

The complaint

Mr C complains that Red Sands Insurance Company (Europe) Limited declined his claim for damage to his bicycle under his bicycle insurance policy.

Reference to Red Sands includes agents acting on its behalf.

What happened

In October 2021 Mr C contacted Red Sands to make a claim on his bicycle insurance policy. He said he'd damaged his mountain bike when he lost balance and his bike hit a tree and then a fence post. There were dents in the top tube of the bike and two bike shops thought it was unsafe to ride or repair. Red Sands asked a specialist cycle engineer (the engineer) to assess the damage. The engineer outlined the tests they conducted and concluded that there was no evidence of cracking on the frame. And the dents didn't compromise the structure of the frame or impair its function or performance. As cosmetic dents weren't covered under Mr C's policy, Red Sands declined his claim.

Mr C complained. He wasn't happy with several aspects of the way Red Sands had handled his claim. He didn't agree that the damage was only cosmetic and he provided statements from two bike retailers in support of his contention. He also said his bike had been returned to him without its pedals and both front and back maxles (quick release axles). Red Sands maintained its decision, so Mr C brought his complaint to this service.

Our investigator initially thought Red Sands had made a fair decision. He was satisfied with the level of expertise shown in the engineer's assessment and thought, on balance, that the damage only appeared to be cosmetic in nature. Mr C disagreed and went to some lengths to gather more evidence to support his view that the damage was more than cosmetic. He provided x-rays of the frame and statements from two senior managers from the company that manufactured his bike (Company A). Our investigator reviewed all the evidence and concluded that a reasonable person wouldn't think it was safe to ride the bike in its current condition. And as its function had been impaired, he didn't think Red Sands could rely on the exclusion in Mr C's policy. He recommended that Red Sands reconsider Mr C's claim without relying on the exclusion.

Red Sands didn't agree and so the complaint was referred to me to make a final decision. I initially issued a provisional decision, not upholding the complaint, and made the following points:

- The engineer's report was more detailed than the evidence provided by Mr C. They had a lot of experience of working with aluminium and they explained in detail the tools they'd used to reach the conclusions they had.
- The engineer's experience of stress analysis and materials was noticeable in the comments they made in response to statements from Company A. And their interpretation of the x-rays was persuasive, saying they supported their view that the damage was cosmetic.
- It was significant that the engineer had inspected the bike in person while the two senior members of staff at Company A had only seen photographs of the damage.

I asked both parties to comment on my provisional findings. Mr C provided further evidence in support of his contention that the damage to his bike was more than cosmetic. He provided a supporting statement from another bike retailer. And most significantly he provided a report by another engineer (engineer F). His view was that if the bike was used to its design limits, there was a very significant risk of catastrophic buckling failure to the top tube and thus the frame itself. Using a magnifying loupe, he found a crack in the aluminium tube in one of the gouges on the top tube. He also found a significant crack on the left side of the down tube and a heavy scratch on the lower surface of the top tube.

We shared engineer F's report with Red Sands and its engineer provided their comments. They queried engineer F's qualifications and experience. They also dismissed some of the statements he'd made and noted that the crack in the gouge on the top tube hadn't been evident during their first inspection and must have been done subsequently. They also provided photographs taken at the time of that inspection to show that some of the other damage identified by engineer F wasn't there during their inspection and appears to have been made at a later date.

In light of this new evidence, I issued a second provisional decision, upholding the complaint. I made the following points:

- Although Red Sands questioned the credentials of engineer F, I had no reason to doubt them.
- The engineer questioned some of the technical aspects mentioned in engineer F's report, including the integrity of the oval tube and 'oil canning'. But I noted that engineer F's comments on the risk of buckling supported those provided by a number of other commentators, including the manufacturers of the bike.
- The engineer questioned whether all the damage identified by engineer F was caused in the incident that led to the claim. I was satisfied the crack in the gouge on the top tube was most likely to have been present at the time Red Sands' engineer inspected the bike, and any worsening of that damage had only been caused by the passage of time.
- I accepted that not all the damage identified by engineer F was caused in the incident that led to the claim. The damage to the down tube was not present when they first inspected the bike.

Taken together, I believed the weight of evidence supported the view that the damage to Mr C's bike would impair its function or performance. So, I said Red Sands should pay to replace Mr C's bike in line with the terms and conditions of his policy. I also thought it should reimburse Mr C for any costs he'd incurred in providing the various reports he'd provided, on receipt of evidence he'd incurred those costs. And it should pay Mr C £100 to reimburse him for the cost of some items that had gone missing while the bike was being returned to Mr C.

Again, I asked both parties to comment on my provisional findings. Red Sands' engineer maintained their view that the damage was cosmetic and criticised some of the comments made by engineer F. They also said the crack in the gouge on the top tube was an impression rather than a crack and was most likely made by a screwdriver being hit by a hammer. And the impression wasn't there at the time of the original assessment. Red Sands said it now wanted to rely on page 18 of Mr C's policy that referred to fraudulent claims, specifically the terms that said, "making a claim for any loss or damage you caused deliberately; or acting dishonestly or exaggerating a claim".

