

The complaint

Mr M, on behalf of Mr F, complains that Aviva Insurance Limited (Aviva) deemed Mr F's boiler beyond economic repair and installed a new boiler before he agreed to the cost.

While Mr M brought the complaint, for ease I'll refer only to the policyholder, Mr F, throughout my decision.

What happened

Mr F had HomeHeat 200 boiler cover with Aviva. He made a claim under his policy when his boiler developed a fault. Aviva investigated the fault and after consideration deemed the boiler beyond economic repair (BER). Both parties are aware of the details of the fault. Aviva placed a warning sticker on the boiler and advised Mr F not to use it.

Mr F's cover provided for a free boiler if his was over seven years old and deemed BER, though he would need to pay for installation. Aviva provided Mr F with the installation price, which he thought was too expensive. He paid a deposit and asked for a breakdown of the figure. Aviva didn't provide any details, despite agreeing to, and went ahead with the installation.

Eventually, Aviva confirmed that the installation cost was a fixed price, so a breakdown wasn't available.

Mr F complained to Aviva that it hadn't responded promptly to his request for a breakdown of the installation price. He also said that he hadn't agreed to the installation price and he complained that his boiler could've been repaired. Aviva looked into his complaint. It sent him a final response saying it had acted within appropriate timescales; the engineer's report confirmed the cost to repair the boiler exceeded its worth, and Mr F's deposit was taken to be acceptance of the installation price.

Our investigator partly upheld Mr F's complaint. She thought it was fair for Aviva to rely on the engineer's report as an accurate reflection of the boiler's condition, and for it to assume payment of the deposit meant Mr F wanted the new boiler installed. However, she didn't think that Aviva had responded in a timely manner to Mr F's request for information about the price. For that reason, she thought Aviva should pay Mr F £100 by way of apology.

Mr F didn't agree. He thought that Aviva had breached regulations by treating him unfairly and placing him in a difficult position of being without a boiler during winter. He also said that payment of the deposit didn't form a contract for the installation because he made it clear he didn't accept the full price. Mr F thought Aviva should refund the deposit and stop seeking payment of the balance.

The complaint was passed to me to decide.

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.

For broadly the same reasons as our investigator, I've decided to partly uphold Mr F's complaint. Let me explain.

Breach

My role is to decide on the circumstances of Mr F's individual complaint. While I understand he is concerned that Aviva breached regulations by the way it treated him, only the regulator can determine breach of its standards. However, I can decide whether I think Aviva dealt with Mr F's claim fairly and reasonably, in line with the policy terms and conditions and, if not, what it should do to put things right.

BER

Mr F complains that Aviva hasn't adequately demonstrated that his boiler was BER and he thinks it could've been repaired. Aviva relied on the engineer's report in making its decision. Looking at the evidence, I can see both parties agree that one part of the boiler needed to be replaced at a cost of almost £700. Aviva decided that another part, costing over £200 also needed to be replaced. Mr F doesn't agree because there was no evidence that it was damaged. The policy provides that a boiler will be deemed BER if the cost to repair is 85% or more of the boiler's value. Aviva's assessment of the parts which needed replacing brought the cost to repair above 85%, so it deemed the boiler BER. Mr F's assessment of what needed replacing brought the cost to repair at about 75%.

So, here, the dispute is about whether the £200 part needed replacing. Mr F described why he didn't think it was damaged and Aviva's engineer explained why it might've been. I've thought carefully about the evidence provided and I'm persuaded by Aviva's report. I realise this may seem unfair to Mr F, but I think Aviva had a duty to err on the side of caution with something as potentially dangerous as a faulty boiler. It thought both parts needed replacing and that, overall, meant it wasn't cost effective to repair the boiler. So, I'm satisfied that it was reasonable for Aviva to deem the boiler BER.

Installation cost

Mr F didn't think the installation cost was a fair price and told Aviva he didn't accept it. He paid a deposit for the boiler installation and asked Aviva for a cost breakdown. Aviva confirmed it was a fixed price, but only after it had installed the boiler.

I've thought about the sequence of events here to decide whether Aviva's actions were fair. Firstly, I can see that Aviva told Mr F how much the installation would cost when its surveyor attended. I understand Mr F thought it was overpriced and he told Aviva that on more than one occasion. He also said he didn't accept the price quoted, "[Mr F] ...*rejects your current proposed maximum cost and looks forward to receiving your appropriate and justifiable response...I await your revised proposals*".

So, there's no doubt in my mind that, prior to installation, Mr F rejected the quote.

However, while Aviva was late confirming that the price was a fixed fee and it couldn't provide a breakdown, I haven't seen anything to suggest that it intended to negotiate the price with Mr F. So, at this point, Mr F was free to reject the installation and arrange for a boiler and installation to be done privately. The terms set out in Aviva's letter to Mr F are clear:

"We have already arranged for our approved installer to arrange a free, no obligation survey and quote for the fitting of the replacement boiler. If you are happy with the quote provided, contact the installer who will arrange a date for the replacement boiler to be installed, unless this has already been arranged. The installer will inform us of your decision.

If you choose not to proceed with our offer of the replacement boiler and installation by our approved installer, no alternative option is available (including supplying the boiler directly to you for private installation or any cash alternatives)."

Paying the deposit secured the installation and implied acceptance of the terms Aviva set out, including payment of the remainder after the work was done. While the overall price was disputed, I think that Mr F's part payment and subsequent permission to install the boiler constitutes acceptance (albeit it reluctant) of the price Aviva originally offered. Mr F has the boiler and is making use of it, so I see no reason for Aviva to refund the deposit or waive the outstanding payment.

Duress

It's here that Mr F makes the point that he felt under duress to accept the boiler because he would've been without heating during winter. I understand that Mr F is vulnerable, and availability of his heating was important. However, as I've said, he was free to make private arrangements for a new boiler. If Mr F reluctantly accepted because the alternative would take longer, I can't reasonably say that Aviva has done anything wrong, or that its actions were unfair. I can understand that Mr F is frustrated at not having more time to consider his options, but, again, it would be unfair to hold Aviva responsible for that.

Delayed responses

With all this said, I don't think Aviva handled Mr F's claim well. He repeatedly asked for information about the BER details and for a breakdown of the installation cost. It took Aviva a month to tell Mr F the installation was a fixed fee so there wasn't a breakdown. I can't say with any certainty that having the information sooner would've made a difference to Mr F's choices, but I think it's fair that Aviva acknowledges its shortfall in service. Our investigator proposed £100 compensation by way of apology, and I think that's fair in the circumstances.

In summary, Mr F allowed Aviva to install a new boiler even though he was unhappy with the price quoted. He paid a deposit and I think it was fair for Aviva to take that as acceptance of the original terms of its offer. On completion, it could reasonably expect Mr F to pay the remainder. While there were unacceptable delays in its responses to Mr F, I'm satisfied that compensation of £100 addresses that issue. I see no reason to ask Aviva to waive the remaining payment or refund the deposit.

My final decision

For the reasons given above, my final decision is that I partly uphold Mr F's complaint and Aviva Insurance Limited must:

- pay Mr F £100 compensation by way of apology for failing to provide information he asked for on several occasions, which may have assisted with his decision making.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 March 2021.

Debra Vaughan
Ombudsman