

## **The complaint**

Mr J has complained about his boiler warranty insurer Evolution Insurance Company Limited because it has refused to consider a claim under his warranty for his broken boiler.

Mr J has cover with Evolution for service and repair of his heating system. Mr J had a complaint about the service element of the cover which has been dealt with separately. Evolution also said this complaint, about the warranty cover, was one we could not consider. In a separate decision I found that it is one which we can consider.

## **What happened**

During a service appointment in December 2023, faults were identified with Mr J's boiler. It was categorised "at risk". In March 2024 Mr J told Evolution his boiler was malfunctioning – it didn't reply to him in this respect. Mr J emailed Evolution in May 2024. He said the service engineer had told him the repairs weren't covered. He was told that the boiler could be repaired, but that the "at risk" work was not covered under the policy. Evolution offered to repair the boiler for Mr J at a cost of £320.

Mr J was unhappy. He noted he had £1,000 of cover on the breakdown policy for repairs. He was unsure why he was paying a premium for cover he wasn't receiving and being asked to pay for repairs. He complained to the Financial Ombudsman Service.

Following my decision that this is a complaint which we can look at, our Investigator considered the merits of Mr J's complaint. She felt that Evolution had unfairly prevented Mr J from making a claim on the policy. Referencing policy terms, she felt there was no reason a claim could not be made and considered – so she said that was what Evolution should do. She said it should also pay Mr J £150 compensation. She noted Mr J was unhappy about paying the premium, but she didn't think Evolution's unfair actions regarding the boiler were grounds to make it reimburse Mr J.

Mr J remained unhappy as monthly premium payments continued to be debited from his account. He said he was paying for a service he was not receiving.

Evolution said there wasn't any claim for it to consider because "at risk" work is not covered by the policy. It said Mr J had known that from the onset of the cover and it had told him that since the boiler service. It said that its comments in that respect were clearly, following my previous decision about what this Service can and can't consider, made as part of it carrying out a contract of insurance. So, Evolution said, there was nothing further for it to do.

The complaint was referred for an Ombudsman's 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.

Having done so I agree with our Investigator. And for the same reasons.

I'm pleased to note Evolution has taken on board my previous decision on this Service's jurisdiction. But I think I should highlight to Evolution that just because an insurer is carrying out a contract of insurance – that doesn't automatically mean that anything it does is done as part of it considering claims under the policy. A claim is something a policyholder makes – but here, before Mr J could make a claim, Evolution told him he could not do so. Evolution said, without there being a specific claim from Mr J, that there was no cover for 'at risk' work.

I've noted our Investigator has quoted some policy terms to Evolution. She's said that these suggest a claim could be considered. I think she is correct in that respect. There is nothing in the "what is covered" details in the policy which precludes a claim being made where 'at risk' work makes up part or all of the necessary repairs. For ease of reference I've set out the same wording here:

Insurance Product Information Document:

*"What is insured?.....Breakdowns, defined as a persistent fault with the boiler or central heating in your home...Unlimited assistance and repairs, with cover up to £1,000 per claim."*

Policy booklet:

*"What we can cover.....Repairs or assistance following a boiler emergency or breakdown in your home unless your boiler is beyond economic repair".*

And:

*"If we've assessed that your boiler is beyond economic repair, and you have been continuously covered by us for at least 12 months we will:*

*Replace your boiler if it is less than 7 years old.... You will be required to pay £1,000 as a contribution towards installation costs; or*

*Provide a £250 contribution, less your policy excess, to a new boiler from one of our approved installers if your boiler is at least 7 years old".*

There is nothing in any of that which says 'at risk' work is not covered or that the need for any 'at risk' work will preclude a claim from being made.

I have considered the policy term which Evolution references in its defence of not considering a claim under the warranty. I've quoted it here, with some emphasis added by me:

"General Conditions.....

Gas Safety

There may be situations when, for reasons of safety, we declare your boiler 'at risk' or 'immediately dangerous.'

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

I note that this term is a condition of cover. It is not an exclusion to cover. I can't say, without an active claim – the insurer's decision about which a policyholder has made a complaint – what the fair and reasonable effect of this term is on that particular claim, in all of the circumstances of it. But I am satisfied that it does not mean a claim cannot reasonably be made by Mr J and fairly, fully considered by Evolution.

To be clear – a claim has not yet been considered by Evolution. I'm satisfied it must do that. If it thinks the claim cannot succeed, or that it only has partial liability for it, it will have to explain why to Mr J. It will need to do that, at a minimum, by taking into account and directly referencing; the issues Mr J has with the boiler, the work that is required to fix it and the policy terms which it is seeking to rely on to decline, or limit its liability for, the claim.

If Mr J is unhappy with its answer, he can make a further complaint, to Evolution in the first instance and then this Service. We'll consider the complaint when we receive it, as we

always do, to see if it falls within our jurisdiction for consideration. But I think that any answer Evolution gives once it has considered a claim, will be a new issue – this Service so far has not considered a complaint about a *claim decline* by Evolution. Further, the ramifications of the policy terms as set out above have only been considered as far as they affect Mr J's ability to make, and Evolution's obligation to consider, a claim.

I can see that Mr J has been very worried and frustrated about this. I can see that he feels he is paying for a service he hasn't been receiving – and I have found that Evolution has unfairly refused to consider a claim for him under the warranty cover in place. I'm satisfied that £150 compensation is fairly and reasonably due.

Compensation, in addition to making Evolution consider the claim, rather than reimbursing premiums, are the appropriate remedies in this situation. This isn't a case of mis-sale. The premium is paid for the cover available. But as with any insurance product – paying a premium doesn't necessarily guarantee that any problem which occurs with the item on the policy, will be covered by the same. Terms and conditions apply to all policies and there are never any guarantees that a claim, once made and considered, will be successful.

### **Putting things right**

I require Evolution to:

- Consider a claim for Mr J's boiler under the warranty. If it thinks the claim cannot succeed, or that it only has partial liability for it, it will have to explain why to Mr J. It will need to do that, at a minimum, by taking into account and directly referencing; the issues Mr J has with the boiler, the work that is required to fix it and the policy terms which it is seeking to rely on to decline, or limit its liability for, the claim.
- Pay Mr J £150 compensation.

### **My final decision**

I uphold this complaint. I require Evolution Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 December 2024.

Fiona Robinson

**Ombudsman**