Mr C was upset about Red Sands' allegations. He categorically denied using a screwdriver to damage his bike further. He provided further comments from engineer F who responded to some of the points made by Red Sands' engineer and said he thought it highly unlikely the

crack in the top tube were caused deliberately by a screwdriver and hammer.

As this was the first time Red Sands had said they were relying on the fraudulent claims section of Mr C's policy, our investigator considered that matter and set out his view in a letter to both parties in May 2023. He thought there was a legal precedent that could be applied to this case, namely the Supreme Court decision from 2016 in the case of *Versloot Dredging v HDI Gerling Industrie Versicherung AG*. In light of that case, he didn't think Red Sands could rely on the fraud clause in Mr C's policy.

Red Sands didn't agree and so the complaint has now come back to me to reach 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.

Where evidence is incomplete, inconsistent or contradictory (as some of it is in this complaint), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

This complaint has been ongoing for some time and Mr C has raised a number of concerns about the way Red Sands has handled his claim. I won't set out every detail he's referred to but I'd like to reassure him that I've read through all the information we have on file.

Damage to Mr C's bike

Mr C's bicycle insurance policy covers him for the cost of repairing or replacing his bike if it's damaged. But it doesn't cover him for damage caused by any cosmetic change that doesn't impair the function and/or performance of the bike. My role is to decide whether it was fair and reasonable for Red Sands to rely on that exclusion to decline Mr C's claim. It's important at this point to note that when an insurer chooses to rely on an exclusion, it's for the insurer to show that the claim can be reasonably excluded. The consumer, Mr C in this case, only has to show that an insured event has occurred.

As I noted in my provisional decisions, the evidence in this case is very finely balanced. I found the report by engineer F compelling and, taken together with the statements from various other commentators, including several bike shops and senior members of staff at Company A, I believed the weight of evidence supported the view that the damage to Mr C's bike would impair its function or performance.

Red Sands' engineer still didn't agree. In summary, they said 'oil canning' can lead to buckling as noted by engineer F, but it doesn't occur in tubular bike frames. They also reiterated points they'd made about the 'elongation at break' (how far the material can stretch before breaking). And noted that a big tell in regard to a crack of future fatigue lines are stretch marks that permeate out from the centre of the depression.

In response, engineer F said there were fundamental misunderstandings in the engineer's report. He challenged some of the technical aspects in that report including the calculation of the 'elongation at break' and said 'oil canning' does occur in tubular structures, such as bicycle frames. He said the cracks in the top tube appear precisely where he'd expect to see them. And noted that the stretch marks mentioned by the engineer could clearly be seen.

There's clearly a difference of opinion between the two engineers involved in this case. Both

have provided sound reasons for reaching the conclusions they have and it's difficult to favour one over the other. But, on balance, I remain persuaded by engineer F's conclusions because they are supported by the other commentators involved in this case. Some of those commentators have inspected the bike in question, some haven't. But taken together their views are consistent and persuasive, all of them united in saying it wouldn't be safe to ride the bike in light of the damage that's been sustained.

Having carefully considered all the evidence in this case, I'm satisfied that, on balance, the damage to Mr C's bike would impair its function or performance. And so I don't think it's fair and reasonable for Red Sands to rely on that section of Mr C's policy to decline his claim.

Fraud

In my provisional decisions I noted that Red Sands' engineer had questioned how Mr C had damaged his bike. They didn't believe the damage was caused by a farm gate and thought it more likely to have been self-inflicted by Mr C. I said that if Red Sands wanted to pursue these allegations, it would need to provide evidence that showed it was more likely than not that Mr C had made a fraudulent claim.

In response to my second provisional decision, Red Sands said it now wanted to rely on the fraud term in its policy, and specifically the terms I've set out above. It didn't provide any evidence to support its contention that the initial damage was self-inflicted. Rather, it focused on the additional damage that it said wasn't present at the time of the initial inspection and so must have been caused since. As I understand it, Red Sands is referring in particular to the crack in the gouge on the top tube identified by engineer F. And its engineer's contention that this was most likely caused by a screwdriver being hit with a hammer.

Our investigator referred to the case of Versloot and I too believe that is relevant here. This case outlined the important difference between a fraudulent claim and a justified claim supported by lies that don't make a real difference. So, if a claimant is dishonest while claiming for something they would have been entitled to anyway – based on the true facts – this isn't enough to decline a claim. This is because the lie isn't considered fraud.

Applying that ruling to Mr C's complaint, Red Sands believe the lie he told was that he was claiming the crack in the gouge in the top tube was caused in the initial accident, when it was actually self-inflicted by Mr C after its assessment of the damage. So, I need to decide if the lie meant the amount he could claim was exaggerated, or whether that lie made the claim valid when it would otherwise have been declined.

I don't think the additional damage Red Sands are alleging would exaggerate the value of the claim. From the evidence I've seen, there was no realistic prospect of repairing the bike frame so the value of the claim was always likely to be the same – a full replacement – regardless of whether a lie was told.

