

The complaint

Miss W complains that Red Sands Insurance Company (Europe) Limited unfairly declined a claim she made on her motor warranty.

Reference to Red Sands Includes its agents.

What happened

Miss W holds a motor warranty with Red Sands. When her car broke down, she made a claim to Red Sands for the damage.

Red Sands declined Miss W's claim. It said because the breakdown had happened so close to Miss W taking out the policy – just 91 miles had been driven - it thought the fault existed before the policy was taken out.

Miss W didn't think this was fair, so she complained. But Red Sands didn't change its stance. It said the MOT, carried out before the policy was purchased, noted an oil leak, which it thought supported the fault pre-existing the policy.

Miss W didn't agree and brought her complaint to us. She said that two engineers thought the fault was sudden and unexpected and not pre-existing the policy. She also pointed out that the oil leak Red Sands was referring to related to the engine, but the damage and fault she was claiming for related to the gearbox.

Ultimately, one of our Investigators upheld Miss W's complaint. They said they were more persuaded by the evidence provided by Miss W and didn't think Red Sands had done enough to show the fault pre-existed the policy. She recommended Red Sands settle Miss W's claim and pay her £100 compensation.

Miss W accepted our assessment, Red Sands didn't, so the case has been passed for an Ombudsman's decision. Red Sands says the score marks on the clutch wouldn't have happened in just the 91 days Miss W held the policy, evidencing the fault was developing before the policy started.

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'm upholding it. I'll explain why.

- Miss W's policy with Red Sands covers her for the mechanical breakdown of a number of listed parts. The gearbox, and the clutch pressure plate are both listed as being covered.
- The policy defines mechanical breakdown as *"The failure of a part, causing it to suddenly stop working, for a reason other than General Wear and Tear or*

negligence.”

- I'm satisfied the fault in question meets this definition. Miss W's car suddenly broke down, there's no suggestion of negligence and Red Sands isn't suggesting the part has failed due to general wear and tear either.
- Red Sands is declining the claim because the policy doesn't cover *“The effects of poor repairs, or faults that were present when You bought the Vehicle.”* It says there are bite marks on the clutch plate which its senior claims handler thinks indicates the fault was developing *“long before”* the policy inception. It acknowledges the fault may have felt sudden in nature, but says it was *“in an advanced state of failure prior to the inception of cover”*.
- Red Sands also pointed out that the MOT before the policy was taken out indicated an oil leak. But it has since accepted this isn't related to this claim, so I need not comment on that further.
- Miss W has also provided reports from engineers who assessed the vehicle to support her view that the fault wasn't pre-existing the policy. Those say it was the pressure plate breaking up which caused the damage to the gearbox and that this was sudden.
- Ultimately, it's for Red Sands to show that the fault existed before the policy was taken out. The term it's relying on requires the fault to be present, not simply developing. I'm not persuaded it's done that. The findings provided by Red Sands and Miss W differ in their opinions of when the fault was *developing*. None of the evidence I've seen shows the fault Miss W experienced was *present* before the policy was taken out. It's accepted the fault would have been sudden in nature to Miss W, and so I think it's fair and reasonable for it to pay this claim.

Putting things right

To put things right Red Sands Insurance Company (Europe) Limited should

- Settle Miss W's claim for the gearbox failure in line with the remaining terms and conditions of the policy. This should include the surcharge for the gearbox.
- Miss W says she had to borrow money to pay this claim. It's not clear where she had to borrow this from. I've not been made aware of any interest she's had to pay, and because it's not her money she's been without, I'm not requiring Red Sands to pay interest on the claim.
- Pay Miss W £100 compensation. This is to represent the disappointment of not having the claim paid initially, and the distress and inconvenience of having to support her position and borrow money to pay the claim.

My final decision

For the reasons set out above, I uphold this complaint. To put things right I require Red Sands Insurance Company (Europe) Limited to take the actions set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 2 January 2025.

Joe Thornley
Ombudsman