

The complaint

Mr and Mrs B complain that Red Sands Insurance Company (Europe) Limited wouldn't appoint contractors to complete repairs when they made a flood-damage claim under their buildings and contents insurance policy.

The policy was in joint names but, for ease of reading, I'll refer to just Mr B throughout my decision.

What happened

The background to this complaint is well-known to both parties. So I've set out a summary of what I think are the key events.

Red Sands accepted Mr B's flood damage claim. Two of its contractors visited Mr B's home on separate occasions but neither agreed to do the work. The first contractor didn't think there would be a work-friendly atmosphere. The second contractor felt that Mr B had already decided to use another contractor and declined the work.

Red Sands offered Mr B a cash settlement based on what it would've cost it to use its own contractors. But Mr B didn't think a settlement based on its discounted rates was fair given that it was Red Sands' contractors that refused the work.

Mr B complained, but Red Sands didn't change its offer.

One of our investigators looked into Mr B's complaint, and initially thought that Red Sands was entitled to make a cash settlement offer based on its own costs. Mr B didn't agree and he provided further evidence which he thought demonstrated that Red Sands had always intended to cash settle.

On further review, our investigator upheld Mr B's complaint and he thought Red Sands should either complete the work using its own contractors or, if Mr B wanted to use his own contractor, pay a cash settlement based on the higher of the two quotes it had for the work.

Mr B accepted, but Red Sands didn't think introducing a third contractor would make any difference to the situation.

The complaint was passed to me to decide, but the situation had changed since our investigator issued his opinion, and the change affected the outcome.

As the outcome would be different, I wanted both parties to have a further opportunity to comment before I issued my final decision. So, I issued a provisional decision in April 2024 explaining that I was intending to uphold Mr and Mrs B's complaint. Here's what I said:

provisional findings

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. My role is to decide whether Red Sands

handled Mr B's claim fairly based on these rules, relevant law, the available evidence, and what is likely to have happened.

As I understand it, the main complaint is that Red Sands offered a cash settlement at its own rates rather than appointing contractors to do the work.

The policy sets out the detail of the contract between Red Sands and Mr B, and how it will settle claims. In particular, I've considered the following:

We will deal with Your claim in the most appropriate way depending on the circumstances. This can include replacing or repairing items or offering You a cash payment... When it is possible that Our supplier can repair or replace, but You would prefer a cash settlement, any offer We agree to make will not exceed the amount We would have paid our supplier.

Red Sands said in its final response to Mr B's complaint that "it was not possible for its contractors to undertake the work". Therefore, a cash settlement was the most appropriate way to conclude his claim. I'm satisfied that's in line with the policy.

However, the disagreement between Red Sands and Mr B now is the amount. Mr B thinks the settlement should be for the cost he'd incur using his own contractor, whereas Red Sands thinks it should be equivalent to its own cost.

Our investigator thought Red Sands should appoint contractors, and if Mr B wanted to use his own contractor the cash settlement would be at Red Sands' cost. That's in line with the policy and I considered it a fair and reasonable outcome.

Since our investigator issued his opinion on how the matter should be resolved, which Mr B accepted, Mr B told us he had appointed contractors and refurbishment work had started. Because of that, the proposed resolution is no longer an option.

So I've thought carefully about how the matter can be resolved now that the repairs have started.

I see little point in proposing that Red Sands' contractors take over the work. I think that would cause confusion and, ultimately, delay progression of the claim and the work. So, Red Sands now has no other option than to cash settle the claim.

And whether or not Mr B wanted Red Sands' contractors to do the work, as he'd said all along, is now irrelevant.

What remains, then, is for me to decide on what basis the cash settlement should be calculated.

When Mr B appointed his contractor to start the work despite accepting our investigator's proposal that Red Sands should appoint contractors, arguably he'd made the decision to opt for a cash settlement. In which case Red Sands would be entitled to pay in line with its own costs.

But to begin with, Red Sands said "it was not possible" for its contractors to do the work. According to the policy, then, its cash settlement offer shouldn't have been based on its own cost to repair. The implication being that the offer should've been based on Mr B's cost to repair.

I've thought about why Red Sands' contractors wouldn't do the work. I understand there was some disagreement between Mr B and the first contractor, which I don't consider to be important at this point. That's because, regardless how that contractor felt, Red Sands arranged for a second contractor to visit Mr B's home.

The second contractor provided a statement about the meeting with Mr B, which I think is fair to summarise as a pleasant meeting, some discussion about what was included in the claim, but clear that Mr B wanted to use his own contractor.

Although Mr B repeatedly told Red Sands he wanted it to appoint contractors, and he specifically stated he did not want a cash settlement, I'm aware that he had his surveyor on site during meetings, and they had preferred contractors.

So I have no reason to doubt the contractor's opinion as stated. But I fail to see why Red Sands thought that meant it was not possible for the contractor to do the work. I consider that to be a matter for Red Sands and its contractor to sort out.

