

## The complaint

Mrs P complains about how Evolution Insurance Company Limited (Evolution) dealt with a claim under her home emergency policy when she had problems at her rental property.

References to Evolution in this decision include their agents who provide services under the policy.

## What happened

Mrs P had a home emergency policy with Evolution, covering her rental property, taken out at the beginning of March 2024, at an annual premium of £297.48 (a monthly premium of £24.79). Later in March 2024 she contacted Evolution to tell them about a problem with electrical failure in one room of the property. Evolution said they couldn't assist with the problem as the issue only affected one room, not the whole property. They considered the issue to be one of maintenance and improvement, which the policy didn't cover.

Mrs P told Evolution the property was a rental property and she had landlord home emergency cover. The room affected was occupied by a tenant and was without power for over a week. She was then told by Evolution that one policy wouldn't cover a multiple occupancy property with multiple lets. Mrs P could either purchase separate policies for each let, or she could cancel her policy, without charge and Evolution would refund her the one monthly premium paid (£24.79).

Separately, slightly earlier in March 2024, there was a problem with the boiler at the property, which caused the gas meter to go into 'armed mode', leaving the property without heating or hot water. Evolution sent an engineer to assess the problem and he said the issue was resolved, with suggestions for improvement. The engineer also left a 'Danger Safety Warning Do not use' sticker on the boiler. However, the boiler was left running and the engineer advised the issue was resolved other than the improvements they'd advised. However, the problems persisted, the boiler continuing to trip the meter into 'armed mode'.

Unhappy at how Evolution had dealt with the issues at her property, Mrs P complained. She said the policy wasn't clear that electrical failure in one room wouldn't be covered. Nor did the policy terms and conditions say that multiple occupancy rental properties weren't covered. Evolution had offered to cancel the policy, but Mrs P declined to agree to that.

Evolution didn't uphold the complaint. In their final response, on the issue with the boiler, they said the engineer reported he didn't find any faults, but adjusted the gas valve, tested the working pressure, and confirmed the heating and hot water were working. On the safety notice left by the engineer, Evolution said the engineer had found a fault with the boiler flue not being 'clipped'. Which meant flue brackets were required. Evolution referred to the *Gas Safety* terms and conditions, where boilers were deemed 'at risk' or 'immediately dangerous'. Any work required to address safety issues (including the flue brackets) would be chargeable.

On the electrical issues, Evolution noted the property was multiple occupancy and each room had independent wiring. As the issue affected one room, not the whole property, it

wasn't classified as an emergency and so wouldn't be covered under the policy (but would be covered as a 'pay on use' service. Evolution referred to the *Pay on use* definition in the policy, meaning any work would incur a fee (plus parts and labour).

Evolution also referred to what they'd previously told Mrs P about the policy being unsuitable for multiple occupancy/let properties and they could offer separate policies for each let. They referred to the policy definitions of *Home* and *Domestic use*. Multiple lets in a building would be considered a commercial arrangement. Evolution said they couldn't provide a policy covering 10 individual room lets with 10 separate electrical units, so the policy wasn't suitable for Mrs P's requirements. So, they had to cancel her policy with immediate effect and refund her monthly premiums (one premium at £24.79).

Unhappy at Evolution's response, Mrs P complained to this Service. She'd had to pay to fix the electrical issue and lost rental income from tenants because of the lack of hot water, which still hadn't been resolved. She wanted reimbursement for the cost of fixing the electrical issue and for Evolution to pay for an engineer to fix the boiler issue.

Our investigator upheld Mrs P's complaint, concluding Evolution hadn't acted fairly. On the electrical issues, the investigator thought it was a persistent fault with the facilities of the property, so would fall within the policy definition of a 'breakdown' (but not 'emergency'). A breakdown would be considered separately under the policy, not just part of an emergency – given that the two terms were separately defined in the policy. The investigator thought Evolution should reconsider the claim under the remaining terms and conditions, as Mrs P had paid for an electrician to fix the problem (subject to Mrs P providing an invoice or report from the electrician).

On the issues with the boiler, the investigator said Mrs P wasn't told about the 'at risk' notice and the absence of flue brackets until a couple of weeks after the engineer had visited and place the 'at risk' notice on the boiler. Mrs P's tenants had refused to pay rent until the issue (and consequent lack of heating and hot water) was resolved. She had to engage her own engineer to resolve the issues. While the investigator noted Evolution wouldn't be responsible for the costs of addressing the flue brackets issue, she thought Evolution should review the claim under the remaining terms and conditions, subject to Mrs P providing an invoice or report from the engineer who fixed the boiler. The investigator thought Evolution should pay Mrs P for any loss of rent from the date of the boiler issue to their final response, should Evolution accept the claims for the electrical and boiler issues.

