

The complaint

Ms R complained that 247 Staywarm Limited (247 Staywarm) unfairly voided her boiler warranty and staywarm plan, resulting in her claim being declined under her home emergency / rescue service agreement.

What happened

After having her boiler fitted, Ms R made a claim on her policy when she noticed a leak coming from the boiler and it was noisier than normal. 247 Staywarm appointed an engineer to attend the property, but due to renovation works he couldn't rectify the problem. The engineer left a flue extension kit with Ms R ready to do the work when the scaffolding had been removed.

However, when the engineer returned, he reported that external rendering had been carried out to the property which covered the gas supply pipe and it was also noted the black seal from the flue had been removed. Rendering had covered part of that area also. The engineer's opinion was that the leak and the noise identified was because of the render work carried out which meant the boiler was no longer fitted to required standards.

247 Staywarm said the rendering had been done without its prior consent, which it said meant it had to void Ms R's boiler warranty and Staywarm plan. It said Ms R needed to rectify the problems caused by the rendering, which included having a replacement flue fitted and new supply pipe. It estimated the cost for doing this at around £600-800. 247 Staywarm said Ms R could cancel the plan, subject to a cancellation fee of £1,000 (although 247 Staywarm later said a mistake was made when this was calculated, and it should've been £700).

Ms R doesn't think this is fair. She said she told 247 Staywarm she was having insulation / rendering fitted when she had the boiler installed. She said when the builder came to do the rendering, she rang up 247 Staywarm to tell them the flue had been fitted incorrectly and the builder had told her it was not long enough to take the insulation into account. Ms R also said the second emergency engineer confirmed to her the flue hadn't been fitted correctly.

She is unhappy her boiler isn't working – and she doesn't think it's fair she has to pay for the boiler to be repaired or to cancel her plan.

Our investigator decided not to uphold the complaint. He said the insulation was fitted by a third-party who wasn't authorised by 247 Staywarm. As this was a breach of the terms and conditions of the policy, he thought it had been reasonable to decline the claim as 247 Staywarm wouldn't have been liable under the policy. Ms R disagreed with our investigator, so the case has been referred to 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.

I'm not an engineer so I have to base my decisions on the evidence provided. 247 Staywarm's engineer's opinion was that the rendering work was the cause of the leak. As I haven't seen any contradictory evidence to this, I think 247 Staywarm has been reasonable in basing its decision on its engineer's opinion that the third-party's work was the cause of the issues reported.

I've considered what the terms and conditions of the policy state in respect to issues occurring because of third-party work.

The policy states "*We will not be liable where the defect or malfunction arises or is wholly or mainly due to:*

ii. Any deliberate or reckless damage caused by you or any third party (whether they are known to you or not);

iv. Any work carried out by any third party other than an Approved Engineer or another person who we have (in exceptional circumstances) authorised in writing to undertake specific work".

The second part of this statement shows that customers are required to seek written authorisation from 247 Staywarm for third parties to carry out specific work. It has said it didn't authorise the third-party to do the work. I appreciate Ms R said she spoke to one of 247 Staywarm's engineers about the work and said her daughter did as well. Unfortunately, I haven't seen any evidence that this did happen.

Our service's decisions are based on evidence, so without this it's hard for me to confirm this happened. However, I think the terms and conditions are clear anyway, that any approval needed to be in writing. I haven't seen evidence that any formal request was made to 247 Staywarm setting out what the work was and who the contractor was. And I haven't seen a written response from 247 Staywarm authorising the works.

As the rendering works had an impact on the flue, I think it's clear from the terms and conditions, Ms R needed to seek written permission. As by not doing so, any issues that occurred, 247 Staywarm wouldn't be liable for under the policy. As Ms R hasn't provided any proof of this written authorisation, I don't think 247 Staywarm has been unreasonable in declining the claim.

I appreciate Ms R felt the flue was fitted incorrectly from the start – however, she signed a Boiler Satisfaction Note to show she was happy with the installation. I know she's not an expert, but I haven't seen any evidence to show the boiler was incorrectly installed. I would also like to point out the installation of the boiler would also be out of our service's jurisdiction, as we are only able to look at contracts of insurance. However, as I haven't seen any evidence that highlights that 247 Staywarm has done anything wrong, I don't think it would be fair to uphold this complaint.

During our investigation, 247 Staywarm did offer to waive any cancellation fees for the plan which I think is fair (which was part of Ms R's complaint saying she would have to pay this revised cost of £700). Whilst Ms R didn't get written authorisation to use the third-party, I think it was a genuine error on her part. I don't think she would've realised at the time the rendering would've caused the issues to her boiler. However, as this wasn't 247 Staywarm's fault it wouldn't be fair for me to uphold this complaint. Ms R rejected this offer – but it still might be available to her should she change her mind and approach 247 Staywarm.

My final decision

My final decision is I don't uphold this complaint. I don't require 247 Staywarm Limited to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 21 December 2022.

Pete Averill
Ombudsman