

The complaint

Miss D complains that Warranty Services Limited (WSL) have declined her claim for replacement of a faulty door.

What happened

Miss D bought a property in July 2022 that had had a new door fitted in October 2019 with a 10 year guarantee provided by the installer.

The door was covered under an insurance policy from Warranty Service Limited in the event that the installer ceased trading.

In February 2023 Miss D made a claim under the policy as she had been advised that the door was misaligned. She had to have the door replaced at a cost of £1500.

WSL declined the claim because they said that Miss D hadn't transferred the policy over into her own name when she had purchased the property and hadn't provided evidence that the installer was no longer trading.

Miss D complained to WSL. She said that she had been unable to transfer the policy because of confusion about who the insurer was and also that she couldn't provide any more evidence that the installer had ceased trading. She said she had contacted FENSA to try and establish who was responsible for the warranty.

WSL issued a final response on 11 April 2023 and didn't uphold the complaint.

Miss D was unhappy with this response and brought her complaint to us.

One of our investigators has looked into Miss D's complaint and he thought the contact with FENSA showed that that Miss D had made reasonable efforts to transfer the policy, and so she asked WSL to reassess the claim.

WSL disagreed with our investigators view, and so the case came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:

Following receipt of further evidence from Miss D, I'm minded to uphold the complaint, and I will explain why.

Transfer of the policy

There is specific provision in the policy which allows for the benefit of the policy to be transferred to a new owner if the property is sold. It says:

'Transferability

The benefit of this insurance will pass to subsequent owners of the Insured Works upon payment of an Administration fee of £20 to the Administrator within 30 days of the transfer of ownership of the Insured Works, providing that the Contractor's Written Guarantee states that it is transferable. Where the Written Guarantee is transferable to a subsequent owner of the Insured Works, that subsequent owner must obtain a copy of the Contractor's Written Guarantee and evidence this as part of any claim submission in order to be able to make a valid claim under this Policy of Insurance.

No replacement Policy requires to be issued. If the Contractor's Written Guarantee is not specifically stated as being transferable, this insurance shall also cease to be transferable on to any subsequent owner of the Insured Works.

Miss D completed the purchase of the property on 13 July 2022, and so under this policy term she had until 12 August 2022 to transfer the policy.

I can see that she contacted FENSA on 25 July 2022 asking to transfer the policy and followed up on 1 August 2022. FENSA didn't reply. The investigator thought that this meant that Miss D had made reasonable efforts to transfer the policy, but WSL disagreed, as they said that FENSA were not responsible for the warranty.

WSL are right in that FENSA are not responsible for the warranty – they are. So I asked Miss D when she had received the copy of the WSL policy documents as once she was in receipt of them, she would be on notice of the policy term about transfer.

Initially Miss D told me that she received these as part of the sale documents and I issued a provisional decision on that basis. However, she has subsequently clarified that she made a mistake and this was not the case. She says that she was only provided with the FENSA certificate when she moved into the property, not the policy document, which was why she made contact with FENSA and not the insurer.

Miss D has provided me with e mail chains with FENSA from July 2022 to February which support this, and also the e mail chains with WSL when she made her claim in February 2023.

The emails with FENSA show Miss D asking to transfer the policy in July 2022, with no response. She then queried the authenticity of the FENSA certificate in January, and FENSA confirmed that they did have the installation registered. Miss D then asks how she can make a claim with FENSA, and they advise that they don't provide the guarantee, but an insurer does. They provide the insurer details on 19 January 2023, but these are incorrect. FENSA eventually provide the correct insurer details and Miss D made contact with WSL in February 2023. Miss D didn't enclose the required documentation with the claim, which included a copy of the policy because she says she didn't have it.

In a further e mail to WSL on 7 March Miss D states she hasn't got a copy of the policy and she copies in the policy administrators asking them to send a copy to her and the insurer. She was then sent a copy by the administrators on 8 March 2023.

Taking this all into account, on balance, I'm now satisfied that Miss D didn't have a copy of the policy document until 7 March. This means that Miss D couldn't have been aware of the requirement to apply for a transfer within 30 days, and so I don't think it's fair to exclude her claim on the basis of a policy term that she wasn't aware of because she didn't have a copy of the policy and wasn't given correct information about who to approach.

From 7 March 2023 Miss D would have been on notice of the term regarding the transfer and the need to pay the £20 administration fee for the transfer.

As she was already in communication with WSL about her claim, I think it would be fair to say she was trying to transfer it at that point, but a transfer was never processed as the claim was declined and matters didn't get that far. So I think it's fair to treat the policy as transferred and the transfer fee should be deducted from any settlement figure.

Has the contractor ceased trading

WSL also said that the claim would be declined because they couldn't find any information to suggest that the contractor had ceased trading by March 2023.

The terms of the policy say the contractor has to have ceased trading, which is defined as:

'Ceased Trading' means ceasing to trade by reason of Liquidation, Receivership, Administration, Strike -Off or Dissolution in respect of a Limited company, Bankruptcy, Retirement, total incapacity or death of the principal in the case of a sole trader or partnership, or any other reason where suitable proof can be exhibited to the Insurer to confirm that the Contractor is no longer trading in any shape or form.'

Miss D has told us that she had been unable to make contact with the contractor. She attempted contact twice in July 2022 when she bought the property but was unable to reach them and tried again in January 2023 to report the issue with the door. She was unable to get a response.

Miss D says she has also checked online, sent a message via the website, sent a WhatsApp, and tried to get in touch through Rated People. The administrators have confirmed that the contractor was a sole trader and was no longer a member of the trade association, and FENSA confirm that the contractor had not been part of FENSA since 2020.

I have checked Companies House, and this shows the company as still active at the present day, with the last set of company accounts being submitted at the end of 2023. However, the limited information I can access seems to indicate the firm may not have been trading for all or any of that year. There is no website, or social media profile that assists in confirming the status of the company.

I am satisfied from this that it is likely that the contractor has ceased trading. He hasn't responded to contact attempts, he is no longer a member of trade organisations, and there is little evidence of financial activity on Companies House. And so I don't think it is fair for WSL to decline this claim on the basis that Miss D hasn't proved that the contractor has ceased trading. I think she has taken all steps within her power to establish if the company is still trading and has not been able to.

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.

Miss D has accepted my decision, and WSL haven't responded, and so I'm making my final decision in line with my provisional findings.

Putting things right

As I'm satisfied that the policy should be treated as transferred, and that it is likely that the company has ceased trading, I think it's fair and reasonable for WSL to settle the claim in line with the remaining terms and conditions of the policy.

My final decision

My final decision is I am upholding Miss D's complaint about Warranty Services Limited and directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 17 April 2024.

Joanne Ward
Ombudsman