

## **complaint**

Mr R is complaining that Homeserve Membership Limited (Homeserve) mis-sold him a home emergency policy.

## **background**

In 2004 Mr R took out an annual Homeserve policy, which among other things, was intended to cover any repairs needed to his boiler. The policy then automatically renewed each year after that.

In 2016, Mr R claimed off the policy as his boiler had stopped working. But the insurer said that the part needed to fix the boiler had become obsolete, so it wasn't able to repair it. So it said that it could either provide a new boiler, but Mr R would have to cover the cost of installation, or pay him £200 towards a replacement boiler.

Mr R's son complained to Homeserve on Mr R's behalf. He said that Homeserve had sold an unsuitable policy because it was aware that the manufacturer had stopped making parts for the boiler in 2007. So he says that it shouldn't have been covering the boiler since then.

Homeserve didn't think the policy was mis-sold. It said that it had repaired Mr R's boiler under the terms of the policy in 2012 and 2015. It said that it can only know parts aren't available when they're needed to complete a repair. Mr R's maintains that Homeserve had a duty to tell them it didn't have parts available and that it shouldn't be covering the boiler.

Our investigator didn't uphold the complaint because Mr R could use the policy as there were only some parts that weren't available. And Mr R had been able to use the policy a number of times during the policy term.

Mr R's son didn't agree and maintained that Homeserve shouldn't have covered his boiler because it was obsolete. And he thinks it should refund all the premiums Mr R has paid. He also says that Homeserve should've told Mr R that the boiler was obsolete and it couldn't repair it anymore. The investigator still didn't uphold the complaint, so Mr R asked for an ombudsman to review the complaint.

## **my findings**

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

I've decided to not uphold this complaint and I'd like to explain why.

First of all, I should explain that the Financial Ombudsman Service isn't the regulator of the insurance industry – that's the Financial Conduct Authority. So it's not our role to decide whether Homeserve should be selling these types of policies or what boilers it should cover. Our role is to consider individual complaints and look at whether Homeserve has acted fairly in this particular case.

### *was the policy mis-sold?*

Mr R took out the policy in 2004. And, given the passage of time, there isn't any documentation to show what he was told when he took out the policy. But this isn't

unreasonable as Homeserve only has to keep data for a minimum of six years and Mr R took it out 13 years ago. But, based on what I know of how these policies were sold, I think it's most likely Mr R would've approached Homeserve to take out the policy.

Homeserve didn't give advice to its customers. So it didn't have to check whether the policy was suitable or not. It was Mr R's responsibility to decide whether he wanted the cover or not. I think it's fair to say, given that he took out the policy, Mr R wanted the protection the policy gave.

Mr R's son says that Homeserve shouldn't have sold the policy because the manufacturer wasn't making parts for the boiler when he took out the policy. But I understand it only stopped making parts in 2007, i.e. after Mr R took out the policy.

As I said, I don't know what information Homeserve gave Mr R when he took out the policy. But, even if it didn't explain everything, I haven't seen anything to show that he wouldn't have bought the policy had Homeserve explained in detail what the policy did and didn't cover. Mr R was looking for a policy that covered him if his boiler broke down. And that's what the policy did.

*did Homeserve have to tell Mr R that parts weren't being made for his boiler anymore?*

Homeserve doesn't have to explain everything that a policy does and doesn't cover. But it has a duty to set out all the significant or unusual terms in the policy.

It's common for home emergency policies to say that it can't repair a boiler when parts aren't available. So it's not an unusual term. Also, the policy doesn't exclude cover when parts aren't available. It says that, where it can't repair it, it will either provide a replacement boiler (with Mr R covering the cost of installation) or £200 in cash. Mr R still has a benefit from the policy, even though the boiler can't be repaired. So I don't think this was a limitation of the policy but a clarification of what happens when a part isn't available. So I don't think it's a significant term, which means Homeserve didn't have to highlight it to Mr R.

But, despite this, I can see that in March 2016, Homeserve wrote to Mr R to say that the policy was going to renew next month. And it included a copy of its 'key facts' document, which explains the key features of the policy. And in this it says:-

***“significant or unusual exclusions or limitations***

*Repairs, where due to obsolete parts, we can no longer cover you (your policy will then be cancelled)”*

So I think it has taken steps to explain to Mr R that it may not be able to provide cover any longer if parts aren't available to enable it to repair the boiler. So I think Mr R should've been aware that cover would end if parts are obsolete.

**my final decision**

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 August 2017.

Guy Mitchell  
**ombudsman**