

The complaint

Mr S's complaint is about the cancellation of a boiler insurance policy by Aviva Insurance Limited.

Aviva Insurance Limited uses agents to deal with claims and complaints on its behalf. Any reference to Aviva in this decision, includes those agents.

What happened

I issued a provisional decision on this matter in February 2021, part of which is copied below:

“Mr S held a landlord's insurance policy with Aviva for several years. His first policy was cancelled in May 2018 and he took out a second policy in July 2018. He has made complaints about claims made under both policies. I will summarise the background to these complaints below:

Policy 1 Claim 1

In late 2017, Mr S made a claim as his boiler was not working properly. Aviva's contractor said the pump needed to be replaced. However, the contractor also said the boiler was located outside, which meant it was affected by damp and should be moved; and he could not repair it, as the patio needed to be removed and the boiler taken out to get to the pump. The contractor also said the flue needed to be fitted horizontally “*with no fall back to the boiler*” and the external condensate pipe protected with suitable insulation.

Mr S was not happy with this and had an independent engineer carry out the repair without the need to move the boiler, or the patio. He made a complaint to Aviva about its refusal to do the repair. Aviva confirmed in response to this (in February 2018) that the boiler did in fact meet the regulatory and manufacturer's installation guidelines and while access to the boiler was less than ideal, it accepted it could have been repaired. Aviva therefore agreed to refund the cost of the repair (£928) and paid Mr S £50 compensation for the inconvenience of having to arrange his own engineer and accommodating the additional repair visit.

Policy 1 Claim 2

In February 2018, Mr S made a further claim as the boiler was faulty. Aviva refused to work on the boiler, as it said again that it is installed incorrectly. Aviva's contractor said again that the boiler's location outside the main property, means it is dangerous for its contractors to work on. The contractors also said part of the boiler cover was missing and there was an issue with the flue.

While Aviva looked into this, Mr S got his own engineer to repair the boiler and asked Aviva to reimburse the cost. He also had to run a temporary heater and boil kettles for hot water. Aviva maintained that the boiler was not installed correctly and cancelled the policy and told Mr S he would need to have the boiler replaced. Aviva said if this was not rectified, it would cancel the policy. Aviva subsequently cancelled the policy on 8 May 2018. However, Aviva

also said that the previous service visits had highlighted access problems to the boiler but not any safety issue with its position. It apologised for this not having been pointed out to Mr S before and therefore agreed to reimburse his repair costs of £1,437 and also paid compensation of £200 for the poor service provided. Aviva also refunded the cost of three annual services (£271.44) as the engineers had not raised any issue with regard to the location of the boiler installation before.

Mr S sent some photos to Aviva, as evidence that the boiler was safe. Aviva still said the flue was not positioned correctly and it would need further evidence before it would consider reinstating the policy. As far as I am aware, no other evidence was provided.

Policy 2 and Claim 1

In July 2018, Mr S took out another policy with Aviva and made a claim under that policy in September 2018, as the boiler had broken down. Aviva arranged an appointment for a contractor to look at the boiler. However, before the appointment took place, Aviva told Mr S it could not attend as it still had concerns about the way the boiler had been installed, which it says made it unsafe for its engineers to work on.

Mr S complained about this and said he had provided photographs to confirm he'd had remedial work done to the boiler. Aviva issued a final response letter on this complaint in October 2018. It accepted it should not have issued the new policy in July 2018, and it should have asked for more evidence of the remedial work having been done. Aviva said if Mr S could now provide such evidence it would reconsider and offered £30 compensation for setting up the policy without checking properly that the work had been done.

Mr S sent a report from an independent gas engineer that the boiler flue was correctly installed and subsequent to this, Aviva reinstated the policy in November 2018.

Policy 2 Claim 2

Mr S made another claim on 2 January 2019, as the boiler kept shutting off and he was having to reset it frequently. One of Aviva's contractors attended on 5 January 2019. Aviva says Mr S would not allow him in, as he said the appointment was meant to be on 7 January 2019. Aviva says this was not correct but its engineer went back out a few days later. Aviva says its contractor confirmed, having looked at the boiler, that the remedial work they had said was required in 2018 had still not been done and it still considered the boiler was not safe to work on.

