

The complaint

Mr K and Miss P complained about Red Sands Insurance Company (Europe). They are not happy about the way a claim under their building's insurance policy was dealt with following an escape of water at their home address especially as Red Sands looked to proportionately settle their claim.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Mr K and Miss P were away from their home address for a short while when there was an escape of water from the water tank in their loft that caused a significant amount of damage. When they submitted their claim to Red Sands it looked into the circumstances surrounding the incident and paid for alternative accommodation amongst other things in looking to settle the claim. Red Sands eventually agreed to cash settle the claim but looked to make a reduction in settlement as it felt that Mr K and Miss P didn't tell it about some ongoing building work. And had they have done so it would have charged around 55% more in premium, so it wanted to reduce the overall claim settlement by this amount.

Mr K and Miss P weren't happy about this, and the total amount Red Sands offered to settle the claim and about the poor service they felt they received alongside some additional delays, so they complained to Red Sands about this. Its agent responded in its Final Response Letter (FRL) on 3 July 24 to say that as Mr K hadn't told Red Sands that they were undertaking some work at their property when they took the policy out that they had misrepresented at the time of taking out their insurance. And so, it was reducing the settlement payment in line with what it would have charged (55% more in premium) had they made it aware of this. And Red Sands responded in a further FRL dated 24 July 2024 to say that it agreed with the position outlined by its engineer and said that it was happy with its initial starting point for the cash settlement in line with its surveyor's scope of works. It noted that Mr K and Miss P had provided their own quotes to undertake the work, but it felt they covered costs that it didn't feel were necessary or attributed to the claim.

For example, Red Sands engineers had costed for the removal and refit of the bathroom and sanitary ware and to test the electrics while Mr K and Miss P had costed for a full rewire and replacement sanitary ware which wasn't necessary in its opinion. However, it did offer £200 compensation in acknowledgement of some delay and poor service.

As Mr K and Miss P remained unhappy, they complained to this Service and our Investigator partially upheld their complaint. He didn't think Red Sands had shown that Mr K and Miss P had misrepresented in anyway as they hadn't started the recent work on an outside summer house when they took out the policy or that the additional work or summer house would have been covered by Red Sands in any event, so he didn't think it was fair to make a reduction in settlement. However, he did think that Red Sands had acted fairly in offering to pay Mr K and Miss P what it would have paid to make good the damage incurred by the escape of water as opposed to use the quotes Mr K and Miss P provided. He also thought Red Sands should pay a further £100 compensation (£300 in total) as Red Sands could have kept Mr K and

Miss P better informed about the claim. And he felt there were some delays in advancing matters and that some aspects of the claim still hadn't been settled.

Although Mr K and Miss P accepted a lot of the Investigator's findings, they maintained that they should be paid costs in line with the quotations they had gained and Red Sands maintained that Mr K and Miss P had misrepresented. So, the matter has been passed to me for review.

What I've provisionally 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 agree that this complaint should be partly upheld, and Red Sands should pay the claim without making a proportionate reduction in line with what it would have cost it to make good Mr K and Miss P's property and it should pay £300 (total) compensation. I'll explain why.

I'd also like to reassure Mr K and Miss P that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything they have told us. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail they would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our Service. And I note that Mr K and Miss P have brought up additional issues in response to our Investigator's view but they would have to be advanced with Red Sands in the first instance so I will not be considering those issues here, just the points dealt with in Red Sands two final responses in July 2024.

In looking to decline Mr K and Miss P's claim Red Sands have made an argument that they misrepresented by not telling it that they had started work on a summerhouse. The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (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 must 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.

Red Sands looked to proportionately settle Mr K and Miss P's claim as it thought they had misrepresented and failed to take reasonable care not to make a misrepresentation when they applied for insurance as they didn't tell it that they had started work on a summer house. I've looked at the questions asked when they took the policy out and it's clear that they did take reasonable care and answered the question truthfully and correctly at that point in time - as they hadn't commenced work on the summer house at that point in time and didn't until a few months later – and so as there wasn't a misrepresentation, I can't say Red Sands acted fairly here. And therefore, the actions taken by Red Sands, of proportionately settling the claim, are unfair as they are not in line with CIDRA.

Our Investigator also went on to consider whether Red Sands could fairly have declined the claim as Mr K and Miss P didn't ensure that it was aware of the building works when they commenced a few months into the policy period. And considered whether the addition of the summer house, which was in the very early stages of its build, would have been covered at all by the policy or was a fundamental change in risk but he didn't think this was the case.

This was because he didn't think the summer house would be covered under the policy and so wouldn't be considered a fundamental change in risk so he didn't think it would be fair or reasonable to allow the settlement of the claim on a proportionate settlement basis for this reason either. He thought it was clear the summer house wasn't covered under the policy as it wasn't attached to the main property or any of the additional areas outlined under the policy. And as there wasn't a fundamental change to the risk when the building work commenced, he didn't think it was fair for Red Sands to proportionately settle.

While I can understand the Investigator's general point here this isn't why Red Sands decided to settle the claim on a proportionate settlement basis. It looked to do this as it thought Mr K and Miss P had misrepresented, but as I've already explained there wasn't a misrepresentation here so Red Sands cannot take the steps it took in relation to the policy.

Turning to the level of the costs of the claim I can understand why Mr K and Miss P would like a higher amount than the amount Red Sands repairing agent concluded it would cost to repair their home as the two quotes they gained were for more. But Mr K and Miss P's quotes were for significantly more than Red Sands contractor had quoted in looking to put things right after the escape of water claim. And I wouldn't expect Red Sands to pay more than it would cost it to put things right had it have undertaken the work itself when looking to cash settle the claim.

