

The complaint

Mr J has complained about his heating breakdown insurer Evolution Insurance Company Limited. He is unhappy that his boiler isn't working but he hasn't benefitted from the cover. He is also unhappy that the policy renewed.

What happened

Mr J had an agreement in place with Evolution for service and repair of his heating system. Part of that agreement was a warranty. In 2023, when Mr J had problems with his boiler, he tried to claim from Evolution under the warranty. He wasn't happy with what happened in that respect and complained to the Financial Ombudsman Service.

In respect of that initial complaint, I issued two decisions. Evolution had challenged this Service's ability to consider Mr J's complaint. So I issued a decision stating we could consider it – because it had acted under the warranty, an insurance product. Meaning it had been carrying out a regulated activity. I then issued a decision in respect of the merits of Mr J's complaint, confirming I was satisfied that Evolution should be considering Mr J's claim under the warranty (which it hadn't, at that point, done).

Evolution then declined Mr J's claim. It said that, in 2023, the boiler was deemed "At Risk" and work to resolve an "At Risk" boiler is not covered by the policy. Mr J didn't agree with that outcome. He was also unhappy that, whilst he was challenging Evolution, his policy had renewed, with Evolution taking payment from his bank. It had then been cancelled but Evolution wouldn't refund the premium. Mr J initially claimed this back from his bank, but it was subsequently taken again. Mr J doesn't think he should be out of pocket for a policy which had no worth to him.

Our Investigator felt Evolution had acted fairly in line with the policy wording when it declined the claim. But she felt it should reimburse the premium it had taken. Noting Evolution, via Mr J's bank, had only recently reclaimed the premium, she didn't recommend interest was added to the reimbursement sum.

Mr J was unhappy about the claim decline. Evolution was unhappy about the reimbursement. So the claim 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.

Claim decline

As I understand it, Evolution's engineer said the boiler was unsafe or "At Risk" due to CO2 readings and deteriorating insulation. Mr J has not disputed that. However, Mr J says the issue he had with his boiler was that it kept switching on and off. It isn't clear to me that the problem with the boiler switching on and off was not related to the "At Risk" issues.

I can see that Evolution is correct. The policy wording does say that a policyholder will be responsible for the cost of resolving any "At Risk" work. So I think Evolution acted fairly when it said it had no liability under the warranty for resolving "At Risk" issues.

In theory, if a policyholder had a boiler with some likely repairable "At Risk" issues, but also a fault which was covered by the warranty, Evolution could still deal with a claim. If, that is, the policyholder was prepared to pay for the "At Risk" work to be completed. Seemingly here though, Mr J is not prepared to do that and/or the "At Risk" issues make the boiler beyond economic repair. Meaning there would be no point in looking to do any other 'non-At Risk' repairs. So, even if the on/off fault Mr J is experiencing is not related to the "At Risk" issues, issues which under the warranty Evolution has no liability for resolving – I can't reasonably blame Evolution for not accepting a claim under the warranty.

Renewal

Prior to renewal, Evolution asked Mr J if he wished to cancel. When he did not reply the policy renewed automatically in November 2024. I don't think Mr J really understood that renewal had occurred because, in December, he said to Evolution "we can think about renewal" once the complaint about repair had been resolved. Evolution said the renewal could not be placed on hold. Evolution took payment as agreed in the renewal.

Mr J disputed the payment with his bank and it initially refunded it under the direct debit guarantee. But recently, the bank, responding to an appeal to the refund made under the guarantee, debited the amount from Mr J again. Evolution doesn't think it should have to repay this to Mr J because the policy had renewed.

On a strictly contractual level, I might have some sympathy with Evolution's position, both that Mr J did not specifically tell it to cancel the renewal and that it could not put the renewal 'on hold'. But, in the circumstances here, I'm not convinced it's fair or reasonable for Mr J to be left out of pocket.

I bear in mind that Evolution's final response letter on Mr J's first complaint was issued in May 2024. Even then the parties were discussing cancellation of the policy. Evolution was totally aware that Mr J felt the policy no longer had any worth to him, not unless or until Evolution accepted a claim and fixed or replaced his boiler. That situation hadn't largely changed by the time the warranty came up for renewal in November 2024, but by the time Evolution and Mr J specifically discussed holding or cancelling the renewal in December 2024, Evolution knew it was not going to accept any claim. In the circumstances here I think Evolution could reasonably have inferred that Mr J did not want this cover to continue, and/or it could have done more to clarify things with him before monies were taken. Further, I note Evolution only reclaimed the monies recently – I think, if Evolution was being reasonable, it could have acted pragmatically and avoided that.

Generally I think that this policy should not have renewed. I'm satisfied that, if Evolution had acted reasonably, it wouldn't have done. Meaning Evolution wouldn't have taken any payment from Mr J at all. Further, I'm also satisfied, if taking payment initially could not reasonably have been avoided, if Evolution had acted proactively and pragmatically in December 2024 and following the bank making a refund under the direct debit guarantee, which to be fair to Mr J it should have done, Mr J would not be out of pocket now for the payment the bank recently returned. So I think Mr J is out of pocket because Evolution did not act fairly and reasonably. I'm satisfied it should reimburse him any payment taken for the 2024 renewal.

Putting things right

I require Evolution to reimburse Mr J any payment it took for the policy which renewed in 2024.

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 8 April 2025.

Fiona Robinson
Ombudsman