

## **complaint**

Mr N has complained that MD Insurance Services Ltd has not refunded all the money owed to him after this service concluded he had been mis-sold building warranties.

## **background**

Mr N brought a complaint to this service about building warranties which he had been sold by MD Insurance Services Ltd ("MD"). The warranties were never issued as MD said that certain conditions for issue hadn't been met.

One of our adjudicators reviewed the complaint and concluded that the warranties had in fact been mis-sold and were unsuitable for Mr N; the relevant condition had not been brought to his attention. As a result, she said that the premium paid should be refunded to Mr N by MD and it should pay him compensation. It agreed to do so.

This, second, complaint deals with the amount that MD paid to Mr N. Specifically, that the refund didn't include approximately £2,600 of fees paid for site audit surveyor's visits to the properties and other registration fees charged as part of the warranty process.

MD says that these charges are not refundable. It says that it complied with the adjudicator's recommendation on the first complaint - to repay the warranties' premium payments - and that these charges don't form part of those premium payments. It pointed out to Mr N that it was entitled to keep fees charged in the event that the warranties were cancelled.

Mr N noted that he hadn't cancelled the warranties. Rather, one of our adjudicators had concluded that they were mis-sold. He said that the fees and charges all formed part of the costs of the warranties and, therefore, MD should refund those fees and charges.

Our adjudicator reviewed the complaint and agreed that MD should repay the charges. She was satisfied that, as the warranty could not be issued without payment of these charges and site visit costs and they were not optional, they formed part of the overall warranty premium. Therefore, she recommended that MD refund the amount due to Mr N (£2,650.20), plus interest and £100 compensation for the inconvenience caused to him.

As MD did not agree with our adjudicator's recommendation, this complaint has been passed to me to review.

## **my findings**

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

The conclusion of our adjudicator in relation to the first complaint was that the warranties were mis-sold to Mr N and that his premium payments should be refunded. I note that MD has now stated that, although it accepted that assessment and agreed to repay the premiums, it still had reservations as to whether the warranties were mis-sold due to concerns about Mr N's dealings with his builder.

However, I cannot ignore that it did agree with our adjudicator's assessment to the first complaint and it did agree to refund the premium payments. The question for me to consider is not whether the warranties were mis-sold, but whether the site visit charges and

registration fees should form part of that refund. I have considered the evidence carefully and concluded that they should.

The recommendation of our adjudicator was that a refund was due to Mr N because the warranties had been mis-sold to him, through no fault of his own. Given that, the refund to Mr N should put him back in the position he would have been in had the warranties not been mis-sold. By paying fees and charges attached to these warranties, which have now been cancelled and which will not be issued, Mr N cannot be said to be in the position he would have been in had the warranties not been mis-sold: he is out of pocket for those charges and fees.

MD has said that the fees and charges did not form part of the premium and it was only required to refund the premium. However, those fees and charges were a compulsory element of taking out and completing the steps for the warranties to be issued: that would never have happened without them being paid. Therefore, I agree with our adjudicator that they form part of the overall cost of the warranties.

I have noted MD's references to the industry standards for insurance companies, which allow companies to retain non-refundable fees in the event that a customer cancels a policy or warranty. However, as has been noted in this case, the warranties were not cancelled by Mr N. Until Mr N complained to this service, the warranties had not been cancelled at all – it was just the case that they would not be issued because of conditions not being met.

For the reasons given above, I agree with our adjudicator that Mr N should be repaid the fees and charges (for registration and site visits) associated with the warranties that were mis-sold.

### **my final decision**

For the reasons given above, I uphold this complaint. I require MD Insurance Services Ltd to pay Mr N £2,650.20, plus interest at a rate of 8% simple per annum from the date he paid those charges and costs until the date of settlement.

I also require MD Insurance Services Ltd to pay Mr N £100 compensation to reflect the inconvenience caused to him by the delay in making this payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 October 2015.

Helene Pantelli  
**ombudsman**