On the policy not being suitable for a rental property with multiple occupancy/lets, the investigator looked at the sale journey when Mrs P took out the policy. She wasn't asked if the property was multiple occupancy/lets, nor was there any indication the policy wasn't designed (suitable) for multiple occupancy. The investigator didn't think the policy definitions of 'home' and 'domestic use' were clear they meant multiple occupancy properties wouldn't be covered. Had it been made clear to Mrs P the policy wasn't suitable (or wouldn't cover) multiple occupancy rental properties, the investigator thought she would have sought cover elsewhere.

Evolution disagreed with the investigator's view and requested that an ombudsman review the complaint. They said a fault might be deemed to be a breakdown, but a claim wouldn't be covered unless it was also an emergency. Mrs P had confirmed she'd read the policy terms and conditions before she took out the policy, so should have been aware of this. On the boiler issue and being deemed 'at risk' the engineer left a warning sticker confirming the flue wasn't supported correctly, and Mrs P told them she was aware of the notice when she contacted them after the engineer's visit. So, Evolution didn't accept she wasn't aware of the issue at the time. They also

disagreed about reconsidering the claim until it was confirmed the 'at risk' work advised by the engineer had been completed (so they could determine whether the continuing issues weren't related to the work advised).

On the electrical issues, Evolution maintained the policy couldn't cover 10 individually rented rooms with 10 separate electrical units. They maintained this should be considered a commercial property, not a domestic property (for domestic use). So, they shouldn't be responsible for the costs of Mrs P's electrician fixing the issue.

On the loss of rent, Evolution said there wasn't any evidence the heating/hot water wasn't working (Mrs P had confirmed the boiler continued to operate). In any event, the policy terms and conditions excluded any consequential losses caused by a breakdown or emergency.

### **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.

My role here to decide whether Evolution has acted fairly towards Mrs P.

There are several issues in Mrs P's complaint. From what I've seen, the main ones are: Evolution's handling of her claim for issues with her boiler; handling of the claim for electrical issues at the property; Evolution saying the policy didn't cover properties in which there were multiple occupancy/lets, and whether Evolution should be responsible for any loss of rent by Mrs P from what had happened.

In coming to my decision I've looked at everything Mrs P and Evolution have said, and the evidence and information provided during our Service's investigation, although I may not comment on every specific detail. In doing so, I've considered the differing views of Mrs P and Evolution about what happened, the policy terms and conditions and their interpretation and application to the circumstances of the case.

I'll cover each issue in turn, starting with whether it was fair and reasonable for Evolution to say the policy wasn't suitable for Mrs P's needs, as it wasn't designed to cover multiple occupancy/let properties.

#### *(a) Whether the policy covered (was designed for) multiple occupancy properties*

Evolution refer to the following policy definition of *Home*:

*"A building designed and used for residential purposes that you own and either live in or rent out for someone else to live in, including any attached garage or conservatory but not detached outbuildings or communal areas."*

The policy definition of *Domestic use* is:

*"Your agreement only includes cover for your property if used for domestic purposes. This may include home office or schooling use, or domestic renting but not where the main purpose of the property is commercial use."*

What isn't in doubt is that the policy allows for cover where the policyholder is a landlord, letting out the property concerned. The policy terms and conditions refer to landlords, for example under a section headed *24/7 Home Rescue Products and Features* there's a table with two columns, one headed *24/7 Home Owner* and one headed *24/7 Home Landlord*.

Looking at the policy terms and conditions, I've noted the Insurance Product Information Document (IPID) states, under a heading *Are there any restrictions on cover?* the following:

*"! You must own the home that you are taking cover out on, and it must be used for domestic purposes."*

The IPID doesn't specifically state that rental properties with multiple occupancy/lets aren't covered. The only reference to rental properties I can see is the following statement under the section headed *What is this type of insurance?:*

*"If you have bought one of our 'Care' products this will include an annual boiler service (or if you are a landlord, a gas safety inspection and 'CP12') as a non-insurance features of the product."*

Which suggests the policy would include policyholders who are landlords (as is the case with Mrs P). And the policy taken out by Mrs P is described (in the welcome letter when she took out the policy) as *Landlord Home Care*. Which indicates she was taking out the policy as a landlord (the Policy Summary of products includes the CP12 Certificate).

So, while it's clear the policy was taken out by Mrs P as a landlord, the key question is whether it is reasonable for Evolution to say it wouldn't cover multiple occupancy properties/lets. And that such an arrangement would reasonably be interpreted to mean the main purpose of the property was 'commercial use'. Having looked at the evidence and information, I've concluded it wasn't clear.

