

The complaint

Ms B has complained about the way in which Evolution Insurance Company Limited ('Evolution') dealt with her request to cancel her home emergency insurance policy.

What happened

Ms B renewed her insurance policy with Evolution in March 2022 through her heating company. The cost of her insurance policy was just over £215 per annum and her boiler service just over £80 per annum making a total price of just under £300. Her monthly payments amounted to just under £25 per month in total.

The heating company contacted Ms B in March 2022 to arrange her annual boiler service. The service took place shortly afterwards, however Ms B noticed that a water pressure pipe started to leak after the service. The service engineer returned to try to resolve the leak, however it continued. Ms B lost hot water and central heating for over 24 hours. She arranged for the boiler manufacturer's engineer to attend and the problem was resolved.

Ms B called Evolution the following day to cancel her insurance following the service issues. This was outside the 14 day 'cooling-off' period referenced in the policy. Evolution told Ms B that she would have to pay the full year's premiums up to and including February 2023, as a service had been carried out. Ms B was unhappy that she was required to pay this sum. She was also unhappy with the way in which Evolution had handled her complaint. Ms B complained to Evolution however it maintained its position, whilst apologising for certain service issues. Ms B then complained to our service. Ms B also said that she had 30 days to cancel her policy and that she wasn't aware that the contract was for a full year.

Our investigator upheld Ms B's complaint. Instead of charging all the insurance premiums to Ms B, it was his view that Evolution should only charge for the proportion of time that the boiler was on cover, plus a reasonable administration charge of £60 for the administrative task of cancellation. He also referred to specific financial regulations to support his view. The investigator concluded that as Ms B hadn't made a claim on her insurance policy, it would only be fair to ask her to pay for cover up to the date of requested cancellation.

Evolution didn't agree with our investigator's view and the matter was therefore referred to me to make a decision in my role as Ombudsman. In July 2022, I issued a provisional decision for this complaint and explained why I was minded to uphold the complaint as follows; -

'The key question for me to consider is whether Evolution applied the terms and conditions of its policy regarding cancellation in a fair and reasonable manner, and whether it provided a fair and reasonable insurance service to Ms B more generally. I don't consider that Evolution has acted fairly and reasonably in all respects and I'll explain why.'

My starting point will therefore be the terms and conditions of the policy. The relevant extracts state as follows: -

'If you cancel after 14 days

Where your agreement is cancelled outside the 14-day cooling off period and you've not made a claim or received a boiler service, there'll be no cancellation fee payable to us and your agreement will be cancelled the day before your next instalment payment would have been due.

Where your agreement is cancelled outside the 14-day cooling off period and you've made an accepted claim or have had an engineer's visit (for example, a boiler service) you must pay any remaining premiums due for the term of your agreement.'

The policy document then repeats the cancellation rights as follows: -

'You have the right to cancel new policies within 14 days of receipt and renewal instructions within 14 days of your renewal. Full details are provided in your policy terms and conditions. Any policies cancelled outside of this 14-day period may be subject to a cancellation fee.'

As well as the documentary evidence and telephone evidence, I've carefully considered the submissions of Evolution and Ms B about the matter. Ms B said that when Evolution phoned to arrange her boiler service, she'd told its representative that the boiler was in perfect working order at the time. Ms B said that she'd received 'a faulty service' on her boiler which then caused a leak from the water pressure vent pipe.

Ms B phoned the service engineer the same day, however he said that he'd tested it during the service and that the leak should soon stop. Later that day she lost all pressure from her boiler and lost all hot water and central heating. She took advice from a plumber who said that the agent had not needed to test the water pressure pipe and had probably split the valve and she might also need a new expansion vessel. The service engineer returned and re-pressurised the boiler and said that Ms B's boiler didn't need any new parts. The pipe continued to leak, however he said it would stop. The water pressure dropped again, and Ms B was again left without heating and hot water. Ms B called the manufacturer and their engineer attended promptly, resolved the problem and produced a report.

After phoning Evolution to cancel her policy the following day, Miss B said that she was shocked to be told that she would be charged until February 2023. She said that this hadn't been made clear to her when her policy was renewed over the phone. Evolution's representative however offered just under £25 credit on her payments as a goodwill gesture.

