

The complaint

Mr M complains that AFH Independent Financial Services Limited (AFH) mis-sold a home emergency policy and that an exclusion clause, wasn't made clear.

What happened

Mr M bought his home insurance in February 2021. The policy had an 'add-on' home emergency cover which Mr M took out at the same time. Mr M bought the policy via an agent, who AFH confirmed was its representative. Just over a week after the policy inception, Mr M's boiler broke down. He contacted AFH and made a claim. It told him that his boiler wasn't covered as it didn't fall under the heating systems that were listed in the policy's terms and conditions. So, it declined his claim.

Mr M raised a complaint, as he said that he was not told that his heating system wouldn't be covered, and he felt that the policy had been mis-sold to him. AFH, in its final response, said that Mr M would've been given 30 days to consider whether the policy was suitable for his needs. It also relied upon the exclusion term in the policy and the claim remained declined.

Mr M referred his complaint to this service. One of our investigators considered the complaint and thought it should be upheld. She confirmed that the policy sold to Mr M was an advised policy. She said that Mr M had been mis-sold the policy as the agent who sold it to him didn't point out that his boiler would not be covered. And the fact that it wasn't covered was a significant policy exclusion which should've been highlighted to him. She recommended that AFH refund the cost of the boiler repairs plus simple interest.

Mr M accepted the view, AFH initially accepted the view. But later did not. It said that Mr M would've received post-sale documents and the agent would've instructed him to check those documents to see if there were any issues of concern. It felt that Mr M overlooked doing this. Also, it said it was unfair to recommend that it pay the entire repair bill as the policy only allowed for a temporary repair and the redress that was recommended would be considered betterment. So, it asked for a decision from an ombudsman.

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 will be upholding this complaint and I hope my findings go some way in explaining why I've reached this decision.

I have reviewed the policy documents however I'm unable to review any sales calls, as I understand that Mr M's sale of the policy, was conducted over a video conferencing call, which wasn't recorded.

AFH accepted that the sale of the policy was an advised sale. That is, that AFH were recommending (or advising) that Mr M buy a particular policy. But with this recommendation, it is imperative that if the policy contained any *unusual, onerous, or restrictive terms*, this needed to be clearly highlighted. There would also be an additional duty on AFH, to ensure that the policy it recommended was *suitable* for Mr M's needs. In other words, AFH would need to ask enough questions to assess Mr M's needs.

In the absence of the sale call, AFH provided me with a questionnaire of what questions ought to have been covered by the agent during the sale. However, it hasn't provided me with what Mr M responses were and if there was any other information gleaned by the agent during the conference call.

What is of note is that the questionnaire provided indicates that the agent ought to have explained the benefits and features of the policy, as well as any exclusions or unusual conditions. But, given that the policy indicated that the primary heating system was covered, I think it would have been reasonable for the agent to have asked further questions of Mr M and if he had done so, I think Mr M would have provided further information about his boiler.

In addition, the evidence I have seen, shows that the agent, confirmed that he did not ask any specific questions regarding Mr M's primary heating source, in fact he said: *'At the point of sale, I had assumed that 'Primary Heating System' was covered'*.

Mr M said that during the sales conference call, he told the agent about the heating system he had. AFH has provided no evidence that refutes this. So, I've no reason to doubt what he said. And given that the statement of insurance referred to the primary heating system being covered, I can see how Mr M and indeed the agent believed that his heating system would be covered.

Generally, the policy exclusions would be included in the insurance product information document or the statement of insurance. But, despite mentioning the complete failure or breakdown to the main heating policy as being covered, there is no mention of Mr M's heating system being excluded. The exclusion is only mentioned on page 49 of the 64-page policy wording document, where the definition of main heating source is provided, and I can't see that the exclusion term was highlighted anywhere else in the policy.

AFH in its final response, accepted that the wording of the term was ambiguous and still didn't specifically state whether Mr M's heating system was covered or not: *'The main gas, electric or oil fuelled hot water or central heating system in Your Home. This does not include: any form of non-domestic heating, warm air systems or any form of geothermal or solar power.'*

I understand that AFH has said that Mr M would've been able to read the documents as the agent took him through the quote and that he would've received the post-sale documentation and be warned to check those documents. But this doesn't prevent AFH making it clear to Mr M that there were restrictions on the cover – which it could've done by asking more questions to find out Mr M's needs.

I'm satisfied that AFH didn't give enough clear, fair, and not misleading information to Mr M so that he could make an informed choice. And post-sale documents aren't enough to put right failures in the sales process. Also, given that AFH has accepted that the exclusion clause itself was ambiguous and its representative thought it was covered, I don't think it's fair that Mr M would've reasonably known that his boiler wasn't covered.

AFH said that the recommendation by our investigator to refund the costs incurred by Mr M in repairing his boiler is unreasonable. As the award would be significantly higher than the policy limit and would mean betterment. I have carefully considered what this means. Given that Mr M specifically told the agent about his heating system, it seems it was important to him. And as he was reassured that his system would be covered, it looks like the misinformation he was given, led him to take out the policy when he may not otherwise have done. So, I'm satisfied that AFH didn't give enough clear, fair and not misleading information for Mr M to make an informed choice. Further, Mr M has confirmed that he would not have taken the policy had this exclusion clause been highlighted to him.

Putting things right

Given the circumstances, I think it's fair that AFH Independent Financial Services Limited put matters right, as I direct below.

My final decision

For the reasons given, I uphold Mr M's complaint.

To put matters right, AFH Independent Financial Services Limited to:

Refund the cost of the new heating system, on presentation of an invoice from Mr M.

AFH Independent Financial Services Limited must pay the amount within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

If AFH Independent Financial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a certificate showing this 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 M to accept or reject my decision before 1 March 2022.

Ayisha Savage
Ombudsman