

The complaint

Mr G's complaint is about the handling and refusal of a claim under his home emergency insurance policy with HDI Global Specialty SE.

HDI is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As HDI has accepted it is accountable for the actions of the agent, in my decision, any reference to HDI includes the actions of the agents.

What happened

Mr G held the policy for a property he lets out. On 22 September 2022, Mr G contacted HDI to make a claim under his policy, as his tenant had reported that the boiler was leaking and was faulty.

HDI told Mr G someone would get back to him later the same day to arrange an appointment. However, he was not contacted, despite chasing, until the next day. HDI sent an engineer out the next day who said the expansion vessel had split, as a result of sludge in the system, which was causing the pressure in the boiler to rise.

However, HDI said it would not carry out the repair under the policy, as to replace the expansion vessel, the boiler would have to be completely drained down and taken off the wall. It said it could not therefore tell if there might be other problems after it replaced the expansion vessel. HDI said the cost of the repair would mean the boiler was therefore beyond economic repair.

Mr G is very unhappy with this. He says the boiler is less than seven years old and there is nothing in his policy about what would happen if the boiler is beyond economic repair. In any event he does not accept it was beyond economic repair. Mr G says he had it repaired for £790 and the policy covers repairs up to £1,000.

Mr G is also unhappy that he had to pay the policy excess of £50. Mr G has asked that the cost of the repair and the excess be reimbursed and that HDI pay him £150 compensation for the trouble caused to him.

HDI maintained its position that the boiler was uneconomic to repair and in response to the complaint also said that the policy required Mr G to prove that the boiler had been serviced in the 12 months before the claim, which he has not done.

As Mr G remained unhappy with HDI's response to his complaint, he referred the matter to us.

One of our Investigators looked into the matter. He said there was no evidence that any lack of service had caused the claim and the policy states there is cover for repairs up to £1,000 and does not contain any explanation about what will happen if a boiler is deemed beyond economic repair. The Investigator asked HDI for the basis on which it made this assessment. It provided its internal beyond economic repair calculator and its estimate of the repair costs. The Investigator said the boiler was not beyond economic repair based on HDI's own internal calculator. He also said that it will often not be known if more repairs might be needed but the policy terms meant that HDI had an obligation to carry out repairs up to the policy limit of £1,000 and so it should have done the repairs.

The Investigator said that if Mr G could provide an invoice for the repairs he had done, HDI should review this with a view to reimbursing the cost and pay him £200 compensation for the inconvenience caused by unreasonably declining the claim.

HDI did not accept the Investigator's assessment. It said that it is not in anyone's interest to continue to pay out to repair a boiler when ultimately any repair was likely to be unsuccessful and a new boiler needed; and the investigator had not said what it expects it to do where a boiler is beyond economic repair. HDI also said that Mr G had failed to provide any evidence to suggest its diagnosis was wrong and he had not proved he had the boiler serviced.

As the Investigator was unable to resolve the complaint, it was passed to me.

I issued a provisional decision on the matter in April 2024. I have copied my provisional findings below:

“Policy terms

Mr G's policy provides cover for various emergency events that might occur. It includes breakdown of the boiler and heating system as follows:

“Insured events covered

1 Main Heating System

The total failure or complete breakdown, whether or not caused by accidental damage, of the main heating system (including a central heating boiler, all radiators, hot water pipes and water storage tanks) in your property.”

The policy also contains exclusions and conditions to the cover. The ones that HDI says are relevant to this company are as follows:

“What is not covered by this policy...

the failure of equipment or facilities which have not been installed, maintained or serviced in accordance with legal regulations or manufacturer's instructions, or which is caused by a design fault which makes them inadequate or unfit for use.”

And:

“Policy conditions

Failure to keep any of these conditions may lead the insurer to cancel your policy, or refuse to pay a claim.

1. Your responsibilities

You must:

...

j) be able to prove that the central heating boiler has been serviced within twelve months prior to a property emergency claim."

The policy also says:

"The maximum payable by the insurer is £1,000 for all claims relating to the same event."

There is no provision in the policy for what might happen if the boiler is deemed irreparable or beyond economic repair.

There is no dispute that Mr G's boiler had broken down and so he has established [on the face of it] he has a valid claim under the policy and was entitled to cover up to £1,000 for the repair. HDI can only refuse that cover, if it can show, on the balance of probabilities that one of the policy terms or exclusions applies to the claim. I will consider the terms it has relied on below.

Beyond economic repair

HDI has provided its estimate of the cost of repair of £281.26 (which includes the cost of the initial visit).

It has also provided a calculator of how much it considers can be spent on a claim, depending on the age of boiler. It has based its rejection of the claim on this internal calculator.