Ms B then complained to Evolution. She said that the boiler was in good working order before the service and was faulty afterwards, but that Evolution had refused to cancel the policy without charging premiums for a full year. She also complained about the way her complaint had been handled. She said she was initially refused the opportunity to speak to a manager. She was then informed a manager would phone her within 24 hours. A manager did leave a message but when Ms B phoned back, the person on the mobile number given didn't know about the matter and promised that someone would phone back. This didn't occur and Ms B was left feeling that Evolution didn't want to speak to her. She said that she no longer trusted the heating company's engineers to service her boiler or carry out repairs.

Evolution have said that following the boiler service in March 2022, the service engineer had reported the problem and that the engineer had therefore re-attended the property. It said that the engineer repressurised the boiler and that this had resolved the issue. Evolution said that Ms B hadn't contacted it advise of any continuing issue. Had it been notified, it said it would've sent the engineer again to further investigate and would have rectified any problem. It accepted that Ms B had contacted it the following day to explain the further issues 'which she resolved independently' and that she therefore wanted to cancel her policy. It had explained that she was required to pay the cancellation fee however and that

this would equate to the remaining payments for the contract term.

The case notes show that the manufacturer's engineer had diagnosed a problem with a valve in the water release pipe which it considered the service engineer had dislodged and that this had caused further problems. The service engineer had thought it was a gas diaphragm which 'just needs repressurizing'. The notes also record that Ms B had tried to call the engineer after the second visit and that there had been no answer. Evolution nevertheless considered that Ms B had received the benefit of a boiler service and a subsequent visit by the engineer and had therefore enjoyed the benefit of the policy. It thought it was therefore clear that Ms B was required to pay the cancellation fee stipulated in the terms and conditions. It said that as a gesture of goodwill, and as an apology for the inconvenience suffered, it offered the customer a reimbursement of one month's premiums.

As to knowledge of the policy terms and conditions, Evolution said that; 'The terms and conditions were provided to the customer at the outset/inception of the policy and the customer was provided with a 14-day cooling off period to enable her to review her terms and conditions.' It also said that Ms B was aware that the policy was for a 12-month period as it was clear on the policy invite/renewal documentation. As Ms B had failed to return to Evolution within the 14 day 'cool-off' period, it said she'd clearly agreed to the terms and conditions: - 'Not only did the customer fail to return to us within 14 days, the customer enjoyed the benefit of a boiler service approximately 18 days after purchasing her...Policy.'

In its final response letter, Evolution stated that it understood and apologised for the inconvenience caused to Ms B, however it didn't uphold the insurance complaint. It repeated that 'if an engineer attends the property, you are tied for the remainder of the contract. You cannot cancel before the next billing date'. It referred to the relevant policy wording and confirmed that where the agreement was cancelled outside the 14-day cooling off period and the policy holder had not made a claim or received a boiler service, there would be no cancellation fee payable. In such a case, the agreement would be cancelled the day before the next instalment payment would have been due. Where the agreement was cancelled outside the 14-day cooling off period and there had been an accepted claim or an engineer's visit it repeated that Ms B must pay any remaining premiums due for a full year.

Evolution disagreed with our investigator's reading of the relevant financial regulation and said it clearly referred to cancellation during the 14-day cooling-off period and was not therefore relevant. It made the point that the regulation provides that customers are required to make payment of the cancellation fee as long as they've been duly informed of it.

Finally, Evolution confirmed that the boiler service formed part of the product provided and that the monthly premium of just under £25 covered both the service and insurance element. It said: - 'It is clear that the boiler service is still a part of the product provided as it is referred to throughout the policy terms and conditions.'

For the avoidance of doubt, in my provisional decision, I do not reach any findings regarding the heating company's actions with regard to the boiler service. What I'm considering is Evolution's handling of Ms B's request to cancel her insurance policy. Having said this, the boiler service is integrally linked to the request to cancel and I'm satisfied that Ms B wouldn't have requested cancellation her policy but for her experience in relation to her boiler service. Evolution likewise accept that the two matters are integrally linked throughout the policy terms and conditions. Evolution's refusal to cancel Ms B's policy without penalty is due to the fact that Ms B received a boiler service and not because she'd made any claim on her policy. As to the financial regulations which have been raised during the course of this complaint, as stated above, my starting point is the policy itself. In this case the key question is whether the policy terms have been applied fairly and reasonably bearing in mind the specific facts and circumstances in this case. I therefore don't consider it necessary to consider the

regulations and don't consider they add to the debate in this instance.

I agree with Evolution that the terms and conditions of the policy are clear with regard to cancellation. I also accept that on the balance of probabilities, Ms B will have had the opportunity to have sight of current terms and conditions on renewal. I'm satisfied on a provisional basis that it was clear from the wording of the renewal documents that the policy was provided on a yearly basis. It was also clear that there was an opportunity to cancel the policy during a 14-day cooling-off period.

