

## **The complaint**

Mr H complains about Evolution Insurance Company Limited (EIC) who declined his claim, under his home emergency policy.

## **What happened**

Mr H held a home emergency policy with EIC. His boiler broke down and he made a claim. EIC sent an engineer who assessed that the fault was with the fan (that required replacement) and an automatic air vent. But, as Mr H's boiler was around 20 years of age at the time, EIC deemed that the boiler was beyond economical repair (BER). EIC explained to Mr H that the cost of the repair was deemed to be more than 80% of the boiler manufacturer's current value.

EIC gave Mr H further options that included, the boiler manufacturer carrying out a fixed price repair at a cost of £310. And if the boiler manufacturer found that the boiler was BER, then Mr H would receive a refund of £210, as £100 would be the call out fee and Mr H would need a new boiler.

The other option it offered was for its engineer to carry out the repair at a cost of £272.74 just for the labour and new fan. Both these options would be chargeable to Mr H, but he refused them.

Mr H complained to EIC as he felt that it hadn't explained to him prior to the purchase of the policy, its calculations for determining BER. And that the calculations would be on the basis of a percentage depreciation each year. Mr H also said that as EIC had told him his boiler was repairable, it was unfair for it to determine that the boiler was BER.

In its final response, EIC maintained its position. It outlined in full how it calculated BER. It confirmed that Mr H's policy would be cancelled due to the BER determination, and a pro-rata refund of £10.89 would be given to Mr H.

Mr H was given his referral rights, so he referred a complaint to our service. He felt that he had been mis-sold the policy as EIC hadn't explained to him how it had calculated the BER prior to him purchasing the policy.

One of our investigators considered the complaint and didn't think it should be upheld. She said that EIC hadn't acted unreasonably when it cancelled his policy, nor when it determined that his boiler was BER. She also said that it wasn't unreasonable for EIC not to outline how it determined BER at the point of purchase. And as the sale of the policy was a non-advised sale, on a price comparison website, EIC wouldn't have been able to advise Mr H if the policy was suitable for his needs.

EIC accepted the view, Mr H did not. Mr H said that EIC had failed to outline its BER calculations in any of the policy documents and so it was unfair for it to rely on those calculations, without it first having communicated the details to its customers. And he also

said it was unfair for him to be charged the excess fee, when nothing was done to his boiler. So, he asked for a decision from an ombudsman.

### **What I've decided – and why**

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

Having done so, I won't uphold this complaint, for much the same reasons as our investigator. I understand that this might be a disappointment to Mr H, but I hope my findings go some way in explaining why I've reached this decision.

I have considered all the evidence that both parties have provided me with. I have also looked at the policy terms and conditions, as well as what happened at the point of sale. And whether it was fair for EIC to charge Mr H an excess.

I understand that Mr H has contacted his bank to apply for a chargeback, as he feels that he was unfairly charged an excess. So, I've had a look into this.

Mr H has confirmed that he received documents from EIC when he purchased the policy. Having reviewed the terms and conditions, it is clear, that when a claim is made an excess becomes payable. EIC confirmed that Mr H chose to pay a lower premium, when he was buying the policy, and this lower premium, meant that an excess of £95 became payable when a claim was made.

There is no dispute that a claim was made and according to the policy terms and conditions, an excess payment becomes payable. Mr H said that the engineer who attended did nothing, and he ought not to have to pay the excess at all.

EIC provided the engineer's report, which I have read. It is clear that the engineer had to inspect the boiler, in order to conclude that the fan and the automatic vent were at fault. So, I'm not persuaded that the engineer did nothing. Consequently, as a claim was made and the engineer attended and carried out an examination of the boiler, I think the excess was correctly charged. And I don't agree that EIC were unreasonable to charge this payment.

I have next considered the issue of whether Mr H was mis-sold the policy as he said EIC did not mention its BER calculations, prior to his purchase of the policy. So, I've had a look at whether EIC recommended the policy to Mr H to buy.

From the evidence, it appears that Mr H purchased the policy online via a price comparison website. EIC said that Mr H after he had selected the policy on the price comparison website, he was transferred to its website where the policy terms and conditions were made available for him to review.

Mr H said that he had bought the policy on a price comparison website. But he then provided me with information that I think indicated that he had made initial enquires via a price comparison website, before purchasing the policy. Further, EIC said that Mr H had purchased several policies within a short period of time, so should have been aware of the product that he was buying.

I've had a look at what Mr H was provided with and I don't agree that EIC recommended that Mr H purchase the policy, so this was a non-advised sale. Also, I can see that Mr H ticked that he had read and understood the terms and conditions before the sale was completed.

One of the terms in the policy that deals with BER states: *'Beyond economic repair Boilers have a working life of, usually, 7 to 20 years. Their value reduces over time, if after an engineer visit and assessment, repair costs are estimated to be more than the current value of the boiler we will not be able to carry out a repair but will try to assist you with other options'*. I think the term is clear that EIC considered that boilers have a working life of up to 20 years and that their value decreases over time. As Mr H's boiler was nearly 20 years old at the time it came on cover, I don't think EIC did anything incorrect by accepting to cover his boiler.

Further, the terms mentions that there will be a decrease in the value of the boiler over time. So, as this wasn't an advised sale and If Mr H didn't fully understand the term, he could've contacted EIC for further clarification of it. But he did not do so. Moreover, he had indicated that he understood the terms of the policy. So, I don't think Mr H has provided enough evidence that he was mis-sold the policy.

Mr H said that EIC ought to have outlined how it calculated BER, at the point of sale. But I don't agree, as it had indicated in the policy that boilers do depreciate. And it wouldn't be something that we would expect an insurer to provide at the point of sale. So, I'm not persuaded that the policy was mis-sold to Mr H.

Consequently, I find that EIC fairly declined to repair the boiler after having deemed it BER. I'm not satisfied that the policy was mis-sold to Mr H. Although I acknowledge Mr H's strength of feeling about this complaint and the reason why he referred it to our service. But, in the overall circumstances of this complaint, I haven't seen enough evidence to show that EIC acted unfairly. I'm therefore not going to tell it to do anything further here.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 September 2023.

Ayisha Savage  
**Ombudsman**