

complaint

Mr B complains about Inter Partner Assistance SA (“IPA”)’s refusal to reimburse him £290.40 for repairs carried out on his boiler by a private engineer.

The circumstances and background to this complaint were set out in my provisional decision in October 2013, as follows:

“background

Mr B holds a home emergency insurance policy, underwritten by IPA. All references to IPA include its agents who administer the policy and deal with claims on its behalf.

At the end of September 2011, Mr B’s boiler began leaking water, apparently caused by a blocked downpipe. Mr B arranged for a private engineer to attend to stop the leak, at a cost of £48. At the same time Mr B reported the matter to IPA, as it was apparent that repairs would be needed to the boiler.

IPA told Mr B that because he had allowed his own engineer to touch the boiler this amounted to “third party interference” and he did not have a valid claim.

Mr B says that his engineer had not actually started any work on the boiler at that stage and had only tried to dry it out. However, he had also diagnosed that the PCB (printed control board) was damaged beyond repair. As IPA would not deal with the claim, Mr B arranged for his engineer to replace the PCB, which he did three days later.

Mr B contacted IPA again about recovering the cost of the repairs under his insurance policy. But IPA maintained its position. In addition, it also said that the claim would not have been covered in any event as the cause of the leak was an installation fault. Later this was revised and IPA said that in fact it would fall foul of the condition that a policyholder should take “reasonable care” of their property to try and avoid damage; as well as an exclusion of claims relating to any equipment which has not been maintained.

As Mr B remained dissatisfied, he brought his complaint to the attention of this service for consideration.

Our adjudicator recommended that Mr B’s complaint should be upheld. She considered that IPA should have dealt with the claim and that it should therefore reimburse Mr B the amount that it would have paid had it attended.

IPA did not accept our adjudicator’s recommendations and says its technical expert has confirmed that a blocked downpipe is a maintenance issue, which is excluded from cover under the policy.

my findings

Firstly, I would like to apologise to Mr B for the time it has taken for his complaint to reach me and to thank him for his patience.

I have considered all the available evidence and arguments from the outset, in order to determine what is fair and reasonable in the circumstances of this complaint. Having done

so, I agree with the adjudicator that the complaint should be upheld but I consider that the amount to be reimbursed by IPA should be slightly different.

Mr B's insurance policy with IPA provides assistance in the event of an emergency situation such as that which occurred here, subject to certain terms and conditions including that "you must not appoint your own contractor as it could invalidate the cover".

However, 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 also 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.

Mr B believed that the leak required immediate attention and so attempted to mitigate his loss by arranging for a private engineer to attend at his property immediately. This does not seem unreasonable to me and there is no evidence that this has caused any difference to the work required to repair the boiler. It therefore seems to me that it would be unjust for IPA to avoid any costs at all for this work just because of a technical breach of a policy term which seems to have made no difference to the ultimate outcome.

However, I also have to bear in mind that IPA's position should not be prejudiced as a result of not being notified of the claim immediately and being given the opportunity to attend first. IPA has a commercial arrangement with a panel of qualified engineers, who are contracted to carry out repairs at fixed prices, as it is in a position to negotiate discounted rates. Therefore, the cost to IPA of arranging for a contractor to attend will generally be less than the amount which a private engineer would charge for carrying out the same work.

It is therefore my opinion that IPA should pay what it would have paid its own engineer (or the amount actually paid by Mr B, if less) to attend to contain the leak, if it had been notified at that stage.

However, with regard to the repairs to the boiler, Mr B was told that he had entirely invalidated any claim by arranging for his own engineer to deal with the leak. It seems to me therefore that he had no choice but to arrange for his own engineer to repair the boiler.

In my opinion, IPA should have advised Mr B differently when he first reported the claim. He incurred private costs because he had been told he had no claim under his policy. Therefore it is my opinion that he should be reimbursed the cost he actually incurred in having the PCB replaced (even if IPA could have had the work done more cheaply).

IPA has also said that the claim would not have been covered because a blocked downpipe is considered to be a maintenance issue and therefore falls within the following policy exclusion:

“Any system, equipment or facility, which has not been properly installed, maintained, serviced or modified, or which is faulty or inadequate as a result of any manufacturing or design defect...

You must take reasonable care and maintain your home and its equipment in good order and take all reasonable precautions to prevent loss or damage”.

I understand that the boiler overflow pipe is linked to the blocked downpipe and this led to water flowing back into the boiler and flooding it.

IPA suggest that Mr B had failed to adequately maintain the downpipe and associated guttering, perhaps by not clearing it regularly enough. However, as IPA will be aware, if an insurer is seeking to rely upon a policy exclusion to reject a policyholder's claim, it is for the insurer to demonstrate that the exclusion in question applies.

Having considered all of the circumstances of the complaint, I am not satisfied that it is fair and reasonable for IPA to seek to rely upon the above exclusion relating to maintenance in rejecting Mr B's claim.

I have not seen any evidence as to how the drain came to be blocked or that Mr B failed to maintain his drains and guttering and that any failure to do so resulted in the blockage in September 2011. I am therefore satisfied that Mr B experienced an insured emergency event for which his policy provides cover.

my provisional decision

For the reasons set out above, I am minded to uphold this complaint and order that Inter Partner Assistance SA:

- *Pay Mr B the amount it would have paid an engineer to attend to the leaking boiler, or the amount he actually paid (ie £48) if less;*
- *Reimburse Mr B the costs he incurred in having the boiler repaired (which I understand was £242.40);*
- *IPA must pay interest at 8% simple per annum on the above amounts from the date Mr B paid his engineer to the date of reimbursement.”*

developments

I have considered all the available evidence and arguments afresh to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the provisional findings set out above.

Both Mr B and IPA accepted the contents of my provisional decision and I therefore see no reason to depart from the recommendations I have made.

my final decision

My final decision is that I uphold this complaint.

Inter Partner Assistance S.A. must do the following:

- Pay Mr B the amount it would have paid an engineer to attend to the leaking boiler, or the amount he actually paid (ie £48) if less;
- Reimburse Mr B the costs he incurred in having the boiler repaired (which I understand was £242.40);
- IPA must pay interest at 8% simple per annum on the above amounts from the date Mr B paid his engineer to the date of reimbursement.

Harriet McCarthy
ombudsman