I do not consider this fair or reasonable. The policy provides cover for up to £1,000. HDI's own estimate of the costs (and Mr G's) was well within that limit. There is no justification for using an internal calculator that has different limits that are not in the policy terms and which the policyholder is therefore unaware of, to limit the cover provided. But in any event, even using its internal calculator, the costs were still less than the limit HDI says it would consider made the boiler beyond economic repair.

HDI also says it thinks the repair would become more involved and *"that it is in no-one's interest for ... [it] to continue to pay out to repair a boiler when, ultimately, any repair was likely to be unsuccessful and a new boiler needed."*

There is no evidence provided to me that the repair HDI's engineer said was needed was not going to be successful. HDI's engineer determined the expansion vessel had split and provided an estimate of the repair cost of this. There is mention that moving the boiler might lead to other problems but no detail and it has certainly not been established that it is likely there would be further problems – or that if there are further problems, they could not be resolved within the policy limit. And in any case, if the policy limit is used up, it'll be for Mr G to then decide what to do if it does not entirely resolve the issues with the boiler.

Given this, I see no reasonable justification for refusing to carry out a repair that is covered under the policy on the basis it may require further repairs.

Maintenance and service

HDI has also said it is for Mr G to produce proof the boiler had been serviced within the 12 months before the claim and he has not done so. It also suggests that the fact the engineer said the damage had been caused by sludge that this indicates a lack of maintenance.

I cannot see that Mr G was asked for any service records before HDI made its decision to refuse the claim. However, in any event I do not consider that HDI can rely on this term, or the maintenance exclusion, to refuse the claim and will explain why.

It seems to me that the requirement that a policyholder has to prove the boiler has been serviced 12 months before a claim, amounts to a condition precedent of cover.

A condition precedent imposes an obligation on the policyholder to take certain steps in relation to the insured property, before any right to benefit under the policy commences.

Effectively, HDI is seeking to impose a requirement on all policyholders to have their boilers serviced annually before any cover will be provided under the policy and this therefore seems to me to amount to a condition precedent.

As such a term could have a significant effect on cover – effectively removing all cover if not complied with – it needs to be made sufficiently clear to the policyholder. That means that it should not just be written clearly but should be sufficiently prominent in the policy terms. The more significant and restrictive a term is, the clearer and more prominent it should be.

In addition, even if such a term is sufficiently clearly expressed in the policy documentation, insurers should not unreasonably reject a claim by relying on technical breaches of [a] condition that ...[is] not materially connected with the circumstances of the claim. In other words, insurers need to show prejudice as a result of the breach of condition in order to reject the claim. The breach has to be material to the loss – not material to other considerations. This has long been our approach and has also been ratified in legislation and the Financial Conduct Authority rules for several years.

So, in order to rely on the condition relating to the service, HDI would have to show that the significance of it was adequately brought to Mr G's attention and, if he is unable to prove the boiler had been serviced (and I note Mr G says it was serviced annually) that the lack of a service directly caused the breakdown of the boiler.

The policy condition is on page four of an eight page policy document and is the last of a list of ten "*responsibilities*" which starts with general requirements that most policyholders would expect, such as cooperating with the contractor and the insurer.

It is not set out in the section about cover, or the section about what is not covered, which is more prominent.

The insurance product information document does say:

"What are my obligations You must be able to prove that the central heating boiler has been serviced during the 12 months prior to it breaking down."

Again, this does not seem to me to be as prominent as it should be, given the significance of the term. And it does not say what will happen if that proof cannot be provided.

These documents are not clear enough in my opinion, to properly inform Mr G what would happen if he cannot provide proof of annual services of the boiler. I do not therefore consider it is fair or reasonable to rely on it to refuse cover.

In addition, even if I thought the policy term was sufficiently clearly set out that it would be fair for HDI to rely on it, there is no convincing evidence as far as I am aware that the boiler broke down primarily because of any lack of service. (Again I note Mr G says it was serviced but I have not seen proof of this.)

HDI's engineer said the expansion vessel split due to sludge in the system and HDI says this is evidence of lack of servicing. However, I have not seen any convincing evidence that this would likely have been prevented by a service of the boiler anytime within the preceding 12 months. And other than having a boiler serviced, I do not consider that there is any other maintenance that a householder can reasonably be expected to carry out on a boiler and central heating system.

I do not therefore consider HDI can reasonably refuse the claim, based on these policy terms.

Putting things right

Mr G was entitled to cover under the policy. He said he had the boiler repaired for £790 but has not yet provided the invoice to evidence this.

If Mr G is able to provide the invoice, or other proof of the work and cost of the repairs to the boiler, HDI should pay him that amount again with interest at our usual rate, from the date he paid that invoice to the date of reimbursement.

If Mr G cannot provide that invoice, then I do not think I can require HDI to pay the £790 he says he paid for the repairs. However, it seems clear to me that he would likely have had a repair done, as the boiler was not working. He might also have decided to replace the boiler but even if he did, I do not think this alters HDI's obligations under the policy. That would be a decision for him, whereas HDI is obliged by the terms that it entered into with Mr G and as set above.

