

The complaint

Mr E complains that Domestic & General Insurance Plc (D&G) have paid less than it should have towards the cost of replacing his boiler under his home emergency policy.

What happened

Mr E has a policy with D&G that provides an annual service for his central heating boiler and insurance against breakdown. It also provides for a contribution towards the cost of a replacement boiler if it can't be repaired. During a service in October 2019 the engineer said the boiler was dangerous. It would need to be written off as parts were no longer available. The next day D&G confirmed it would contribute £750 towards the replacement cost. Mr E contacted D&G to complain as he thought the policy should contribute £1,500.

D&G didn't uphold the complaint saying the policy had a £1,500 repair limit rather than replacement value. It said Mr E was free to find his own engineer to see if they could fix the boiler. It could authorise costs up to £200 for this immediately and would consider any additional costs as required. Mr E wanted to consider the situation. He decided to replace the boiler. D&G sent him a cheque for £750.

Mr E wasn't satisfied and referred his complaint to our service. He said D&G should pay £1,500 for the boiler and £500 for his distress and inconvenience. Our investigator looked into his complaint but didn't uphold it. He said in offering £750 D&G had made an error, but it was in Mr E's favour. The terms and conditions (T&Cs) of the policy said the replacement payment would be the lesser of £1,500 or the manufacturer's fixed repair cost, which was £335.88. By offering Mr E £750 D&G had done more than it needed to. So, it hadn't treated him unfairly or unreasonably and couldn't be asked to do anymore.

Mr E said as the boiler couldn't be repaired the fixed repair cost was a fictitious figure, being used to "*muddy the waters*" and D&G should pay the £1,500 "*shown clearly*" in the T&Cs. He noted that his daughter had the same policy from D&G, but the terms were different, showing the £750 replacement cost he had been offered. He said his T&C's hadn't been changed. As Mr E doesn't agree it has come to me to decide.

My provisional decision

I issued my provisional decision on 31 October 2020. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint. I'll explain why.

I needed to consider whether D&G has acted fairly and reasonably in line with the T&Cs of the policy, the law and industry good practice in its dealings with him and I don't think it had. Mr E was correct that D&G has changed the T&C's of the policy. It did incorrectly apply and refer him to the new T&C's rather than the actual terms of his policy. This caused confusion and understandable suspicion, but I thought this was an innocent error. D&G was in the

process of updating for existing customers T&C's, but Mr E's hadn't been updated at this point.

D&G argued that this error has benefited Mr E as the new T&C's offered a larger payment than would have been available under the actual T&C's applying to his policy. The new T&C's provided a payment of £750 towards the cost of a replacement boiler if it couldn't be repaired.

The T&C's actually applicable to Mr E's set out an overall policy limit of £1,500 for repairs and replacement:

“the policy limit is the most we'll pay in total towards repairs and/or towards a replacement for the product. The policy limit is £1,500.

This does say the policy will pay £1,500 towards replacement and this is what Mr E understood the policy to offer.

There was a further section in the T&C's headed **“Repairs and write offs”** Which says if a product can't be repaired vouchers or cash will be provided instead (of repair) and:

“will be the lesser of either:

- *Our repairer's estimated cost of the repair (this will often be the manufacturer's fixed price repair charge); or*
- *the balance of the policy limit ...*

Under this policy you will not receive a replacement boiler and we will therefore not be responsible for any installation and delivery costs.”

I didn't think this wording was clear enough for Mr E to realise that it meant if the boiler couldn't be repaired the policy limit didn't apply and what the policy did offer was a set but undisclosed amount, based on a something not actually available. And that this set amount was significantly less than the £1,500 policy limit.

D&G has said that the maximum the policy provided for was £335.88 – the manufacturer's fixed price repair charge rather than the balance of the policy limit of £1,500. Whilst it offered Mr E the option of seeking repair via his own engineer it had already said the parts weren't available. As Mr E had no heating or hot water, he decided to urgently replace the boiler. This clause doesn't refer to parts availability and as D&G said the boiler couldn't be repaired, I don't think it is reasonable to refer to a fixed price repair that isn't available rather than the balance of the policy limit also provided for.

If parts could have been obtained the policy would have paid out up to £1,500, but because parts can't be obtained it effectively offers a set policy amount. In this case, only £335.88. This is a substantial difference and it wasn't clearly disclosed to Mr E, despite D&G holding full details of his boiler. I don't think there is enough information in the documents provided to Mr E for him to be been aware of the significance of this clause relative to the premiums he was paying and policy limit of £1,500. So, I don't think it is fair and reasonable.

Whilst D&G made an error and paid out more than the *“fixed priced repair charge”* provided for, as I don't think that term is reasonable, I think D&G should pay Mr E a further amount of £750 to meet the full £1,500 provided for under the policy limit.

I think Mr E has been inconvenienced by both the delay and in need to bring a complaint about this so D&G should add interest to the balance amount due to Mr E and pay compensation of £150 for his trouble and upset.

I asked both parties to send me any more information or evidence they wanted me to look at by 30 November 2020.

Response to provisional decision

Mr E said he agreed with the decision.

D&G didn't agree with my decision and made several points. It said the policy did refer to parts availability in respect of repairs and write-offs in the paragraph above and that the terms of the policy were very clear. It said Mr E had already received £394.12 more than the original terms of his plan provided for. And if this amount was increased to the repair limit of the plan of £1,500 then he would "*be receiving considerably more than he was entitled too*".

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 done so, I've decided to uphold the complaint.

I've carefully considered D&G's comments, but they haven't changed my view and I don't think the policy terms are clear.

The paragraph referred to by D&G does mention lack of parts availability along with several other scenarios. These include the inability to make a repair, where repair costs would exceed the cost of a new product or repairing would "*exceed the policy limit*". Any of which would trigger the condition I refer to above being the lesser of the fixed price repair charge or the balance of the policy limit. But I don't think it was clear what this meant for Mr E in terms of what cover would be provided in these scenarios.

The policy's purpose is to provide for repair and or a contribution to replace the boiler. The policy limit quoted for repair or towards replacement was £1,500 if repairs could be made. I don't think that is fair and reasonable for this to default to a reduced, significantly in this case, fixed price repair charge should parts not be available or be too expensive and so on, without the implications of this being fully disclosed to the policyholder in monetary terms.

From the information provided to him I think Mr E was right to think that the policy did offer cover of up to £1,500 and had he known the policy was effectively capped at an upper claim limit of £335.88 he more likely than not wouldn't have continued with it.

I think D&G should pay Mr E a further £750 being the balance of the claim to the £1,500 policy limit with interest at 8% a year simple from the date it first settled his claim and pay Mr E £150 for his trouble and upset.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Domestic & General Insurance Plc.

I direct Domestic & General Insurance Plc to pay Mr E a further £750 with interest at 8% a year simple from the date it settled his claim and further £150 in compensation for trouble and upset.

Domestic & General Insurance Plc must pay the compensation within 28 days of the date on which we tell it accepts my final decision. If it pays later than this it must also pay interest on

the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Domestic & General Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell how much it's taken off. It should also give a certificate showing this if Mr E 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 E to accept or reject my decision before 12 January 2021.

Nigel Bracken
Ombudsman