

## **The complaint**

Mr D complains Red Sands Insurance Company (Europe) Limited unfairly declined his motor warranty claim.

## **What happened**

Mr D's car developed a fault. It required a replacement engine. He claimed against his Red Sands motor warranty. After considering the evidence and opinion of its engineer Red Sands declined the claim. It felt the loss was caused by wear and tear – something excluded by the policy.

In April 2023 Mr D complained. He didn't accept the breakdown to be the result of wear and tear. He felt this was supported by the car having mileage of only 18,000 and a comprehensive service history. Red Sands responded to Mr D's complaint that the breakdown was the result of wear and tear. It said there was insufficient evidence of a sudden mechanical failure – as required for the policy to pay out. So it continued to decline the claim.

Mr D wasn't satisfied so came to this service. He doesn't accept the cause to be wear and tear. He says this isn't supported by the car's regular, manufacturing servicing and low mileage. To resolve his complaint he would like his claim to be paid.

Our Investigator was more persuaded by comments from Mr D's repairing garage, the service history and low mileage than Red Sand's engineer. So he was of the opinion there was a sudden mechanical breakdown – rather than the cause being wear and tear. So he recommended Red Sands accept the claim in line with the policy terms. He also felt it should pay Mr D £100 compensation for distress and inconvenience.

Mr D accepted that outcome. Red Sands didn't. It didn't accept there had been a mechanical breakdown. So the complaint was passed to me, as an Ombudsman, for 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr D or Red Sands provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

The terms for the warranty provided by Red Sands state it '*...covers all mechanical and electrical parts (including labour costs to fit them) against mechanical breakdown*'.

Mechanical breakdown is defined by the warranty as '*... the failure of a part, causing it to suddenly stop working, for a reason other than negligence*'.

Mr D's repairer diagnosed the problem as a big end bearing failure on the crankshaft. So I'm satisfied there was '*...failure of a part...*'. And having considered the evidence I think its most likely the failure caused the part to '*...suddenly stop working, for a reason other than negligence*'.

Mr D described the car as running perfectly. Then when driven a few miles a couple of days later it suddenly made a very loud noise. That prompted him to have it recovered to a garage.

The car, although ten years old, had less than 20,000 miles on the clock. I wouldn't expect a big end bearing, on this model, to fail due to wear at such low mileage. There's nothing to support poor maintenance, or negligence, being the cause of the part failing earlier than expected. Instead records show the car being regularly serviced.

I've considered Red Sands' engineers' description of pitting and scoring on bearing shells. But I'm persuaded by Mr D's repairer's comments. He described the breakdown as a mechanical failure. He said, as an experienced repairer of the car's manufacturer's engines, he ruled out wear and tear.

Those comments, along with the low mileage and service history, make me think there was most likely a mechanical breakdown, as defined by the warranty, rather than the cause being wear and tear.

Red Sands hasn't referred to any other policy term to refuse the claim. So, rather than require it to reconsider, I'm going to require it to settle.

The policy has a claim limit of £10,000. Mr D says the repairs cost him more than that. So on evidence of Mr D having paid for the repairs Red Sands will need to reimburse him £10,000. I haven't seen evidence of a policy excess. But if there is one Red Sands can apply it the total paid for repairs. It shouldn't apply it to the policy's claim limit.

As Mr D's been without funds because of Red Sands' failure to settle his claim fairly it will need to apply simple interest at 8%. This will be applied from the date he paid the invoice to date of settlement.

It will also need to pay him £100 compensation. That's in recognition of the unnecessary distress and inconvenience it caused him. That includes having to sell items to fund the repairs and deal with this complaint.

### **My final decision**

For the reasons given above, Red Sands Insurance Company (Europe) Limited must:

- on receipt of evidence Mr D paid for the repairs reimburse him £10,000. It will need to add simple interest at 8% - applicable from the date the invoice was paid until the date of settlement\* and
- pay him £100 compensation.

\*If Red Sands considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 January 2024.

Daniel Martin  
**Ombudsman**