Therefore I do not think it is fair that Mr G receive nothing under the policy, just because he can't provide an invoice. So in the absence of the invoice, it seems to me to be fair that HDI should pay the amount it said the repair would cost which was £192. It should add interest, at our usual rate to the date of reimbursement.

I note that Mr G also asked for reimbursement of the policy excess he paid. A policy excess is the first uninsured part of a claim, it is not a call out fee or administration fee to be charged in the event of a claim by the insurer. So it was wrong for HDI to take and keep the excess, when it was refusing to provide the cover under the policy. However, as I think HDI should effectively meet the claim, it is right that the excess is [now] payable.

Similarly, and for the avoidance of doubt, HDI cannot deduct the call out fee it paid its own engineers if it reimburses the amount Mr G paid his own contractor (which is what it stated it would be entitled to do in a letter to Mr G).

I also consider it fair for HDI to reimburse the £15 he says he paid for a heater for his tenant. While there is no invoice for this, I think it is likely he bought this and it seems a reasonable amount to have claimed.

Finally, I recognise that this matter has caused Mr G inconvenience that was not necessary and could have been avoided. I agree with the Investigator that the sum of £200 is appropriate for this.”

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or comments they want considered.

HDI does not accept my provisional decision. It says one of the key purposes of the requirement to have the boiler regularly serviced is to prevent breakdowns due to sludge; and the failure to service a boiler also tends to increase the cost of claims. HDI provided links to two online articles about how regular servicing and maintenance of a boiler can help with sludge removal.

HDI says it has been prejudiced in this case by the lack of service, as the breakdown was due to a build-up of sludge. HDI also says the insurance product information document clearly states the need to prove the boiler has been serviced as a significant obligation of the policyholder. It does not agree therefore that the need to have the boiler regularly serviced was not made clear to Mr G and was not relevant to the decline of the claim.

Mr G has also responded to my provisional decision. He has provided a copy of an invoice dated February 2022 for a boiler service and landlord's gas safety certificate; a copy of the landlord's gas safety certificate and the invoice for the repairs he had carried out in September 2022.

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.

As stated in my provisional decision Mr G's claim was declined on the basis that HDI said the boiler was beyond economic repair. Mr G was not asked about the service of the boiler and as far as I can see and this was only raised by HDI in response to Mr G's complaint.

I did set out that the insurance product information document did refer to the requirement that the boiler be serviced in the 12 months before any claim. However, overall I remain of the view that this requirement and the significance of it on the cover being provided is not sufficiently clear to the policyholder.

I also stated that, even if this requirement had been sufficiently clearly and prominently set out in the policy documentation, there was no evidence that a service in the 12 months prior to this claim would have prevented the boiler breakdown.

HDI has said the expansion vessel split due to sludge in the system and provided links to articles of general guidance about the need for regular servicing of a boiler and how this is one way of helping prevent build-up of sludge in a central heating system. The articles that HDI has referred to says that servicing can help but also refer to other causes of sludge

building up and how to remove it. And just because sludge might have been the cause of the issue with Mr G's boiler, this does not establish by itself that the boiler would not have broken down, if it had been serviced. I therefore remain of the opinion that HDI has not provided any direct convincing evidence that the breakdown would not have happened if there had been a service in the 12 months before the boiler broke down.

In any event, Mr G has provided a copy of an invoice for the service of the boiler and a copy of the landlord's safety certificate for February 2022, *i.e.* seven months before the claim was made. There is no copy of the actual service document but given the invoice provided, I have no real reason to doubt it was serviced in February 2022.

However, even without this, for the reasons set out above, I see no reason to change my provisional findings that HDI cannot rely on the condition to have the boiler serviced to refuse the claim.

HDI has not made any further comment on my provisional findings about the refusal of the claim on the basis the boiler was beyond economic repair, so I also remain of the opinion that it was not fair or reasonable to decline the claim on the basis it was beyond economic repair. And neither party has commented on my provisional findings about the reimbursement of the cost of the portable heater or the compensation I proposed, so again I remain of the opinion that these payments are also warranted and fair.

Mr G has provided a copy of the invoice for the repairs he had done in September 2022, so I consider HDI should reimburse that cost.

My final decision

I uphold this complaint against HDI Global Specialty SE and require it to do the following:

1. Reimburse Mr G the cost of the boiler repair, together with interest at 8% simple per annum from the date he paid that invoice to the date of reimbursement;
2. pay Mr G £15 for the heater together with interest at 8% simple per annum from the date of the claim to the date of reimbursement; and
3. pay Mr G £200 compensation for the distress and inconvenience caused by its handling of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 June 2024.

Harriet McCarthy

Ombudsman