Did the lie make the claim valid when it would otherwise have been declined? I don't think so. The alleged lie being told only came to light when engineer F inspected Mr C's bike. He had already produced a report before that inspection and then added to it once he'd actually seen the bike. As I've said above, the evidence in this case is finely balanced. But engineer F's comment about the crack in the top tube was only one part of his report and, to my mind, not sufficiently significant on its own to cause the declined claim to become a valid one. In my view, the claim should have been upheld without engineer F's comment about the crack in the gouge on the top tube.

So, I think the Versloot judgement can be applied here. And even if the additional damage was self-inflicted after the claim was made, there was no benefit to Mr C because he had a

valid claim anyway. So, I don't think it's fair for Red Sands to rely on the fraud clause in Mr C's policy to decline his claim.

Missing items

Mr C has been consistent in his story about the missing items. And he was specific in terms of the make and model of the pedals and maxles he said were missing. Red Sands was certain the pedals and maxles had been returned but agreed to provide replacements as a gesture of goodwill. But, according to Mr C, the replacement pedals weren't the same as those that had gone missing. He said the pedals were cheap, while the rear maxle didn't fit his bike and the front maxle was actually the original one he'd sent to Red Sands.

Having considered the evidence, including the correspondence between Mr C and Red Sands, I think it's more likely than not that these parts went missing either in the workshop or during the process of couriering the bike to and from the engineer. And, on balance, I'm also persuaded the pedals and rear maxle Mr C received from Red Sands weren't of the same quality as the ones he'd sent to them. Mr C initially thought he was missing about £100 worth of parts and while the cost of new pedals and maxles of the type Mr C says he lost appear to range from about £30 to £150, I think it would be fair for Red Sands to pay Mr C £100 to cover the cost of replacing those parts (noting that he now has the front maxle).

Putting things right

Mr C's policy says that Red Sands will pay the cost of repairing or replacing his bike if it's damaged. It goes on to say that it won't pay any more than the insured value detailed in his schedule. The insured value of Mr C's bike is £2,300. In light of my findings above, I think Red Sands should pay to replace Mr C's bike, less any excess set out in the terms and conditions of his policy. From the evidence I've seen, I don't think repairing Mr C's bike is a realistic option.

Red Sands has said that if the claim is allowed, it would favour replacing the frame rather than the full bicycle. But I can't see that option in the terms and conditions of Mr C's insurance policy. That only refers to repair or replacement of the bicycle. So, I think it should pay the full value of Mr C's bike, less any excess.

Mr C's policy says Red Sands has the right to take possession of any part, or the entire bicycle, prior to settlement of a claim for loss or damage. If Red Sands wants to take possession of the damaged bike, it should tell Mr C within two weeks of this decision. And pay for its packaging and transportation.

I think Red Sands should also reimburse Mr C for the cost of the missing items. I don't think it would be fair for Mr C to also keep the pedals and rear maxle that Red Sands sent him as a gesture of goodwill. So, he should return those to Red Sands. On receipt of those items, Red Sands should then pay Mr C £100, plus the cost Mr C incurs in returning the pedals and rear maxle.

Mr C thinks Red Sands should pay him compensation amounting to £1,896 for the losses he's incurred in pursuing his complaint. That figure includes the cost of damage reports he got from bike shops, plus the time they spent liaising with Company A. It also includes the cost of insuring the bike frame against theft. But the majority of this amount was to reimburse Mr C for the days he needed to take off work and fuel costs incurred taking his bike for inspections.

I'm sorry to disappoint Mr C but I don't think it would be fair or reasonable to ask Red Sands to pay him that amount. When we look at making awards for compensation, we look at the

impact a business's mistake has had on the complainant. I recognise this complaint has taken up a lot of Mr C's time and I accept he's taken time out of work to deal with these matters. He's also incurred fuel costs taking his bike for inspections. But, as I've said, this case was finely balanced. I can't say Red Sands made a mistake when it first declined Mr C's claim, or subsequently when it maintained its decision after he provided further evidence in support of his claim. It was relying on a report from its engineer that was clear and persuasive. So, I don't think it would be fair to ask Red Sands to reimburse Mr C for costs he incurred providing that further evidence, or for the insurance he chose to take out during that period.

It was engineer F's report that was instrumental in reaching my decision. I think it would be fair to ask Red Sands to reimburse Mr C for the cost of that report. But engineer F provided his services free of charge. The other reports Mr C paid for were also influential in reaching my decision and I think it would be fair for Red Sands to reimburse him for those costs. Mr C has provided evidence that he paid a total of £125 for those reports.

My final decision

For the reasons given above, my provisional decision is that I uphold the complaint and Red Sands Insurance Company (Europe) Limited should:

- settle Mr C's claim in full, less the policy excess, in line with the terms and conditions of his policy;
- notify Mr C within two weeks of this decision if it wants to take possession of the damaged bicycle;
- pay Mr C £100 on receipt of the pedals and rear maxle, so he can replace the items that have gone missing, plus the cost he incurs in returning those items; and
- pay Mr C £125 to reimburse him for the cost of obtaining damage reports from three bike retailers.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 August 2023.

Richard Walker
Ombudsman