Red Sands has explained to Mr K and Miss P that their quotations showed work that wouldn't be covered under this claim, such as - stripping out work that had already been undertaken; new doors when most only needed adjustments and handles could be reused; electrical work that was unnecessary when only an electrical test and certification was required; plumbing work that wasn't required once the leak had been fixed; quotes for new bathroom and sanitary ware when the old items should have been reused; expenses in relation to the management of the claim which wouldn't be covered under the policy. And various other things that wouldn't be covered for this claim.

Given all of this, I think the fair and reasonable thing to do, in the particular circumstances of this case is for Red Sands to pay the claim in full but in line with its own scope of works and pay 8% simple interest on any outstanding amount from the date of claim until the date of settlement. And £300 compensation for the poor service and delay in updating and advancing Mr K and Miss P's claim. And Mr K and Miss P are free to raise any additional points they wish to raise with Red Sands not covered under this complaint.

Replies

Both sides responded in detail to my provisional decision. In the main Red Sands repeated its position that it believed Mr K and Miss P had carelessly misrepresented here and hadn't told Red Sands they had commenced work on a summer house. On the one hand it suggested this was when the policy was taken out, saying Mr K and Miss P didn't tell Red Sands about this when they took the policy out, and on the other suggesting they should've notified it that they had commenced the work.

So, Red Sands maintained it acted fairly in applying a proportionate settlement in line with CIDRA given the careless misrepresentation and non-disclosure and the fundamental change in risk. And it said again that the policyholder didn't disclose the construction on its

portal which they were obliged to when they commenced the work seeming to acknowledge that Mr K and Miss P hadn't misrepresented when they took out the policy.

While Mr K and Miss P highlighted that they felt they had outstanding payments due in relation to Alternative Accommodation (AA) which they felt were due under the claim, Council Tax, associated costs and damaged items. And they identified what they felt were discrepancies in their settlement as their quotes were higher than Red Sands scope of works which they felt was based on lower market prices and excluded several essential repairs resulting in a shortfall.

In addition, they highlighted that Red Sands agent removed and disposed of kitchen and sanitary ware. And reiterated that the electrical works required a full rewire as the damage stemmed from the leak. They went on to say they wanted a full breakdown of the final claim and request that Red Sands appoint an independent third-party surveyor to provide an independent second opinion. Plus, Mr K and Miss P highlighted the amount of stress and inconvenience caused due to repeated delays, miscommunication, and failure to address key aspects of the claim in a timely and thorough manner.

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 remain of the view that the complaint should be upheld. I don't propose to go over the finer detail of the complaint again, partly as the key issues are known to both sides and partly because the further representations, in the main, raise points that have been considered already.

I've considered Red Sands further representations in which it has reiterated its argument. But ultimately, I'm satisfied that there wasn't a misrepresentation here by Mr K and Miss P and so Red Sands cannot take the steps it took in looking to proportionately settle the claim. As such I think that Mr K and Miss P should be put back into the position they should have been in, but for the error. And Red Sands should pay the claim adding 8% simple interest on any outstanding amount from the date of claim until the date of settlement.

Turning again to the level of the costs of the claim and Mr K and Miss P's further representations. I have spoken to Miss P and reiterated that I'm only looking at the issues considered under Red Sands FRL's of July 2024. And outlined some of the additional points raised by Mr K and Miss P, including whether Red Sands agents disposed of items including sanitary ware, would have to be considered by Red Sands in the first instance. I will leave Mr K and Miss P to advance those issues now if they wish with Red Sands and I don't want to delay matters here. Plus, I understand that Red Sands will consider further representations in relation to the Council Tax and associated costs, including additional AA payments, drying costs, and contents so I'll leave Mr K and Miss P to advance this with Red Sands as well.

I know Mr K and Miss P feel that there are discrepancies in settlement between their quotes and Red Sands but as I've outlined in my provisional decision, I wouldn't expect Red Sands to pay costs it wouldn't have paid if it had dealt with the claim. And although Mr K and Miss P would like an independent surveyor to reconsider things it would be difficult to advance this now as they have chosen to redevelop the house after the escape of water claim as opposed to just repair the damage. But I feel Red Sands acted fairly in looking to cash settle the claim in line with Mr K and Miss P's wishes and I agree it would be fair to reuse items that weren't damaged. Although if its agent is responsible for disposing of items then obviously that will need to be considered separately now as I've already outlined.

Finally, I know Mr K and Miss P would like more by way of compensation for the poor service and delay they faced here. But insurance claims always cause a fair degree of stress and inconvenience and I feel £300, as opposed to the £200 offered by Red Sands, in acknowledgement of the poor service and delays caused feels fair, especially as they would always have faced a fair degree of additional inconvenience when they chose to reconfigure the house after the escape of water claim.

Given all of this, I think the fair and reasonable thing to do, in the particular circumstances of this case is for Red Sands to pay the claim in full but in line with its own scope of works and pay 8% simple interest on any outstanding amount from the date of claim until the date of settlement. Plus, £300 compensation for the poor service and delay in updating and advancing Mr K and Miss P's claim. And Mr K and Miss P are free to raise any additional points they wish to raise with Red Sands not covered under this complaint.

My final decision

It follows, for the reasons given above, that I'm upholding this complaint. I require Red Sands Insurance Company (Europe) to pay the claim in full in line with its scope of works and pay 8% simple interest on any outstanding amount from the date of claim until the date of settlement. And pay £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Miss P to accept or reject my decision before 27 June 2025.

Colin Keegan
Ombudsman