I've reached this conclusion for several reasons. First, looking at the sales journey followed by Mrs P when taking out the policy, there is no mention I can see of her being asked for any details of the arrangements under which she was a landlord, including the nature of the property occupancy and tenancy (including whether it was occupied by a single tenant(s) or multiple tenants/occupancy). So, Mrs P wasn't asked a clear question whether the property was multiple occupancy/let. Given the importance of this question – Evolution say they wouldn't cover multiple occupancy/let properties – then I think a clear and specific question should have been asked at the point the policy was taken out.

Nor is it clear that 'commercial use' would include multiple occupancy/lets (whereas single occupancy/let wouldn't be considered 'commercial use'). It's reasonable to think the primary reason a landlord lets a property is to generate rental income from tenant(s). If, as Evolution maintain, the policy was meant to indicate multiple occupancy/lets were commercial – but a single tenant(s) weren't – then I think that distinction should have been made clear. I've also considered the general principle that ambiguity in a contract should be interpreted in favour of the party that didn't draft the contract. Which in this case would be Mrs P.

So, I've concluded Evolution didn't act fairly and reasonably in saying the policy wasn't designed to cover multiple occupancy/let properties.

Having reached this conclusion, I've considered what Evolution should do to put things right. While I've concluded they haven't acted fairly, I don't think it's reasonable to ask them to reinstate the policy, given their position they won't offer policies to cover multiple occupancy/let properties. That is an operational decision for Evolution, which isn't something that falls within the remit of this Service. Had Mrs P reasonably been aware Evolution wouldn't offer a policy in the specific circumstances of her tenanted property (or been told they wouldn't offer the policy) then it's likely she would have looked for cover elsewhere (which she may well have already done).

So, I won't be asking Evolution to take any specific action on this point.

*(b) The issues with the boiler*

Turning to the issues with the boiler, when Mrs P contacted Evolution, they sent an engineer to assess the boiler and diagnose the issue. Evolution say the engineer carried out checks on the boiler and adjusted the valve. The engineer also deemed the boiler to be 'at risk' because of the issue identified with the flue (requiring brackets). Evolution refer to the following policy *General Conditions* under a heading *Gas Safety*:

*"There may be situations where, for reasons of safety, we declare your boiler 'at risk' or 'immediately dangerous'*

*'At Risk' is a potentially dangerous appliance where one or more faults exist and which, as a result, may endanger life or property. An example of this is inadequate ventilation. In these circumstances, we have a duty to switch off the appliance and advise you not to use it...*

*You are responsible for the cost of work we undertake to address an 'At Risk'... appliance."*

In their final response, Evolution also refer to the engineer confirming the heating and hot water were working fine, and to the engineer's report on their findings:

*"Customer was getting e133 fault. I've tested gas going to boiler also working pressure also checked electrodes and condense trap checked resistance on gas valve and PCB both fine boiler is firing up for heating and hot water can't find any faults the only fault was the flue not being clipped"*

Looking at Evolution's complaint notes, they refer to the engineer visit and a report saying the customer had heating and hot water and 'all ok now'. There's also a note of Mrs P calling the same day to refer to the safety notice the engineer attached to the boiler, indicating the 'At Risk' designation, but also ticking boxes to say the boiler had been turned off and a 'do not use' notice affixed and that turning off the appliance will not remove the risk.

Given the apparent contradiction between the 'at risk' notice – requiring the boiler to be turned off - and the boiler being left working, I can understand Mrs P's confusion and seeking clarification from Evolution. And she subsequently told them about continuing issues with the boiler. I've also noted Evolution's final response acknowledges Mrs P wasn't provided with an update, given the contradiction between what happened and the continuing issues.

Mrs P says she subsequently engaged her own engineer to fix the boiler. I've not seen any invoice or report that sets out what the issue was and how it was resolved (or the cost) so I'm not able to conclude whether the issue was something that should have been identified and resolved by the engineer's visit(s) or covered under the policy – though I note Evolution sent an engineer to inspect the boiler.

Taking all these points together, I'm not persuaded Evolution have acted fairly and reasonably towards Mrs P. To put things right, I think Evolution should re-assess the claim, in line with the policy terms and conditions, including any invoice/report from Mrs P's engineer on the cause of the issue.

*(c) Electrical issues*

On the issue of the electrical problems, Evolution say the policy meant the issue wouldn't be considered an emergency as the issue only affected one room at the property, not the whole property. The Insurance Product Information Document (IPID) refers to emergencies being defined as:

*"...major loss of heating, hot water or other facilities in your home following a boiler, central heating, plumbing, drainage or electrical system fault."*

The full policy definition of *Emergency/Emergencies* is:

*"Major loss of facilities (for example, heating, hot water, clean water or drainage) in your home, or sudden and unexpected events (for example an uncontrollable leak) which, if not dealt with quickly, would in our opinion make your home unsafe or insecure, cause damage or further damage to your home, or cause personal health risk to you or others."*

Looking at this definition, I think it reasonable to conclude that loss of electrical power in one room of the property (which I understand to have been three sockets and lights) wouldn't be considered to be a 'major loss' of facilities. So, it was reasonable for Evolution to say it wasn't an emergency.

