

### ***“summary of complaint***

*Mr B complains about the rejection of a claim he made under his Barclays HomeSOS Insurance cover underwritten by Amtrust International Underwriters Ltd.*

### ***background***

*On or about 2 January 2011, Mr B sought a call out under his emergency cover as his boiler, which was 12 years old at the time, had broken down. He was informed that no repair by an engineer could be undertaken under his policy as it was 15 months since he had last had the boiler serviced, rather than 12 months as the policy required.*

*Mr B complained. He said his engineer had told him a service was not needed every 12 months. He also referred to other home emergency insurance policies which did not require an annual service. He sought reimbursement of the cost (about £360) of having the boiler repaired.*

*Amtrust confirmed rejection of the claim, relying on a policy exclusion for:*

- failure of boiler or heating systems that have not been serviced by a qualified professional in the last 12 months.*

*Amtrust did however offer £50 compensation as a gesture of goodwill for inconvenience caused as a result of delays in dealing with the claim.*

*Mr B remained unhappy, noting that Barclays had stopped offering HomeSOS cover. He thought Barclays knew the ‘system was not up for purpose’ as they had received a number of complaints about the policy.*

### ***our initial conclusions***

*Two adjudicators considered the complaint, and reached different findings.*

*The first concluded that Amtrust was entitled to reject the claim in reliance on the exclusion. She regarded Barclays’ withdrawal of the policy as a commercial decision which did not in itself mean it was unsuitable. She considered the £50 offer made by Amtrust was reasonable.*

*However, in the absence of any evidence that the claim would not have arisen but for the lack of any service in the previous 12 months, a second adjudicator recommended Amtrust should accept, or at least re-investigate, the claim.*

*Mr B disagreed with the first adjudicator’s findings and Amtrust with the second. Accordingly, the matter has been referred to me for determination.*

### ***my findings***

*Firstly, I would like to apologise for the time it has taken for this complaint to reach me. We are dealing with an unprecedented caseload and are trying to find ways to progress cases more quickly. I am sorry that this has meant a long wait.*

*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 Services Authority rules regarding insurance claims handling provides 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, the critical issue for me to decide is whether Amtrust has established that it has been materially prejudiced by the fact that Mr B's boiler had not been serviced within the preceding 12 months (but had been serviced 15 months before) before he submitted his claim.*

*The parties are fundamentally disagreeing over whether a more recent service would have prevented the problem. Mr B has consistently denied that it would, whereas Amtrust maintains it is speculative to say that a service would not have revealed a fault, or improved the running of the boiler so the fault would not have occurred.*

*According to the invoice for which Mr B claims indemnity, his engineer carried out unspecified repairs to the boiler on the first attendance in January 2011, charging twice as much for labour, and substantially more for unspecified parts, compared to what he charged when he returned a few days later to replace the boiler air switch. Mr B has since told us that his engineer in fact replaced the air switch first.*

*Amtrust has made the point – validly in my opinion – that more work was obviously done, and parts replaced, than just the air switch, but on the face of the invoice it is difficult to know*

*what. It has surmised that the repair may have had to do with replacing the boiler fan, which Mr B has since confirmed was the cause of the problem.*

*The boiler fan appears on a Gas Safe maintenance checklist Mr B has sent us. This seems to indicate that the fan is one of the boiler components which would be checked in the course of an annual service. According to Mr B, he has been informed, by two Gas Safe registered technicians, that no service would show a fan or switch would break down in the future.*

*I have not been presented with any engineering or other expert evidence in support of either party. However, as set out above, it is for Amtrust to establish that it has been prejudiced. So, albeit it might be speculative to say that a more recent service would not have identified a fault with the fan and/or air switch, Amtrust has not established that it would have done. Indeed by refusing to attend at all, it has lost the opportunity to do so.*

*As Mr B has already had the repairs carried out, it seems to be that the fair and reasonable outcome in this case is for Amtrust to reimburse him these costs together with interest at our usual rate.*

*I note that Amtrust has already offered £50 on a goodwill basis to reflect the fact that there were also delays, and I endorse this offer.*

### ***my provisional decision***

*For these reasons, I am minded to uphold this complaint and require Amtrust:*

- pay Mr B the sum of £359.44 together with interest at 8% simple per year from the date that he paid the invoice to the date of reimbursement; and*
- pay the sum of £50 previously offered to compensate for delays”*

### **developments**

Amtrust has responded to my provisional decision. Whilst it disagrees with my provisional decision, it says that as its engineer did not attend the property it would be difficult for it to demonstrate that Mr B's failure to have his boiler serviced was material. It therefore agrees to abide by my provisional decision.

Mr B has also responded. He says that he has been told that engineers usually change the boiler air switch before the boiler fan, as the air switch is the cheaper part and normally breaks down first.

Mr B has also raised concerns about his treatment by the bank which sold him the policy as part of his packaged bank account, including that the cost of his account has not changed to reflect the fact that this cover has been removed.

Given the responses received, I see no reason to depart from the findings set out in my provisional decision. Amtrust has prejudiced its own position by refusing to attend and in the absence of any convincing evidence that the problems with the boiler would not have occurred had Mr B had it serviced within the preceding 12 months, it remains my decision that it should reimburse his repair costs.

I have noted Mr B's comments regarding his bank. This complaint has been dealt with against Amtrust as the providers of the HomeSOS insurance policy because it is responsible for his claim under the policy and how that was dealt with. If Mr B has concerns about any of the actions carried out by his bank, then he would need to complain direct to the bank first and if his concerns are not resolved he may bring a separate complaint to us. I am unable to address those within the context of this decision against Amtrust.

**my final decision**

For the reasons set out above, I uphold this complaint. Amtrust International Underwriters Ltd must do the following:

- pay Mr B the sum of £359.44 together with interest at 8% simple per year from the date that he paid the invoice to the date of reimbursement; and
- pay the sum of £50 previously offered to compensate for delays.

Harriet McCarthy  
**ombudsman**