

The complaint

Mr K complains that Red Sands Insurance Company (Europe) Limited (“Red Sands”) said he’d misrepresented his details when applying for his contents insurance, so it avoided his policy (cancelled back to the start) and wouldn’t pay his claim. Mr K found it difficult to buy cover elsewhere.

What happened

Mr K applied for a home contents and personal belongings insurance policy with Red Sands. He bought the policy through a broker I’ll refer to as “F”. The policy started in February 2024.

When he applied for cover, Mr K told Red Sands he’d had continuous cover for more than ten years.

In September 2024 his vehicle was broken into, and a substantial amount of his personal belongings were stolen.

Red Sands looked into his claim and asked for a copy of his previous insurance policy as part of its claims procedure. It emerged that Mr K had a gap in cover from his previous policy to Red Sands’ of 97 days. Red Sands said it would accept a gap in cover of up to two months.

Red Sands said he’d recklessly misrepresented his details. It voided the policy back to inception and wouldn’t pay his claim. It wouldn’t return his premium.

Mr K remained unhappy and brought his complaint to this service. He asks that Red Sands pay his claim. He says he was able to get a quote through F with zero years continuous cover.

Our investigator looked into it and thought his complaint would be upheld in part. He thought Red Sands had acted in line with the relevant legislation when it cancelled his policy. But our investigator thought Mr K’s misrepresentation was careless rather than reckless, so he thought Red Sands should refund Mr K’s premium plus 8% simple interest.

F told Mr K to ask for his premiums to be returned under the Direct Debit guarantee.

Mr K didn’t accept the view as he thought his policy was in force and Red Sands should pay his claim.

Because he didn’t agree, this complaint has been passed to me to make a final 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.

Having done so, I’m upholding Mr K’s complaint in part, but it’s important I say that I think Red Sands acted in line with the relevant legislation when it cancelled his policy. What that

means is I'm not going to ask it to pay his claim.

But what I have done is ask Red Sands to say that Mr K doesn't need to tell other companies about the cancellation in future so he should be able to obtain insurance more easily.

I appreciate Mr K will find my decision disappointing and I'll explain why I've decided it.

When looking at a complaint where there is a failure to disclose relevant information, I must first consider whether there has been a qualifying misrepresentation under the relevant law which is the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA").

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a policy. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

In Mr K's case there was a gap in cover of 97 days. The question asked of him when he applied for cover was:

"For how many years have you continuously held contents insurance without any claims?"

Continuously means not having a break from a policy for more than 2 months.

Mr K said he'd had continuous cover for ten years. I think the question is clear, and so I think Mr K failed to take reasonable care not to make a misrepresentation.

I've gone on to consider whether Mr K's misrepresentation was a qualifying one. In other words, what would Red Sands have done differently had it received the correct information from Mr K when he applied for the cover.

Red Sands has sent this service information that shows it wouldn't have been able to offer Mr K cover if it'd known his correct information about the gap in cover.

What this means is that Mr K's misrepresentation was a qualifying one under CIDRA.

It follows that I think Red Sands action in cancelling Mr K's policy from the start was fair in line with CIDRA.

I've said above Mr K said he could have found cover through F if he'd said he had zero continuous insurance. That may be the case, but F was acting as a broker. Red Sands is the insurer here, and its acceptance criteria meant it couldn't accept him on cover if it'd known about the correct state of affairs. F, as a broker, may have been able to source cover for Mr K from another company.

In later correspondence with this service, Mr K has pointed out that Red Sands could have checked his continuous cover at the start of his policy. But I don't agree. Mr K was

reasonably in the possession of that knowledge when he took out the policy – he could have checked exactly when his previous cover ended fairly simply. I've said above about the specific legislation that covers this, CIDRA, and CIDRA says he should act as a 'reasonable consumer'.

I can also see Red Sands has now agreed that Mr K's misrepresentation was careless, rather than reckless. What this means is Red Sands now needs to refund the premium he paid to it for cover, which is the outcome under CIDRA. I've mentioned above that, in its response to the view, F (presumably acting on behalf of Red Sands) told Mr K to recover his premiums via the Direct Debit guarantee.

This isn't acceptable. Red Sands now needs to refund Mr K's premium directly to him in full.

Red Sands also said it wouldn't pay interest on Mr K's premiums. Under CIDRA there's no mention of any obligation for an insurer to pay interest on the refunded premium. Red Sands makes the point that it incurred claims handling costs in initially taking on and investigating Mr K's claim and it doesn't think it's fair to be penalised by paying interest. I agree that Red Sands doesn't need to pay Mr K interest on his premiums.

I told Red Sands about the difficulties Mr K was having with sourcing and affording insurance, and it agreed to change its records to show that Mr K had cancelled his policy. It also told this service that would mean Mr K isn't required to disclose that his policy was voided.

What I'm going to do is require Red Sands to write to Mr K and tell him this.

Because I've said Red Sands doesn't need to pay interest on Mr K's premiums, and it needs to write to him to tell him about the change in his cancellation status, I'd usually need to issue this as a Provisional Decision, then ask both parties for comments, then issue a Final Decision in due course.

But I regard the changes as minor, and Mr K has told me about his pressing need to buy insurance. So in the circumstances I'm going to issue a final decision straight away.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part.

I direct Red Sands Insurance Company (Europe) Limited to:

- Update Mr K's records on its internal and any external databases it's updated to show he cancelled his policy.
- Write to Mr K and confirm it's done this, and that he doesn't need to tell other companies about this.
- Refund his premium directly to him.

Red Sands Insurance Company (Europe) Limited must pay the amount within 28 days of the date on which we tell it Mr K accepts my final decision. If it pays later than this, it must also pay interest on the amount 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 Mr K to accept or reject my decision before 17 April 2025.

Richard Sowden
Ombudsman