

complaint

Mrs S complains that when she made a claim on her home emergency policy Amtrust Europe Limited charged her a call out charge for a visit by an engineer.

Where I refer to Amtrust, this includes its claims handlers.

background

Mrs S phoned Amtrust when her boiler stopped working. The call handler asked her when her boiler had last been serviced. Mrs S said it was sometime last year, and her husband usually dealt with this. She was asked if she had the maintenance documents and said she didn't know.

An engineer called the next day. He said some parts would need to be replaced, but he didn't believe that the boiler had been serviced for a number of years. And Mrs S wasn't able to provide the maintenance documents. So the engineer didn't do any repairs.

Mrs S then received a bill for the call out charge. She complained to Amtrust, saying it wasn't fair for her to be charged when she hadn't been told that would happen.

Amtrust said the charge was fair. So Mrs S complained to this service. Our adjudicator said Amtrust could refuse the claim if Mrs S couldn't confirm that the boiler had been serviced within the last 12 months, as required by the policy terms. So it was fair for Amtrust not to do the repairs. But she didn't think it was fair to charge for the visit, because Mrs S hadn't said she would provide the service documents – she said she didn't know if she had them – and she hadn't been told there would be a charge if she didn't provide them. So the adjudicator said Amtrust should waive the charge, and pay Mrs S compensation of £75 for the distress caused to her.

Amtrust has requested an ombudsman's decision. It says:

- the policy terms make it clear the customer needs to have their boiler serviced every year;
- Mrs S knew this, because she'd had a previous claim refused a few months earlier for the same reason;
- it accepts claims based on the customer's word that they have kept to the policy terms;
- the engineer said he didn't see any service documents, Mrs S didn't know when it was serviced, and by looking at the boiler he would say it had been a number of years;
- in her complaint, Mrs S said the claim was refused because the boiler was beyond economical repair, but that wasn't the reason given to her at the time;
- Mrs S provided a copy of the policy terms that didn't include the warning about having the boiler serviced, but the policy document sent to her did include that warning;
- it's clear the boiler hadn't been serviced and the information Mrs S gave was incorrect;

- as the policy conditions had not been met and Mrs S gave incorrect information, she should be liable for the cost of the call out.

my findings

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'm upholding the complaint.

The policy terms do make it clear that the policyholder has to have their boiler serviced every year, and that claims won't be covered if it hasn't been serviced. Mrs S hasn't been able to provide confirmation that the boiler was serviced. So I agree that Amtrust could refuse her claim, and didn't have to repair the boiler.

But I don't think that necessarily means it was fair for Amtrust to make Mrs S pay a call out charge. Amtrust says Mrs S gave false information, because she said the boiler had been serviced. I don't think it's quite so clear cut. She said they'd had someone out "sometime last year" but her husband dealt with this. And when she was asked about the service documents, she said she didn't know if she had them.

I understand Mrs S had made a previous claim, which was refused because she didn't have details of the servicing. So I think she should have known a claim wouldn't be accepted without this information. And, as I've said, the policy terms do make it clear the boiler has to be serviced for cover to be provided.

But I don't think someone would know from this they would be charged for a call out. It's one thing to know your claim may not be covered and repairs not done. It's quite another to think you will be charged a fee. I don't think it was clear to Mrs S that she would be charged. And this wasn't mentioned in the phone call. If Mrs S was going to be charged for the visit unless she produced the service documents, the call handler could have told her she had to produce them, and warned that she would be charged if she didn't. And Amtrust said Mrs S had confirmed she would produce the documents, when in fact she hadn't said that.

Amtrust has also said Mrs S sent us a copy of the policy terms that didn't include the warning about servicing the boiler, but I haven't seen any such document.

In these circumstances, although I agree that Amtrust could refuse the claim, I don't think it was fair to charge for the visit.

Mrs S received a demand for payment for a fee when it hadn't been made clear to her that she would be charged. And she received correspondence saying she'd told Amtrust's agent she would have the service documents available, when she hadn't said that. I think this would have caused her some distress.

my final decision

For the reasons given I uphold Mrs S's complaint and require Amtrust Europe Limited to:

- waive the call out fee; and
- pay Mrs S £75 to compensate her for the distress and inconvenience caused to her.

Amtrust Europe Limited must pay the £75 within 28 days of the date which we tell it Mrs S accepts my final decision. If it pays later than this it must also pay interest from the date of my final decision until the date of payment at 8% per year simple*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 October 2016.

Peter Whiteley
ombudsman

* If Amtrust Europe Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.