the provisional 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.

. My role here is to decide whether Red Sands have acted fairly towards Ms A.

I've considered the points raised by Ms A in turn.

On her first point, I considered the time taken by Ms A to raise her concerns in my provisional decision, including her being busy and being reluctant to raise concerns (given her previous experience of raising concerns). However, I didn't think this of itself was a valid reason for Red Sands to decline the claim. So, it wasn't a factor in my conclusion Red Sands acted fairly and reasonably in applying the policy terms and conditions.

On the second point, I recognise it was Red Sands' suggestion she got a quote to replace the doors. I can also see why Ms A thought this meant they would cover the cost. But I don't agree this amounted to a binding commitment to cover the cost. Obtaining a quote would simply indicate the potential cost of such a solution – Red Sands weren't obligated to accept it. I understand Ms A saying she wouldn't have gone ahead with the quote had she known Red Sands wouldn't cover the cost, which is why (coming onto her third point) I think she suffered a significant loss of expectation Red Sands would cover either the whole cost, or he balance of the indemnity.

On the third point, I considered in the provisional decision the issue of Red Sands indicating, in an initial email, they would pay the balance of the indemnity. However, this didn't change my conclusion it was fair and reasonable for Red Sands to subsequently change their position and decline to cover the replacement unit, and that the initial email could be taken to be a binding commitment. But as I've said, the change of position did lead to a significant loss of expectation on Ms A's part, which I recognised in concluding Red Sands should pay £500 compensation for loss of expectation (and distress and inconvenience). So, I haven't changed my mind on this point.

On the fourth point, I considered the issue of the difference in tint (colour) in detail in my provisional conclusion, in reaching my conclusion Ms A was aware of the possible colour variation of the replacement unit glass and the policy terms and conditions wouldn't mean this would be considered a defect in workmanship and/or materials. So, the cost of replacing a unit because of colour mismatch wouldn't be covered. And while Ms A says she was told the difference in tint (colour) wouldn't be noticeable and she shouldn't have signed off the statement indicating her satisfaction with the work, it remains the case she did. Looking at the photographs of the doors she's provided, I can see the difference in tint (colour). There is a degree of 'cloudy', but it may be the effect of the sunlight shining on the glass.

A further aspect I've considered is the recently introduced Consumer Duty (the Duty), which sets higher and clearer standards of consumer protection across financial services and requires businesses to put their consumers' needs first.

The Duty applies to open products and services where the event date was on or after 31 July 2023. Under the Duty, amongst other things, insurers should support their customers in making use of their policy without unreasonable barriers. Red Sands have set out the reasons why they declined Ms A's claim, in line with the policy terms and conditions, and I've concluded they acted fairly and reasonably in applying the terms and conditions to decline the claim. But I also think Red Sands have acted unfairly due to the significant loss of expectation, distress and inconvenience caused by their decline of the claim (after initially indicating they would pay the remaining balance of the indemnity). And I've taken this into account in deciding what I think Red Sands need to do to put things right (£500 compensation).

Taking all these considerations into account, I've not changed my conclusions set out in the provisional decision, so my final decision remains the same.

My final decision

For the reasons set out above, my final decision is that I uphold Ms A's complaint in part. I intend to require Red Sands Insurance Company (Europe) Limited to:

- Pay Ms A £500 compensation for loss of expectation, distress and inconvenience.

Red Sands Insurance Company (Europe) Limited must pay the compensation within 28 days of the date on which we tell it Ms A accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 31 May 2024.

Paul King
Ombudsman