As Mr S was unhappy with this, Aviva agreed to send another engineer for a second opinion. Aviva says the second contractor agreed the boiler had not been safely installed. Aviva therefore cancelled the policy again in early February 2019. Aviva issued a final response letter on this complaint in March 2019. Aviva offered £60 for the confusion with the appointment that was initially arranged and didn't think it needed to do anything more. Mr S is very unhappy with this. He says that as Aviva wouldn't repair the boiler, he had to replace it and he wants Aviva to reimburse these costs. He says he paid £2,600 for the boiler and installation costs.

Mr S says Aviva has previously worked on his boiler without any issue being raised about the installation. He also says that Aviva should have come and inspected the boiler to ensure it could provide the cover when he took out the policies.

Aviva responded to Mr S again in August 2019. It said it shouldn't have allowed a new policy to start in July 2018 and refunded the premiums Mr S had paid (i.e. £154). Aviva also paid £90 compensation for the inconvenience and confusion caused in relation to the

appointment.

Jurisdiction

Before considering the complaint, the investigator determined whether we are allowed to look at the complaints, as we are not allowed to look at every complaint referred to us. I agree with the investigator that we have jurisdiction to look at the issues complained about from April 2018 onwards, i.e. the handing of policy 2 claims 1 and 2. For the sake of completeness, I will explain why.

Our rules (set out in the Dispute Resolution section of the Financial Conduct Authority Handbook) provide that we cannot look at a complaint if it was made to us more than six months after the date on which the business sent the consumer its final response (unless it consents or there are exceptional circumstances which caused the delay).¹

Aviva issued four final responses to Mr S, one in response to the complaints about each of the above claims, in: February 2018, April 2018, October 2018 and March 2019. Mr S came to our service on 24 October 2019, which is more than six months after Aviva's letters. Mr S has not said the delay in referring the matters to us was due to any exceptional circumstances. Aviva consented to us looking into the complaint it addressed in its final response letter of March 2019 but did not consent to us looking into the prior complaints. However, Aviva re-visited the issues that it had addressed in its final response letter of 22 October 2018 in August 2019, when it wrote to Mr S and changed its position by also agreeing that the premiums Mr S had paid for the second policy should be refunded. As this was a different outcome than it had set out in its final response letters of October 2018 and March 2019, then the time limits set out in those letters no longer apply. We can therefore look at any issues that arose since April 2018 (i.e. the matters raised and addressed by Aviva in October 2018 and March 2019, in relation to policy 2, claims 1 and 2). I don't think I can look at the actual cancellation of the first policy, as although this happened in May 2018, the decision to cancel it had been made when Aviva wrote its final response letter of April 2018. Mr S and Aviva both accept this.

Investigator's recommendation

One of our investigators looked into the matter. The investigator didn't recommend that Mr S's complaint be upheld. The investigator thought that Mr S was aware Aviva had concerns about the installation of the boiler and so, while Aviva shouldn't have allowed the policy to start again, this doesn't mean it should cover any claim. As it didn't think it was safe for its contractors to work on, the investigator said Aviva was entitled to decide it could not provide cover for the boiler. The investigator also said the initial service visit, when a new policy is set up, is not provided by Aviva, so he couldn't find it at fault for not carrying this service out.

Mr S doesn't accept the investigator's assessment. He says Aviva has worked on his boiler since telling him there was remedial work required; and the boiler was installed in 2013 and the manufacturer's contractors have attended on four occasions and not advised of any issues with the installation.

As the investigator was unable to resolve the complaint, it has been passed to me.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and

¹ DISP 2.8.2

reasonable in the circumstances of this complaint.

It is generally up to insurers to decide what cover they are prepared to provide in exchange for the premium charged. It is not, on the face of it, unreasonable for an insurer to decide that it is not prepared to insure a boiler which it says is unsafe. However, Aviva initially agreed to cover the boiler and only told Mr S it would not cover it after having issued a policy in July 2018. I have to therefore consider whether Aviva had the right to cancel the policy having entered into that insurance contract with Mr S.

