

## The complaint

Mr and Mrs H complain that Red Sands Insurance Company (Europe) Limited hasn't paid a claim under a warranty insurance policy.

## What happened

Mr and Mrs H took out a warranty insurance policy for their orangery. This covered them for defective workmanship or faulty materials, and for breaches of Building Regulations (when the insured works are windows and/or doors) – in the event that the member company has ceased to trade. The member company here is the installation company.

Mr and Mrs H made a claim to Red Sands on 23 June 2023. They said they had been trying to get the member company to remedy an internal leak in the corner of the orangery. However, the company had recently gone into administration. So, Mr and Mrs H wanted to claim under the policy.

Red Sands declined the claim, as it said two exclusions applied in the circumstances. It said the issue was guttering, which was excluded after one year. The other exclusion was where the defect occurred before the member company ceased to trade. But Red Sands accepted it hadn't handled the claim as promptly as it should have done. So, it paid Mr and Mrs H £200 for the distress and inconvenience caused.

Unhappy with Red Sands' decision, Mr and Mrs H brought a complaint to this Service. They said that the report about the defect was inconclusive as to what the cause was. They also said the current defect happened around the time the member company ceased to trade. So, Mr and Mrs H didn't think Red Sands had treated them fairly or reasonably.

One of our investigators reviewed the complaint. Having done so, he didn't think Red Sands had applied the exclusions fairly. He agreed that the report about the defects was inconclusive as to what the cause was. And he noted that the member company hadn't carried out lasting and effective repairs before ceasing to trade. So, he didn't think Red Sands had fairly relied on the second exclusion either. So, he thought Red Sands should reassess the claim, and pay Mr and Mrs H £150 for the distress and inconvenience caused in unfairly declining it.

Red Sands didn't respond to our investigator's findings. So, as no agreement was reached, the complaint was passed to me to decide. I issued my provisional decision in June 2025. Here's what I said:

*"Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr and Mrs H's complaint.*

*The policy provides cover in the event the member company has ceased to trade. This is defined in the policy term as follows:*

*“where the member company is operated as a limited company or a limited liability partnership means the member company ceasing to trade due to the appointment of a receiver, administrator or liquidator due to compulsory liquidation or creditors’ voluntary liquidation [..]”*

*I’ve looked at the information on Companies House and I can see the member company ceased to trade due to the appointment of a liquidator due to creditor’s voluntary liquidation on 5 July 2023. So, it was from this date onwards that Mr and Mrs H could claim under this policy.*

*Red Sands has relied on two exclusions to decline the claim:*

*“4.4 any damage or defects to guttering or rainwater goods where the damage or defect occurs more than one year after the insurance start date; [..]”*

*4.18 any defect or fault, whether reported to the member company or not, that occurred before the member company ceased to trade;”*

*I’ve first considered if Red Sands fairly relied on exclusion 4.4. to decline the claim.*

*An inspection was carried out on Mr and Mrs H’s orangery to identify the cause of the leak, and the remedial action needed. The report in October 2023 referred to a box gutter. It said the water was pooling in the middle suggesting the box gutter dips in the middle and the pooling water had made its way through the joint.*

*There was a further email from the same company in December 2023 which again referred to the box gutter. But it then referred to three joints, and that it wasn’t possible to determine which of the joints was leaking.*

*Mr and Mrs H have referred to the findings in December 2023 being inconclusive as to the cause of the leak. So, they don’t think Red Sands has fairly relied on this exclusion. But it seems to me that whilst it wasn’t clear which joint was leaking, it was a gutter joint that was leaking. Additionally, I can see that Mr and Mrs H referred to a leaking gutter in an email to the member company in 2021.*

*Based on what I’ve seen so far, I think it’s more likely than not that the damage or defect being claimed for was for guttering. And I haven’t seen persuasive evidence to show that this happened within the first year after the insurance start date. So, I currently think Red Sands has acted fairly and reasonably by relying on this exclusion.*

*I’ve also considered if Red Sands fairly relied on exclusion 4.18. to decline the claim.*

*It’s clear that the defect occurred before the member company ceased to trade. Mr and Mrs H had been in touch with the company at least already in 2021 to try and fix the leak. They’ve said there was an attempt to fix the issue over five visits.*

*The email I’ve referred to above from December 2023 referred to three joints, and it wasn’t possible to tell which one was leaking. And that it may not be possible to confirm this due to the amount of sealant that had been applied over subsequent visits. Mr and Mrs H have also provided emails between them and the member company in 2021 about remedying the issue. These refer to guttering being replaced which was leaking and needed to be fixed.*

*It seems to me that the defect or fault that Mr and Mrs H are claiming for happened well before the member company ceased trading – it was just never fully remedied. And even if there was a further defect caused by the member company trying to remedy the issue, Mr and Mrs H reported this to Red Sands on 23 June 2023. And they said in their claim form that they first noticed the issue in May 2023. So, this was also before the member company ceased to trade as per the terms of the policy.*

*Overall, I haven't seen anything to suggest that the defect or fault Mr and Mrs H are claiming for is something that first occurred after the member company ceased trading. So, based on what I've seen so far, I think Red Sands acted fairly and reasonably when declined the claim by relying on the second exclusion. This is because the defect or fault occurred before the member company ceased to trade.*

*I'm sorry to disappoint Mr and Mrs H, but based on what I've seen so far, I think Red Sands acted fairly and reasonably when it declined the claim.*

*I can see that it took Red Sands an unreasonable amount of time to give an answer on the claim. Mr and Mrs H first raised it on 23 June 2023, but it wasn't until 5 March 2024 that Red Sands declined it. But I think the £200 it paid them as compensation for the distress and inconvenience caused is fair and reasonable. So, I don't think there's anything else it needs to do, to put things right."*

