

complaint

Mr C complains that Homeserve Membership Limited mis-sold him a boiler insurance policy.

background

In 2015, Mr C took out a Gas Central Heating Breakdown Cover policy underwritten by an insurance company. Homeserve acted as the insurance broker. At the time his boiler was almost ten years old. The insurance company don't provide cover for boilers that are ten years old or older.

In 2018 Mr C had trouble with his boiler. The engineer said that it was beyond economical repair and the required replacement parts were obsolete.

Mr C made a claim for a replacement boiler. Homeserve pointed out that his policy contained clauses which said that if his boiler was more than seven years old – or needed parts which were obsolete – the insurer wouldn't pay for a replacement but would provide a £200 contribution towards the cost of a new boiler.

Mr C complained to Homeserve. He said he'd not been told about these clauses when he bought the policy and wasn't aware of them. He also pointed out that Homeserve had been taking annual premiums of £263 for a policy that would likely only provide benefits of £200 (once).

Homeserve didn't uphold Mr C's complaint. They said the terms and conditions applying to the policy were supplied to him – and were clear what would happen if a boiler of seven years plus was deemed beyond economical repair and/or required obsolete parts.

Mr C wasn't happy with this and complained to us. Our investigator looked into it and thought on balance the policy had likely been mis-sold. He said Homeserve should return Mr C's premiums (with interest).

Homeserve disagreed and asked for a final decision from an ombudsman.

my findings

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

Homeserve sold the policy to Mr C over the phone. They say they can't find the recording of the call. They have however, provided a script which their sales staff are required to follow on each call.

At several points, the script requires the salesperson to emphasise that they're not offering the customer any advice about the suitability of the policy for their needs.

It's difficult to imagine that all of these prompts were missed in any one call, so I have to assume Mr C was aware that he wasn't being advised about the policy's suitability and that he ought to consider the policy's terms and conditions.

Towards the end of the script, the salesperson is instructed to ask whether the customer wishes to proceed to set up the policy and to offer to send the terms and conditions if they require further details.

There's a 28-day cooling off period in which the customer can cancel the policy if they wish to do so having considered the terms and conditions or having had second thoughts.

The terms and conditions are clear that Homeserve will give a £200 contribution towards the cost of a new boiler if a boiler older than 7 years is found to be beyond economical repair or to have obsolete parts.

Homeserve say their salesperson will have followed the script. And so Mr C would have been aware he needed to read the terms and conditions. If he didn't - and proceeded to buy a policy which was unsuitable for him - that's his responsibility. They say they would have been very clear that they weren't advising him and that the onus was on him to check whether the policy suited his needs.

We usually take the view that a business can't rely solely on a terms and conditions document to show that they acted entirely fairly and reasonably in selling a policy to a customer - even when that sale doesn't involve any advice or recommendation about the suitability of the policy.

If there are important conditions or exclusions – particularly where these wouldn't be obvious to a customer, aren't standard, or restrict the cover on offer – we'd usually expect the business to draw these to the customer's attention.

Homeserve appear to share our view. The script they say would have been used to sell the policy to Mr C also has a section – entitled 'Information' – which requires the salesperson to describe the key points about the policy to the customer.

Those key points include the following:

"If your boiler is under 7 years old and deemed beyond economical repair, then we'll replace it. If the boiler is over 7 years old you'll receive a £200 contribution towards a new one."

So, Homeserve clearly regard this as something which should be made clear to the customer during the sales call – and not left for the customer to pick up from the terms and conditions document alone.

If we had the call recording and it were clear the script had been followed – and that Mr C had been advised about the condition applying to boilers over seven years old – I don't think there would be any doubt that Homeserve had acted entirely fairly and reasonably towards Mr C and that he'd chosen to buy the policy in full knowledge of this restriction.

In the absence of the call recording, I have to decide what's likely to have happened during that conversation. On balance, I think it's unlikely Mr C was told about this particular policy provision. I'll explain why.

First of all, Mr C says he wasn't told about this policy term during the telephone conversation. I don't have any reason to disbelieve him. And whilst memories can fail after

this amount of time (the sales call was in 2015), it's difficult to see how Mr C might have missed such significant information at the time.

Mr C's boiler is over seven years old. According to the sales script, the age of the boiler has to be established early on in the conversation with the customer. So, Mr C would have had fresh in his mind what age his boiler was (almost 10 years old at the time).

If he had then been told very clearly about the restriction on boilers over seven years old, it's difficult to see why he would have bought the policy. As he's pointed out, this would amount to paying out £263 annually for a maximum one-off benefit of £200 at the point that his boiler failed and was beyond economical repair.

Of course, I have to take into account that during the time he had the policy, Mr C was covered for the cost of repairs if he had trouble with the boiler but it wasn't beyond economical repair.

But I also have to bear in mind that any such repairs – which by definition have to be economical - were likely to be far less expensive than replacing the boiler. Mr C says he took out the cover in case he had to replace his boiler – and it's unlikely he would have considered the annual premiums good value if they only covered repairs and not replacement.

Given the age of Mr C's boiler, he would also likely have known that there was an increasing risk that any failure would result in his boiler being deemed beyond economical repair because the parts were no longer readily available.

So, taking all of that into account, I think it's most likely Mr C wouldn't have bought the policy if he had in fact been informed about the restricted benefits for boilers over seven years old.

In summary, I'm satisfied on balance that Mr C bought a policy which wasn't suitable for his needs because he wasn't informed in the sales call about the relevant restrictions. And that being the case, I'm satisfied Homeserve didn't treat him fairly or reasonably when they sold the policy to him.

my final decision

For the reasons set out above, I uphold Mr C's complaint.

Homeserve Membership Limited should return the premiums Mr C paid for his policy since its inception in 2015. And they should pay him interest at 8% simple from the date the premiums were paid to the date they repay them to Mr C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 April 2019..

Neil Marshall
ombudsman