The policy provides that Aviva may *“cancel this policy by giving you at least 7 days' notice in writing to the last address you provided us if you're seriously in breach of the terms of your policy. Examples of a serious breach include failure to make a payment despite contact from us, failure to provide complete and accurate answers to the questions we ask (see the Consumer Insurance (Disclosure and Representations) Act 2012 section on Important Information; submitting a fraudulent claim or if you use threatening or abusive behaviour towards our engineers or staff. If we cancel the policy we'll refund the premium paid for the remaining period of cover, unless you've made a claim.”*

I have seen no evidence that there has been a serious breach of contract by Mr S that would warrant cancellation of the policy mid-term. It seems to me that Aviva is effectively saying that either Mr S misrepresented the position regarding his boiler, when he applied for the policy in July 2018 (and it would not have issued the new policy, if it had known he had not rectified the issues it had raised about the boiler); or it made a mistake and should not have issued the policy to him.

I have not seen any evidence that anything Mr S said when taking out the policy in July 2018 qualifies as a misrepresentation in accordance with the relevant legislation.² Aviva says that it was a mistake to issue the new policy in July 2018 and reinstate it in November 2018.

However, even if Aviva made a mistake, it is only allowed to rely on that mistake as reason to void the contract, if it can be established that Mr S was aware of that mistake at the relevant times. I don't think that has been established from the evidence I have seen.

Mr S knew that Aviva had concerns about the safety of his boiler but he disagreed with its assessment and had provided evidence he says supported his position. He may therefore have been aware Aviva issued the new policy by mistake. However, Aviva had changed its mind about the safety of the boiler before, as it had confirmed it was installed properly and was safe in its final response letter of February 2018. And, Aviva cancelled the policy in October 2018 and asked for more evidence about the safety of the boiler again. Mr S provided more evidence and, having received that, Aviva reinstated the policy in November 2018. Aviva therefore affirmed the contract. I do not think it can therefore rely on any mistake made in July 2018, given it reinstated the policy, thereby confirming it was prepared to offer cover in November 2018.

Aviva also had the opportunity to check the boiler itself at any time.

The policy includes a boiler health check:

“Boiler Health Check: Your policy includes provision for a BHC (including a boiler service) by HomeServe, in the first year of your policy (or if you change address). This is not an element of insurance and therefore it is not part of the contract of insurance underwritten by the Underwriter and it is not regulated by the Financial Conduct Authority.

² Consumer Insurance (Disclosure and Representations) Act 2012

This also means that if you have any complaint relating to this service, you will not have the right to refer the complaint to the Financial Ombudsman Service. We will carry out a BHC of your boiler and/or central heating system within the first 90 days of the start date of your policy to assess whether your boiler passes our criteria...

If you report a problem with your boiler and/or central heating system before we have completed the BHC, we will carry out this when we attend to assess the problem with your boiler and/or central heating system. Your boiler and/or central heating system will need to pass our criteria before we carry out a repair."

The investigator says that this boiler health check is not provided by Aviva and so cannot be considered. However, if the boiler health check is intended as a test of the boiler to ensure Aviva is willing to insure it, I think it is relevant to this complaint.

As I understand it no boiler health check was carried out in relation to the second policy (issued in July 2018) within the first 90 days of cover or afterwards. Given that this is to ensure eligibility for cover and given the particular concerns raised about Mr S's boiler, I would have thought this would have been done. Aviva had the opportunity to ensure it was happy to provide the cover Mr S was paying for and didn't take it.

Aviva also had several other opportunities to check the boiler and it affirmed the contract and reinstated cover. Having done so, I do not think it was fair or reasonable for it to void the policy again in February 2019 after Mr S made another claim.

In addition, even if Aviva had established that the insurance contract was voidable due to a mistake (which I don't think it has) it seems to me there is still a legitimate debate about whether the boiler was correctly installed or not. Mr S has provided evidence that it was, and as noted above, Aviva had also confirmed it was in February 2018. And, again as noted, it had serviced the boiler previously, without raising any issue about the safety of the installation. I have seen the service certificate dated 2015 which records the boiler is located outside but doesn't raise any issue about this; one dated 2016, which also records it is outside and simply says "boiler access is poor"; and the one in 2017 says "Boiler's position allows only partial service".

