

The complaint

Mr C complains that Red Sands Insurance Company (Europe) Limited have denied there is an insurance contract in place for a purchase contract agreement he entered into with a window installation company for his conservatory.

What happened

Mr C entered into a purchase contract agreement with a window installation company who I shall refer to as S to install a conservatory on 4 August 2020.

In July 2023 defects became apparent with the conservatory , and so Mr C raised this with S who agreed that the defects needed rectifying. Unfortunately, S went into administration before this could be completed.

Mr C notified Red Sands, who he understood were the insurance backed guarantee providers for S.

Red Sands denied that there was an insurance contract in place for Mr C's installation as S hadn't registered Mr C's installation and purchased a policy.

Mr C complained to Red Sands as he thought this was incorrect and wanted Red Sands to provide cover for his conservatory.

Red Sands issued a final response on 4 January 2024 and didn't uphold the complaint. They said that their insurance policies are purchased after installation is completed on an individual basis by the installer and failure to do so by the installer doesn't confer any obligation on them.

Mr C was unhappy with this response and brought his complaint to us.

One of our investigators has looked into Mr C's complaint and she thought that Red Sands had acted fairly as there was no contract of insurance because there was no evidence that S had ever registered the conservatory.

Mr C disagreed and so the complaint has come 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.

I'm not upholding this complaint and I will explain why.

In Mr C's purchase contract agreement with S, it says that:

20. As a FENSA registered business it is a condition of our contract that you enter into a contract of insurance in respect of the guarantee. The insurance contract provided to you for

that reason insures you in the event that we cease trading and cannot honour the guarantee, subject to exclusions and restrictions set out therein. The policy is provided through Installsure who will issue policy documents directly to you following the completion of installation

It also says that the order price includes an Insurance Backed Guarantee Fee
Mr C argues that because of this contract clause, S is acting as Red Sands agent in concluding the contract of insurance and the duty to notify and register was a duty owed to Red Sands.

I can't agree with this for the following reasons.

It is true that the responsibility lies with S to purchase the policy on behalf of the consumer at the completion of the installation, and that doing so is a condition of the S's FENSA membership.

However, S and Red Sands are entirely separate entities, and S is not acting as an agent of Red Sands or selling policy on their behalf, but is a customer, purchasing policies from Red Sands on behalf of its own customers, which are intended to take the place of their own guarantee should they cease to trade.

The fee for the insurance would have been included in the contract price that Mr C paid, but it is then S's responsibility to use that to purchase the policy on Mr C's behalf and their failure to do so is entirely their own failing, and Red Sands can't be held responsible for that. They had no knowledge of the installation, received no funds for the purchase of the policy, and issued no policy documents.

Although it is a condition of FENSA membership that an insurance backed guarantee is put in place to back up S's guarantee, there is no FENSA registration and certificate required for conservatories as they are covered by building regulations, so the oversight wouldn't have been picked up before S ceased to trade. It's also why Mr C didn't receive a FENSA certificate following the installation. He should, however, have received the insurance documents, and the fact that he didn't receive anything despite the fact that the contract says this will happen will should have alerted him to the lack of insurance.

I do appreciate Mr C's position, and understand how frustrating it is to purchase something from a well-established supplier thinking that from the terms of their contract you will have a backup guarantee. Unfortunately, in view of the above, due to the actions, or inactions of the supplier, Mr C is left without cover, but it is not the fault of Red Sands, who knew nothing about Mr C's conservatory. So I can't fairly say that Red Sands have done anything wrong here, or that they are under any obligation to provide Mr C with any cover or redress.

I can see that Mr C has made a point that S were FCA registered and so he thinks that means they were authorised to act as agents for Red Sands. However, as far as I can see from our records, S were authorised for consumer credit activities - presumably for their finance agreements – not for selling or conducting contracts of insurance, so this doesn't assist Mr C.

However, I do note from FENSA's website that they may be able to assist Mr C in getting some resolution despite there being no insurance, and the following web page gives guidance on how they can help and leads the customer through the options:

<https://www.fensa.org.uk/FENSA-Homeowner-Hub-Missing-IBG>

I appreciate that this will be disappointing for Mr C but I hope the above information on FENSA assists him in obtaining some redress.

My final decision

My final decision is I'm not upholding Mr C's complaint about Red Sands Insurance Company (Europe) Limited and so they don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 October 2024.

Joanne Ward
Ombudsman