Having said this, and on a provisional basis, I don't consider that it was fair or reasonable for Evolution to enforce this part of its policy in the way that it has. The cancellation rights as reproduced above make it clear that Evolution will exercise its discretion in applying any cancellation fee: - Any policies cancelled outside of this 14-day period may be subject to a cancellation fee'. Any such discretion should be applied fairly and reasonably.

I'm satisfied on a provisional basis and on the available evidence that the leak had been caused by the service engineer and that following his second visit and the re-pressuring work, the problem persisted. I don't agree with Evolution that the issue had been resolved prior to the manufacturer's input. Evolution ultimately appears to have accepted that the leak was caused by its engineer and apologised for the inconvenience. I'm satisfied that it was therefore reasonable for Ms B to seek assistance from the manufacturer rather than through Evolution, particularly if Ms B had tried to contact the service engineer again following the second visit. I can understand why Ms B might lose faith that the service engineer wouldn't cause more damage. Although Evolution have said that if it had been aware of the issue it would have rectified it, I consider that Ms B gave the opportunity to rectify it and this failed.

Evolution considered that Ms B had received the benefit of a boiler service and also the benefit of a subsequent visit by the engineer and had therefore enjoyed the benefit of the policy. As referenced above, it's not possible to separate the wish to cancel the policy and what happened as a result of the service. The policy and the cancellation terms and conditions tie the issues together. Evolution has accepted that they are inextricably linked, and that one premium is payable for both the insurance and service element of the product which has been sold to Ms B.

I'm satisfied that Ms B received an annual service and that this may have provided some benefit. Any benefit must however be seen in the light of the fact that it caused a problem which hadn't existed previously. The way in which the matter was handled led to an apology. It caused inconvenience for Ms B and her family and caused Ms B to lose faith in the service. In the circumstances, I don't consider that it would be fair and reasonable for Evolution to rely on the specific wording of the policy in this instance to impose a cancellation fee upon Ms B. Neither do I consider that it would be fair to apply a notional administration fee for cancellation as mentioned by or investigator. Such a fee is not included in the terms and conditions of the policy.

The specific policy wording meant that a cancellation fee would only be applied had Ms B made a claim (she had made no such claim), or if the annual service had been carried out. I provisionally conclude that it wouldn't be fair reasonable for Evolution to rely on the technical wording of the policy in this instance of a flawed service. It would for instance be unfair and unreasonable to require a policy holder to pay the whole year's premiums following an engineer's visit where the engineer had forgotten his equipment. It couldn't be classed as an effective visit. In a similar manner it would be unfair and unreasonable to charge a cancellation fee where, as in this case, the boiler service had caused a significant problem which was not previously present. This is even the case if the majority of the work was carried out successfully in other respects. The problem caused couldn't be described as a 'de minimis' or trivial issue.

I do however accept that it would be reasonable for Evolution to adhere to the provision in its policy terms which allows it effectively to charge for the first month of cover and to cancel the policy prior to the second payment. It states: - 'your agreement will be cancelled the day before your next instalment payment would have been due'. This is because this provision would have applied in all other cases of cancellation where a boiler service hadn't been received.

As to the way that Ms B's service issues regarding cancellation were handled, on the balance of probabilities, I accept Ms B's version of events and that a manager had not returned her call as promised. I'm also satisfied on a preliminary basis that it was unfair and unreasonable for Evolution to have pursued a full year's premiums in the specific circumstances and that this will have caused stress and inconvenience to Ms B. I therefore consider that it would be appropriate for Evolution to pay a modest sum of £150 in compensation to acknowledge the stress and inconvenience caused to Ms B and her family.'

In my provisional decision, I asked both Ms B and Evolution if they had any further comments or evidence which they would like me to consider before I made 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.

Neither Ms B nor Evolution provided further submissions in response to the provisional decision, apart from a request by Evolution for further information regarding the calculation of compensation award for stress and inconvenience.

In the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter.

My final decision

For the reasons given above, I uphold Ms B's complaint and require Evolution Insurance Company Limited to do the following: -

- to cancel Ms B's policy in accordance with her request.
- to refund all premium payments made from the end of March 2022 onwards.
- to pay 8% a year simple interest on such amounts from the date of payments to the date of settlement.
- to pay compensation of £150 to Ms B for stress and inconvenience within 28 days of acceptance of any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 7 October 2022.

Claire Jones
Ombudsman