

The complaint

A limited company, which I will refer to as R, complains about the decision of Red Sands Insurance Company (Europe) Limited in relation to its Guaranteed Asset Protection (GAP) insurance claim. R also complains about the handling of this claim.

What happened

The following is intended only as a brief summary of the events leading to this complaint. Additionally, even where other parties have been involved, for the sake of simplicity, I have largely just referred to R and Red Sands.

R operates as an agricultural contracting business. And acquired a vehicle on finance. R took out motor insurance with a third-party insurer, which I'll refer to as N. The policy provided cover for a number of different types of use, including the carriage of other people's property for hire or reward. The policy did not though cover the carriage of passengers for hire or reward. R also took out a GAP Insurance policy underwritten by Red Sands.

In February 2024, the driver of the vehicle (a director of R) was involved in a serious accident. A claim was made on the motor policy with N, and the vehicle was ultimately written off. Settlement was made under the policy with N. However, as this left a shortfall between the cost of the vehicle and the settlement, R also made a claim under its GAP policy with Red Sands.

However, Red Sands declined the claim. It said that the GAP policy excluded any vehicles with are used for hire or reward. R responded saying that, whilst the policy with N did provide cover for such usage, R did not use the vehicle in this manner. Red Sands did not alter its position and R brought its complaint to the Financial Ombudsman Service.

Our Investigator recommended the complaint should be upheld. He didn't think Red Sands had demonstrated that the exclusion applied to the circumstances. And that it was not reasonable to merely assume that coverage for a type of usage amounted to actual usage of that type. He recommended Red Sands should reconsider the claim based on the remaining terms. He also thought R had been avoidably inconvenienced through the claims process, so recommended Red Sands pay R £250 to reflect this.

Our Investigator also recommended that Red Sands pay interest on any claim settlement that is ultimately payable to R. I will briefly address this point here.

I do consider that, as part of the process of reconsidering the claim, it would be preferable for Red Sands to consider whether there has been any impact on R as a result the time taken to pay any potential settlement and, if so, to think about how this should be redressed. However, I am unable to include a financial award of interest in relation to a complaint that is being redressed by way of a direction. This means it is not appropriate for me, as part of this complaint, to actually direct Red Sands to pay interest on any claim settlement that is ultimately due when the direction is to reconsider the claim.

If a claim settlement is ultimately due, and R considers that it has suffered as a result of the

time taken to make that settlement, it will need to raise this as a separate matter at that time. I would though encourage both parties to work together, and to take into account the approach of the Ombudsman Service to situations where there has been a delay in an insurer settling a claim – details of which can be found on our website.

Subsequent to the Investigator's view, Red Sands also said that R had been paid a refund of the policy premium. It does not appear that this has actually happened though. Potentially, money has been received by the dealer that arranged the policy. However, it does not appear R has ever accepted or received this payment. So, it would seem this is a matter Red Sands will need to take up with the dealer.

Red Sands asked for an Ombudsman's decision on this complaint, so this matter has been passed to me. Red Sands did not offer any further details of why it did not agree with the Investigator's opinion.

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 am upholding this complaint, largely for the same reasons as the Investigator.

Red Sands has sought to decline R's claim on the basis that an exclusion applies to the claim. As a result, it is for Red Sands to demonstrate that it is most likely that this exclusion applies to the circumstances.

The policy excluded vehicles which:

“Are used for hire or reward...”

And R's motor insurance policy with N did cover it for certain use in a hire and reward capacity. So, I can understand Red Sands interest in this point.

However, I don't consider that it is enough to say that R was capable of using the vehicle in this manner to demonstrate that it was most likely actually being used in this manner. Having the capacity to carry out an activity and to be insured whilst carrying out that activity, does not inherently mean that activity is actually being carried out. And unless the vehicle was being used in this manner, I do not consider it is fair and reasonable to apply the exclusion.

R has denied it was using the vehicle in this manner. And, other than pointing to the capacity for being insured under the policy with N, Red Sands has offered nothing to demonstrate that it is more likely than not that R was using the vehicle for hire or reward.

Ultimately, I do not consider Red Sands has demonstrated that the exclusion applies to the claim. It follows that I do not consider it was fair or reasonable for Red Sands to rely on this exclusion to decline the claim.

I also don't consider Red Sands handled the claim as well as it ought reasonably to have. I am unable to take into account the personal distress R's directors apparently experienced throughout this period. But I do consider R itself would have been avoidably inconvenienced as a result of Red Sands' handling of the claim. So, I agree with our Investigator that Red Sands ought to compensate R for this. It should be noted that this inconvenience is separate from any impact of not having received any settlement that might ultimately be due from the claim itself.

Putting things right

Red Sands Insurance Company (Europe) Limited should reconsider R's claim on the basis that the vehicle was not an excluded vehicle due to it being used for hire or reward.

Red Sands Insurance Company (Europe) Limited should also pay R £250 compensation for the avoidable inconvenience it has caused through its handling of this claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 26 November 2024.

Sam Thomas
Ombudsman