

The complaint

Mr G complains about how Red Sands Insurance Company (Europe) Limited has handled claims on his mechanical breakdown insurance policy for his car's gearbox and torque converter.

What happened

Mr G's car was vibrating when driving so he took it to a garage and contacted Red Sands. The garage said the torque converter had mechanically failed and so needed replacing. Red Sands accepted the claim but said it would only pay 60% towards the repair. It said this was because the policy didn't cover electrical faults with the torque converter and as it wasn't clear if it was a mechanical fault or electrical it wouldn't pay the full cost. Red Sands also said due to the age and mileage of Mr G's car it wouldn't pay more than 60% of the repair cost.

Soon after, Mr G said his car made a loud bang while driving and warning lights appeared on the dashboard. Mr G then claimed for this with Red Sands as he'd been told by the garage it needed a new gearbox. The garage diagnosed a fault with the gearbox and said it needed replacing. Red Sands reviewed the claim and said the gearbox would need to be taken apart to understand exactly what had failed. Mr G didn't agree to this. He said the gearbox is a sealed unit and not a part the garage would take apart. He also said the cost to take the gearbox apart would be similar to that for replacing it. As Mr G wasn't happy with how Red Sands was dealing with his claims he complained. He said the gearbox had mechanically failed and so should be covered; he also said the full cost of the torque converter should be covered as well.

Red Sands reviewed the complaints and issued two final responses. One final response for the torque converter complaint and one for the gear box complaint. For the gearbox claim, Red Sands said it had been unable to determine whether the exact cause of the fault was mechanical and therefore didn't agree it had done anything wrong by asking for the gearbox to be stripped. For the torque converter claim, Red Sands said, as it had been unable to determine the exact cause of the fault, it had only authorised 60% of the claim for the parts needed to repair the torque converter. Red Sands agreed to pay £2,148.28 for the torque converter.

Unhappy with Red Sands response, Mr G referred his complaint here. He said he'd paid £2,986.42 to repair the torque converter and so Red Sands should pay the full amount. He also said it was unreasonable to ask for the gearbox to be stripped any further as three garages had said the fault was mechanical and so it should be covered.

I issued a provisional decision on this complaint on 14 August 2023 where I said:

"The terms and conditions of Mr G's policy with Red Sands say it covers his car for the mechanical breakdown of covered parts. It defines mechanical breakdown as:

“the failure of a mechanical or electrical component, causing a sudden stoppage of its function, for a reason other than wear and tear, deterioration or negligence.”

The policy covers the gearbox and torque converter but excludes electrical components of both parts. I'll address the torque converter claim first. For the torque converter, Red Sands has said it's likely a mechanical failure due to the components of the part. But said, due to the age and mileage, it's only going to pay for 60% of the parts. I've noted the policy excludes cover for parts which have failed due to wear and tear. For a part to be excluded due to wear and tear I think it is fair and reasonable that it would need to have reached the end of its normal working life for it to be fair for it to not be covered.

In this case there isn't evidence the torque converter has reached the end of its normal working life. Red Sands also hasn't shown where in the policy it will only pay for 60% of the parts. And when considering Red Sands has accepted the claim, I'm therefore not satisfied Red Sands has acted fairly by only paying 60%. To put things right, Red Sands should therefore pay the additional 40%. It should also add 8% simple interest to the amount it pays to compensate Mr G for not having the money.

I've also looked at the claim for the gearbox and can see the garage who has inspected Mr G's car has said:

“no electronic faults on the Gearbox.” It also says “you could hear the mechanical judder under acceleration which is caused by sudden mechanical fault, and this causes the vehicle to go into Safe/Limp mode”

I understand Red Sands would like the gearbox dismantled to confirm exactly what the cause of the fault is. However, in this particular case, I'm satisfied Mr G has had the fault diagnosed, the gearbox, and also shown it's most likely failed due to mechanical failure. It therefore follows that I'm not persuaded Red Sands has acted fairly and reasonably by not covering the claim for Mr G's gearbox.

I've noted Red Sands said due to the age and mileage It's most likely the gearbox failed due to wear and tear and provided generic comments from a garage which says gearboxes on this manufacture of cars start having problems around 80,000 miles. I can see Mr G's car has covered more than 80,000 miles. However, just because some gearboxes from this manufacturer have problems from that mileage, it doesn't mean that's what's happened to Mr G's, or that it's failed due to wear and tear. And, as explained above, I'm not persuaded Red Sands has shown that it's most likely this part has reached the end of its normal working life. I'm therefore not persuaded Red Sands can decline this claim for wear and tear either.

