

The complaint

Mr S has complained about his motor warranty provider Red Sands Insurance Company (Europe) Limited because it has declined his claim made when he identified an issue with his car's differential.

What happened

In December 2022 Mr S heard a grinding noise whilst driving his car. He felt it was rapidly getting worse and needed attention. He took the car to his garage, which determined a bearing failure had occurred within the rear differential. Mr S asked the garage to contact Red Sands as he felt this was likely something he could claim on his warranty.

Mr S, noting the warranty – whilst a car is being repaired – also offers cover for some hire costs incurred by the warranty holder, hired a car. This to keep himself mobile whilst his was being repaired.

Red Sands asked the garage for details about the failure. Ultimately Red Sands felt the rear differential was suffering from wear and tear – which is not something covered by the policy. Mr S was unhappy with that answer. He complained to the Financial Ombudsman Service.

Our investigator felt Red Sands had unfairly relied upon a wear and tear argument to decline the claim. He felt it should pay Mr S's repair costs, reimburse his costs for hire and pay him £150 compensation.

Mr S was happy with the outcome. Red Sands felt the damage under consideration was consistent with normal wear and tear. So it wasn't in agreement with our Investigator's view that it had acted unfairly and unreasonably in declining the claim. The complaint was referred to me for an Ombudsman's consideration.

I felt Red Sands acted fairly and reasonably when it declined the claim. So I issued a provisional decision to share my views with both parties. My provisional findings were:

"The policy"

In respect of hire the warranty says Red Sands will pay up to £30 a day for seven days towards the cost of a replacement vehicle. But the warranty also stipulates that: "You can only have a replacement vehicle if the Vehicle is being repaired under the Policy". So Red Sands would only be liable to Mr S for any car hire costs if his repair claim was successful.

Turning to the repair the warranty says:

"WHAT IS COVERED"

Any mechanical breakdown.....Mechanical breakdown is the failure of a part, causing it to suddenly stop working, for a reason other than wear and tear, deterioration or negligence."

The term "breakdown" might suggest the car or a part of it would need to have lost all function. But our approach is to view a breakdown as occurring when a part stops

functioning as it should. And I note that Red Sands did not rely on a loss of function argument to decline liability. The argument has focused on wear and tear. In short if Red Sands has reasonably shown that the differential of Mr S's car likely suffered wear and tear, thereby reaching the end of its normal/usually expected life, the loss would fall outside of the cover offered by the policy.

Wear and tear

The garage told Red Sands it had stripped the differential down and found multiple points of damage. Red Sands asked the garage for its view on what had caused that. The garage said the bearing had failed which had caused pitting and further damage to occur.

I can see that Red Sands considered the garage's view. But also asked it for photo and video evidence of the damaged parts. From a review of Red Sands' notes it seems that the garage didn't really explain a cause of the failure which had caused the damage Red Sands was being asked to cover. I note that having seen images depicting the damage, Red Sands felt this was likely wear and tear – that nothing sudden had happened.

I've viewed the damage. I can see pitting and scoring across multiple parts. I note Red Sands' explanation that metal parts wear naturally and, as they do pieces of debris remain in the system, causing damage over time as they come in contact with the parts of the differential, sometimes rubbing against parts which are moving, with further damage being caused. Until the damage starts to affect the function of the part. In very general terms that makes logical sense and I can see that this type of mode of damage would cause the type of damage depicted in the images of the differential from Mr S's car. I can also see that, overtime, that type of damage would case the part to reach the end of its normal life.

I know Mr S feels this is something which happened suddenly. I accept that he suddenly started to hear a concerning noise. But that noise was just a symptom of the damage within. I think it's fair to say that a noise like this would only become apparent at the stage when a certain, perhaps critical, amount of wear/damage had been caused. It would be unfair to say that the absence of a noise meant the system had not been affected by wear.

I've considered what Mr S has said about the differential not being given a maintenance or replacement programme by manufacturers – which he thinks means it's not expected to suffer wear. But I think the manufacturer does set out some repair and maintenance detail which impacts the differential. The differential is made up of many moving metal parts and they are all kept mobile and protected (to a certain extent) from contact with each other by engine oil. And the servicing programme for Mr S's car does dictate that every so often (years or mileage whichever marker is reached first), the engine oil is changed. This will help to protect the parts long term. But it still doesn't mean they won't suffer wear at all.

I appreciate that Mr S believes its most likely that the metal in the bearing failed due to some inherent defect. That this caused pieces to come away, when they otherwise wouldn't have, and then cause the damage seen throughout the differential. But I've not seen any expert analysis to support this theory. Certainly, in light of the fact that the pitting and scoring looks like that one would logically associate with wear and tear damage, for me to be persuaded otherwise, I think an analysis of the metal, showing it was poor or otherwise compromised against similarly used differentials, would need to be seen. I say that also because the car itself has done over 100,000 miles – and if the metal in such a key moving part of the engine, was inherently flawed, I'd have expected that to have become apparent earlier in the life of the car.

Effectively, what I see here is that Red Sands thinks wear and tear has caused the damage, and Mr S contends it has not. Mr S has explained why he feels this is not wear and tear. And

Red Sands has set out why it thinks it is. I've given some analysis of those arguments above. On this occasion, particularly given the mileage of the car, the nature of the part in question and the images of damage I've seen, I find I'm most persuaded by Red Sands' argument. I'm satisfied that the differential has likely suffered wear and tear over time, such that it's reasonable to say it's likely reached the end of its normal working life.

What all that means overall

With the policy limiting cover to breakdowns not caused by wear and tear, I think Red Sands decline of the claim for its repair, was fair and reasonable. With no successful repair claim, Mr S's entitlement to any hire costs also reasonably falls away. And because I've not found Red Sands failed Mr S in respect of its claim decision, there are no grounds for me to award compensation for any upset he was caused because of it.

Claim handling

I know Mr S thinks Red Sands took too long to make a decision. I can see that some detail was received from the garage just before Christmas and Red Sand then indicated it would not be accepting the claim. But it was then a few weeks before anything else happened. Once Mr S contacted it in January, to query the decision, Red Sands reviewed matters, and communicated its final claims decision, which would later become its final response on the complaint, within a few days. And I've found that Red Sands decision, as initially indicated before Christmas, was fair and reasonable.

I note that in Red Sands' final response issued in February 2022, it apologised for its delay in handling the claim. I think that was reasonable in this instance and don't intend to make it do anything more regarding any delay."

Red Sands said it accepted my provisional decision. Mr S did not reply to it.

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 appreciate that my provisional decision was likely upsetting for Mr S. That is regrettable. And whilst I haven't received any objection from him to my findings, I have reviewed everything. Having done so I'm satisfied with my provisional findings initially issued. I can confirm they are now the findings of this, my final decision.

My final decision

I don't uphold this complaint. I don't make any award against Red Sands Insurance Company (Europe) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 November 2023.

Fiona Robinson
Ombudsman