The policy defines *Breakdown* as:

*"A persistent fault with the facilities in your home (for example, heating, hot water, clean water or drainage) which has affected their normal operation."*

Again looking at the circumstances, while the definition doesn't specifically mention electrics or electrical system, I think the loss of electrical power in one room would reasonably include 'a persistent fault affecting their normal operation'.

Evolution also make the case that a claim would only be covered if it involved an emergency *and* (my emphasis) a breakdown. As I've set out, the policy includes separate definitions of *emergency* and *breakdown*. The policy also refers in several places to 'emergency or (my emphasis) breakdown'. For example in the *What we can cover* sections of the policy for *Boiler Breakdown* and *Home Electrics*. This indicates cover would be provided for *either* an emergency or a breakdown. That is, either/or, it wouldn't need to be both.

Evolution also maintain the policy wouldn't cover 10 individually rented rooms with 10 separate electrical units. They maintain this should be considered a commercial property, not a domestic property (for domestic use). So, they shouldn't be responsible for the costs of Mrs P's electrician fixing the issue.

I don't agree. As I've concluded above, it wasn't made clear to Mrs P when she took out the policy that multiple occupancy/let properties wouldn't be covered under the policy. Nor that it is reasonable to interpret such properties as being 'commercial' property.

Evolution, in an earlier response to Mrs P, say the issue was one of maintenance, referring to the policy definition of the term, as follows:

*"Steps identified by our engineer which aim to reduce the risk of a future emergency or breakdown (for example, powerflush, inhibitor, magnetic filters, replacing parts which are functioning but beginning to show wear and tear, or dealing with sludge, limescale or debris)."*

Looking at the definition, it's not clear to me on what basis Evolution concluded the problem was due to a maintenance issue. Nor have I seen any evidence on what the issue was found to be (by Mrs P's engineer). So, I can't conclude whether the issue could reasonably have been a maintenance issue (and so excluded from cover).

Taking these points together, I've concluded Evolution didn't act fairly in declining to cover the electrical issues at the property.

Thinking about what Evolution should do to put things right, given the uncertainties over what the issue was (and whether they could reasonably be considered a maintenance issue) then I think Evolution should re-assess the claim in line with the policy terms and conditions, including any invoice/report from Mrs P's electrician on the cause of the issue.

*(d) Loss of rent*

Mrs P says the problems with her boiler led to a loss of rent from her tenants because they didn't have access to heating and hot water, given the continuing issues with the boiler. She's provided messages from tenants saying they will withhold rent while, or until, the issues are resolved. But she hasn't provided clear evidence of any such withholding of rent and the extent of any financial loss she incurred.

Evolution say consequential losses aren't covered under the policy, referring to the following policy wording:

***“Consequential losses***

*Your agreement does not cover consequential losses or damage directly or indirectly caused by the emergency or breakdown that led to your claim.”*

This is a common feature in home emergency policies, and I think its meaning is clear. Evolution say there also isn't evidence the boiler didn't continue to operate – but the messages provided by Mrs P from tenants saying they have withheld (or will withhold) rent contradict this view. I don't have any reason to doubt the veracity of the messages, which indicate continuing issues with the boiler (as do the complaint notes, which include Mrs P contacting Evolution to say she was continuing to experience issues with the boiler).

While I can't conclude, on the evidence available, Mrs P has clearly suffered financial loss of rent, should the claim for the boiler issues be re-assessed and accepted by Evolution (the potential loss of rent appears to be as a result of the boiler issues and consequent lack of heating and hot water) then I don't think it unreasonable for Evolution to assess any financial loss in line with the policy terms and conditions.

**My final decision**

For the reasons set out above, my final decision is that I uphold Mrs P's complaint in part. I require Evolution Insurance Company Limited to:

- re-assess the claim for the issues with the boiler, in line with the policy terms and conditions, including any invoice/report from Mrs P's engineer on the cause of the issue.
- re-assess the claim for the issues with the electrics, in line with the policy terms and conditions, including any invoice/report from Mrs P's electrician on the cause of the issue.

- Assess any financial loss of rent incurred by Mrs P in line with the policy terms and conditions, if they re-assess and accept the claim for the boiler issue (and subject to Mrs P providing evidence of any such financial loss).

If Evolution accept either, or both claims, and settle them by reimbursing Mrs P for the evidenced costs from the respective invoices/reports, they should also add interest, at a rate of 8% simple, from the date Mrs P paid the invoices to the date they settle the claims.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 13 November 2024.

Paul King  
**Ombudsman**