So, to put things right, Red Sands needs to accept the claim for the gearbox and pay the claim in line with the remaining terms and conditions of the policy. If Mr G has paid for the repairs to his gearbox, then Red Sands will also need to add 8% simple interest per year to what it pays to compensate him for not having the money.”

Mr G responded and provided a receipt for £500 for a second-hand gearbox he'd bought and had installed on his car to replace the failed one. He said Red Sands should also pay for this and for a new gear box to be installed, as per the policy terms and conditions.

Red Sands responded and didn't accept my provisional decision. It said the torque converter would have had some wear and the terms say Mr G will need to make a contribution towards the replacement part if it improves the vehicle.

Red Sands also said the gearbox is not a sealed unit and the repairing garage is not a gearbox specialist. It also said an electrical fault with a gearbox can cause a drop in oil which would cause a mechanical fault. Red Sands also said even if the fault was mechanical then the parts would be worn and not covered by the policy. It also said it wasn't clear what the fault with the gearbox was and given the car's mileage it would likely have had wear and tear. Red Sands also said the policy terms don't say a part needs to reach the end of its normal working life, and that as Mr G's car had done 146,000 miles then it's likely the gearbox had reached the end of its normal working life.

Finally Red Sands said that the policy terms say Mr G has to pay for any diagnosis and dismantling to identify the fault and as this hasn't been done, on balance the outcome Red Sands reached it thought was fair.

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.

I'll first address Red Sands response. I agree the terms of the policy say if the part to be replaced has some wear and it improves the general condition or value of the vehicle then Mr G will need to make a contribution. However, I'm not persuaded this means it's fair and reasonable for Red Sands to only pay 60% of the claim for the torque converter. I say this because the policy doesn't say how much Mr G would need to pay, I'm also not satisfied Red Sands has shown the torque converter most like had wear. It's just said that it's likely it had wear. Finally Red Sands also hasn't shown the replacement torque converter has improved the value either, I'm therefore not persuaded this means it's fair and reasonable Red Sands only pays 60% of the claim. I therefore don't intend to depart from the findings in my provisional decision on the torque converter.

In regard to the gear box, Red Sands said it's not a sealed unit. Mr G has disputed this and said it is a sealed unit. Neither party has provided anything from the manufacturer or specialist which shows that this specific gearbox is or isn't a sealed unit. It's therefore not clear if it is one which could be stripped and diagnosed further. I appreciate that Red Sands has said that an electrical failure could cause a mechanical failure to the gearbox, it's not clear if that is the case though and Red Sands has pointed out that Mr G hasn't done the further diagnostics as required under the policy. However, without knowing if the gearbox is sealed or not, I'm unable to say whether Red Sands has acted fairly by asking Mr G to do this.

Red Sands has also said Mr G's car has done 146,000 miles and therefore it's most likely reached the end of its normal working life. While that is a possibility, along with it being a possibility that an electrical fault has occurred, there is also the possibility that it was a mechanical failure, and the gearbox hadn't reached the end of its normal working life. So, without anything to show otherwise, I'm not persuaded it's fair and reasonable for Red Sands to decline the claim for wear and tear.

So as explained above, I'm persuaded it's most likely Mr G's gearbox has suffered a mechanical failure. And while there is a debate about whether further diagnostics can be completed on the gearbox, I need to decide what a fair and reasonable outcome to the complaint is. I've also noted Mr G paid £500 for a replacement gearbox, albeit a second hand one and that the terms of Mr G's policy say that Red Sands can use exchanged or reconditioned parts to repair the car. Therefore, in this case I think the fair and reasonable outcome would be for Red Sands to pay Mr G the £500 he paid for the second-hand gearbox. Red Sands should also pay the associated costs for the gearbox to be fitted, in line with the remaining terms and conditions of the policy. It should also add 8% simple interest

per year to what it pays to compensate Mr G for not having the money. Calculated from the date he paid for the gearbox and paid for the repair, until the date payment is made.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. I require Red Sands Insurance Company (Europe) Limited to:

1. pay 100% of Mr G's claim for the torque converter. It also needs to add 8% simple interest per year to the additional amount it pays for this, calculated from the date Mr G paid for the torque converter repair until the date settlement is made.
2. pay Mr G the £500 he paid for the replacement gearbox. It should also pay the costs to replace the failed gearbox with the second-hand one, in line with the remaining terms and conditions of the policy. As Mr G has paid for the gearbox repair already, 8% simple interest per year should be added to what he paid, calculated from the date Mr G paid for the repair until the date settlement is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 September 2023.

Alex Newman
Ombudsman