

complaint

Mr M's complaint is about Amtrust Europe Limited's handling of a claim under his home emergency insurance policy.

Amtrust Europe Limited uses agents to deal with claims on its behalf. All references to Amtrust in this decision should be read as including those agents.

background

Mr M's boiler stopped working and he notified Amtrust on 2 October 2017. Amtrust sent an engineer to look at the boiler and the engineer diagnosed that a flow sensor was required. The engineer said that Mr M told him that the boiler had not been serviced for two years and as this is a breach of the policy terms, it would not cover any repairs.

Mr M strongly disputed that he had told the engineer this and said it had been serviced. He was able to provide Amtrust with copies of the relevant certificate, the fault had been ongoing for a month and he had been without heating and hot water for that entire time.

In addition, initially Amtrust disputed that the certificate provided were proof of a full annual service and said they were gas safety certificate only. However, after some discussion, it was accepted that the certificate was acceptable to prove that the boiler had been serviced.

On 24 October 2017 Amtrust told Mr M that it would arrange for an engineer to attend but could not guarantee an evening appointment. I understand it was not until 27 October 2017 that Amtrust confirmed it had ordered the required parts. An attendance to fit them was made on 5 November 2017. I understand there have been no further problems with the boiler but Mr M is very unhappy about the delay.

Amtrust accepted that it should not have taken so long for the claim to be dealt with and offered £250 compensation, later increased to £350, to Mr M.

Mr M remains unhappy with the compensation offered. He says he was only told he could make use of alternative accommodation a few days before the engineer was due to fix the boiler and by then it would have caused him more trouble to move into alternative accommodation and then back again a few days later. However, he wants Amtrust to pay him the equivalent cost – *i.e.* seven days at £250 per day as compensation.

One of our adjudicators looked into the case. She thought it should be upheld as the delay in dealing with the claim should have been avoided and she did not consider that Amtrust should have refused cover, even if no service had been carried out. However, the adjudicator didn't think she could reasonably ask Amtrust to pay the equivalent cost of the alternative accommodation cover to Mr M, as he was offered alternative accommodation and whilst she understood the reason for not using it, he had not incurred this cost.

The adjudicator did however, recommend that Amtrust pay a further £150 compensation (*i.e.* a total of £500) for the inconvenience caused.

Mr M does not accept the adjudicator's assessment. He says the £150 compensation proposed does not adequately reflect the distress and inconvenience caused.

As the adjudicator could not resolve the matter, it has been referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M's policy says: *"You are not covered for any claim...relating to the central heating boiler which ... has not been subject to an annual service"*.

Home emergency insurance policies, such as this one, do not cover every eventuality or incident which might befall the insured property. Rather, the policy sets out specific incidents which will be covered and in turn this cover may be subject to specified exclusions. We would generally accept that insurers are entitled to decide what risks they want to cover and which risks they want to exclude.

However, I am not persuaded that the requirement to have any boiler, which is the subject of this insurance policy, regularly serviced amounts to a policy exclusion. As stated, policy exclusions stipulate what risks or events are not covered by the policy. Whereas it seems to me that the requirement that a policyholder has their boiler serviced at 12 month intervals, whilst worded as an exclusion, actually amounts to a condition precedent of cover.

A condition precedent imposes an obligation on the policyholder to take certain steps in relation to the insured property, before any right to benefit under the policy commences. Amtrust wants to impose a requirement on all policyholders to have their boilers serviced annually before any cover will be provided under the policy and this therefore seems to me to amount to a condition precedent.

Both we and the insurance industry generally have long held that it is unfair and unreasonable to reject a claim on the basis of a policy condition, unless breach of the condition has caused some prejudice to the insurer (cf. the Association of British Insurers' old Statement of General Insurance Practice, which provided, amongst other things, that "an insurer will not repudiate liability to indemnify a policyholder... on grounds of a breach of warranty or condition where the circumstances of the loss are unconnected with the breach unless fraud is involved").

The Financial Conduct Authority rules regarding insurance claims handling provide that an insurer should not unreasonably reject a claim by relying on technical breaches of condition that are not materially connected with the circumstances of the claim.

In other words, insurers need to show prejudice as a result of the breach of condition in order to reject the claim. The breach has to be material to the loss – not material to other considerations, such as its commercial interests or pricing of the policy generally.

So, in order to rely on a condition relating to the annual service, Amtrust would have to show that the lack of service directly caused the breakdown of the boiler and it had no such evidence at the time.

As a result of unfairly applying this condition, it meant that the problem with Mr M's boiler - diagnosed on 2 October 2017 – was not repaired until 5 November 2017. This is not acceptable. Even after Mr M provided the certificate there was delay of several more days

before the repair was done. Amtrust is providing a home emergency insurance and so Mr M was entitled to expect a prompt response and for it to get his boiler working again as quickly as possible. It seems to me there's no reason this should have taken more than a few days. Instead it took over a month.

I therefore agree that some compensation is appropriate for the distress and inconvenience caused. Mr M has said he had to heat water in kettles in order to bathe and was without heating, until he was able to borrow some electric heaters. This would have therefore been extremely frustrating and inconvenient. I also accept the point that even though alternative accommodation seems to have been mentioned to Mr M earlier on in the claim, as he thought his claim was being rejected, he couldn't have taken up that offer. However, it also seems to me, given that he declined it later, there has to be some doubt about whether Mr M would have taken it up earlier anyway. I don't therefore agree that it would be appropriate to rate the compensation warranted, in line with the alternative accommodation benefit limits under the policy, when Mr M did not use alternative accommodation.

I consider that the total compensation of £500, recommended by the adjudicator, is appropriate overall to reflect the distress and inconvenience caused to Mr M by the handling of this claim and this is in line with awards made in similar cases.

my final decision

I uphold this complaint against Amtrust Europe Limited and require it to pay Mr M the sum of £500 compensation for the distress and inconvenience caused by the handling of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 April 2018.

Harriet McCarthy
ombudsman