Red Sands accepted my provisional decision. Mr and Mrs H didn't, and they maintained that Red Sands hadn't fairly relied on either exclusion. I've summarised their key points below:

- The report in October 2023 clearly confirms that the damage was due to faulty workmanship, or faulty install/product. So, this means the source of the issue was from the first day of installation and is not solely, or at all, related to damage or defects to guttering or rainwater goods. And the email in December 2023 is inconclusive as to the source of the issue.
- If the issue was guttering or rainwater goods, then replacing these should have fixed the problem. However, neither the report in October 2023 nor the email in December 2023 concluded that this would resolve the issue.
- Companies House information shows that the member company was in severe financial difficulties already in January 2023, which ultimately led to them ceasing to trade before Mr and Mrs H contacted them about the issue in May 2023. And during this period, there was information online which said that the member company had stopped trading.
- The previous defect was reported to the member company in August 2021, which involved replacing a length of guttering, and other work, due to a leak. This was completed in September 2021, no part of the roof was involved in the fix, and there were no defects outstanding until May 2023. It's clear that the defect in dispute was new to Mr and Mrs H at the time.
- Red Sands gave Mr and Mrs H no indication that their claim would be declined for eight months. The amount of compensation Red Sands has paid doesn't reflect the distress and inconvenience caused.

### **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.

Mr and Mrs H have sent in detailed comments in response to my provisional decision. I've considered everything they've said and sent. However, I've only commented on the points that I consider to be material to the outcome of the complaint, as I'm required to do. So, I haven't addressed every point Mr and Mrs H have raised. This isn't meant as a discourtesy, it simply reflects the informal nature of this Service.

In my provisional findings I referred to a report in October 2023, and a further email from the same company in December 2023. The email was in fact from a different company. But I considered the contents of both the report in October 2023, and the email in December 2023 when reaching my provisional findings. The fact that these were from different companies, rather than the same one, has no bearing on the outcome. Rather, the contents of the report and the email are material to the outcome.

I appreciate neither the report in October 2023 nor the email in December 2023 were conclusive as to the source of the leak. However, as I explained in my provisional decision, both referred to guttering or gutter joints. So, it seems to me that it's more likely than not that the damage or defect was to guttering.

I've reviewed the exclusion 4.4 again, and I appreciate that the term could be interpreted to mean that it doesn't apply in circumstances where the faulty workmanship was present from the date of installation, as that would mean the defect *occurred* at installation. But if I were to apply the same interpretation to exclusion 4.18, this would mean no claim would ever be payable, as then the policy wouldn't cover any defect or fault that occurred during installation as this would always be before the member company ceased to trade.

But as any ambiguity in policy terms should be interpreted in favour of the consumer, I make no further findings on exclusion 4.4 as this doesn't have a bearing on the overall outcome. This is because I still think exclusion 4.18 applies in the circumstances.

Mr and Mrs H say the defect only occurred in May 2023. However, for the reasons I explained in my provisional decision, I don't think the evidence supports that. When Mr and Mrs H submitted the claim, they said that the member company had attempted to fix the issue over several visits since installation. They said this worked for a period and then the leak reoccurred. This is also reflected in the report in October 2023 which referred to attempts to rectify the issue over five visits. And the email in December 2023 refers to sealant being applied over subsequent visits.

Based on what I've seen, I'm not persuaded that the damage or defect that Mr and Mrs H say occurred in May 2023 was new and separate to the issue that they had already reported to the member company several times over the years, and it had attempted to put things right – the previous attempt having been in 2021. So, I think it's more likely than not that the defect occurred well before the member company ceased to trade.

The member company ceased to trade as per the policy terms on 5 July 2023. However, where a member company has *effectively* ceased to trade, even if it's not strictly in line with the policy terms, I may find that it wouldn't be fair or reasonable to rely on a strict interpretation of this policy term. Rather, it may be fair to consider when the member has effectively ceased to trade.

Mr and Mrs H have sent articles about the member company from June and August 2023. However, these are both after May 2023. So, even if the defect first occurred in May 2023, I don't think I could fairly say the evidence shows that the member company had effectively ceased to trade by this point. I don't think a record of financial struggles in January 2023 that Mr and Mrs H have referred to is enough to say that the member company had effectively ceased to trade.

Having considered everything again, I don't think Red Sands acted unfairly or unreasonably when it declined Mr and Mrs H's claim. This is because I think it has fairly relied on the exclusion 4.18 as it's more likely than not that the defect occurred before the member company ceased to trade.

I appreciate how stressful this has been for Mr and Mrs H. But I can only hold Red Sands responsible for any mistakes it has made – which were the delays I set out in my provisional findings. And I think the compensation it has paid for these is fair and reasonable. I don't think Red Sands is responsible for the worry Mr and Mrs H have had over their orangery.

For completeness, Mr and Mrs H have also said that one of the companies who inspected the orangery removed some plasterwork, with Red Sands' permission, and there's a cost involved to remedy this. But I don't think I could fairly hold Red Sands responsible for this. I haven't seen anything to suggest that Red Sands directly instructed the company to remove plasterwork. And in any event, if Mr and Mrs H wanted to fix their orangery, they would have always needed to get someone in to inspect the damage and/or provide a quote for the works. So, I think this is a cost they would likely always have incurred.

I'm sorry to disappoint Mr and Mrs H, but I don't think there's anything else Red Sands needs to do, to put things right.

### **My final decision**

My final decision is that I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 14 August 2025.

Renja Anderson  
**Ombudsman**