As I've said, Mr B confirmed the work has now started. That means a cash settlement is the only option available to resolve the matter.

On the one hand, Red Sands should pay Mr B's repair cost because it didn't appoint contractors. On the other hand, Mr B made a decision to appoint his own contractor which took away Red Sands' option to do the work. By doing so, he effectively confirmed he wanted a cash settlement, which Red Sands would be entitled to pay at its own cost.

Having considered each of these options, neither feels fair in the overall circumstances. So, for that reason, I think the fairest way to resolve this complaint would be for Red Sands to pay a cash settlement which is halfway between its highest quoted repair cost and the reasonable repair costs for the flood damage evidenced by Mr B. Essentially, I'd be asking Red Sands to split the difference.

I'm aware that there are some disputed costs, which our investigator addressed, but neither party has commented further on those. A natural outcome of my proposed resolution will allow for Mr B to evidence those costs for Red Sands' consideration.

Finally, our investigator thought Red Sands should pay £200 compensation. I can see that the claim settlement was delayed between June 2023 and October 2023, which is the period I have considered for this complaint, in part because Red Sands would only offer a cash settlement. I think the proposed compensation is reasonable in the circumstances.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision. I've summarised the responses here.

Responses

While disappointed that they would not be fully indemnified for the cost of restoring their home, Mr and Mrs B accepted that the provisional outcome was the best they could hope for. However, they thought they were being unfairly penalised for starting repair work when Red Sands had repeatedly made it clear that they intended to force a cash settlement.

Mr B highlighted some of the distress he and Mrs B had experienced, which he said was a direct result of Red Sands' handling of the claim rather than the flood. He also referred to email evidence which he said confirmed Red Sands had always intended to cash settle.

But, with that said, Mr B accepted the outcome with the following two requests:

- Firstly, he wanted me to state the final settlement amount to prevent any uncertainty. He also wanted the amount to include VAT because he would have to pay VAT on everything, so it made no sense to use figures excluding it. Mr B's expectation was that the settlement would be around £100,000 including VAT.
- Secondly, Mr B asked me to make it clear that the settlement would be cash, paid directly to him without delay.

Red Sands responded to say Mr B's decision to start repair work, and so close to our final decision, made his position on the matter clear. But it accepted the outcome if it was agreed that its calculation of £88,296 excluding VAT satisfied the terms set out in my provisional decision. Red Sands had deducted items which it believed were excluded under the terms of the policy.

Red Sands also said it would pay VAT only if Mr B provided evidence that he'd incurred that cost.

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.

Having considered the responses from both Mr B and Red Sands alongside the evidence and my provisional findings, I've decided to uphold Mr B's complaint for the same reasons I gave in my provisional decision. However, I'll respond to the further comments and requests now.

Both parties mentioned the work that had already started, and each thought it supported their position: Red Sands said it made Mr B's choice clear, whereas Mr B said it was a result of Red Sands' delays and its intention to cash settle.

As I said in my provisional findings, it didn't feel fair to choose one side over the other on this point. Essentially, it seems that Mr B and Red Sands each believed they knew what the other always intended as the claim outcome, resulting in it becoming protracted while they disagreed over the fairest way to settle the claim in line with the policy.

So, on considering this part of the complaint again, I remain satisfied that splitting the difference for the cash settlement is the fairest outcome.

Mr B asked me to specify that it would be a cash settlement paid without delay. In my provisional decision I said I was minded to require Red Sands to pay a cash settlement. In terms of when that would be paid, it only becomes binding if Mr B accepts my final decision.

The final point I'll address is the settlement amount. Although Mr B wants me to specify the final cash settlement amount, that's not something I can do. Red Sands has set out what it believes the cash settlement would be based on splitting the difference, and we have made Mr B aware of that. But I make no finding on whether it's correct or whether it includes everything covered under the policy. It's for Mr B to evidence his costs and for Red Sands to assess in line with the policy. But, in principle, the settlement appears to be in line with my provisional decision and broadly in line with what Mr B expected.

The settlement is excluding VAT, but that doesn't mean VAT won't be covered. If work is done by a company which isn't VAT registered, it wouldn't charge VAT. So I can't require Red Sands to pay for a cost Mr B hasn't incurred. Therefore, it's right that Red Sands

requires evidence of any VAT payments before it will reimburse that cost and I've updated the outcome to reflect that. To evidence his costs, it's likely Mr B will need to provide copies of his paid VAT invoices, but that's something he will need to address directly with Red Sands.

My final decision

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Mr and Mrs B's complaint and Red Sands Insurance Company (Europe) Limited must:

- pay a cash settlement to Mr and Mrs B which meets them halfway between their reasonable evidenced repair costs for the flood damage and Red Sands' highest repair costs. That is, split the difference. The settlement will include VAT only if Mr and Mrs B provide Red Sands with appropriate evidence of their VAT costs.
- pay Mr and Mrs B £200 compensation for only offering a cash settlement rather than another contractor.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 12 June 2024.

Debra Vaughan
Ombudsman