Having determined that the policy should have remained in place, I have to consider what would have happened, had Aviva considered the claim as it should have done. Mr S says the boiler had to be replaced. The policy does not cover replacement of the boiler if it is within the first six months of the policy. Mr S took out this policy on 2 July 2018 and I understand the claim that led to the boiler needing replacing was made on 2 January 2019, so the policy was exactly six months old. I think the boiler replacement cover was therefore in place. However, I've seen no evidence about what was wrong with the boiler at this point and why it was replaced. I assume it was considered uneconomical to repair but without further evidence, I cannot determine whether Aviva should meet any of the cost of a new boiler yet. I would ask Mr S to provide further information about this in response to this provisional decision.

In addition, the policy would only cover the cost of the boiler itself and not the installation costs, if the insured boiler was over seven years old. I understand Mr S's boiler was over seven years old, so he would not have been entitled to the full cost of replacing his boiler in any event, even if the policy had not been cancelled.

As stated, there is little evidence about what was wrong with the boiler. At this stage therefore, I can only ask Aviva to reinstate the policy and reconsider the claim. I would ask both parties to provide further information about this in response to this provisional decision.

I also consider that some compensation is warranted for the wrongful handling of the claim and cancellation of the policies. I consider a total of £350 is appropriate. This should include the £154 policy refund, as if the policy had been kept in place, as it should have been then Mr S would have had to pay that. So Aviva only needs to pay the balance of £196.

My provisional decision

I intend to uphold this complaint and require Aviva Insurance Limited to do the following:

1. reinstate the policy for July 2018 to July 2019; and
2. reconsider the claim; and
3. pay £350 compensation for the distress and inconvenience caused by its handling of the claim (less the premium refund of £154)."

Responses to my provisional decision

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

Mr S has responded and says his heating engineer confirmed the boiler was beyond economic repair and a new boiler would be required. Mr S has provided a copy of the letter dated 29 July 2019 from his engineer stating the boiler was beyond repair, as the combustion box was showing signs of corrosion and the boiler had deteriorated in the previous few months. Mr S therefore had the boiler replaced in October 2019 and has provided a copy of the invoice for this work and a breakdown. Instead of asking Aviva to reconsider the claim, Mr S asks that I require it to reimburse the amount he paid. Mr S also asks that full compensation of £500 be paid, with no deductions and says there would be no point in reinstating the policy as the original policy would have expired by now and he has had the boiler replaced.

Aviva has also confirmed receipt of my provisional decision. It has said the letter from Mr S's engineer (dated 29 July 2019) is dated after the cover would have ended, and *"how do they know the deterioration has happened over the past few months? Why could this not have happened the few weeks prior to their visit? Furthermore, how has the corrosion occurred? Is it because of where the boiler is situated or is it because there was a leak?"*

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.

If Mr S wants the replacement boiler cover, there needs to be a policy in place, so it does need to be reinstated from the date it was cancelled. I agree that he would not need it after he had a new boiler. I understand the policy was cancelled in February 2019 and the premiums Mr S paid from July 2018 to February 2019 were reimbursed to him. So Aviva is entitled to this amount, plus the premiums that would have been payable from February to 1 July 2019 (when the policy was due to end). This can be deducted from any amount Aviva is required to pay Mr S.

The policy would have ended on 1 July 2019. Mr S's gas engineer's letter in which he says the boiler is beyond repair is dated 29 July 2019, which is around four weeks after that policy would have come to an end. And the boiler was replaced in October 2019. Aviva therefore says there was no cover in place then.

Mr S made a claim in January 2019 and by July 2019, his engineer said the boiler had deteriorated to the extent that it was beyond repair. I accept that there is not much detail available about what was wrong with the boiler in January 2019 and why it deteriorated to the point that it was not repairable. Aviva questions if this was due to its location but as I consider it had accepted the cover, and the fact I do not think it has established the boiler had been incorrectly installed, for the reasons set out in my provisional decision, I don't think this is relevant. If Aviva had not wrongfully cancelled the policy and refused the claim, it would have had the opportunity to inspect the boiler itself. It has lost that opportunity now and the only evidence available is from Mr S's engineer. He has said the boiler was beyond economic repair and there is no evidence to counter this. And, even if the fact the boiler needed to be replaced was not linked to the January 2019 claim, it seems unlikely to me that the deterioration of the boiler to the extent that it became uneconomical to repair would have happened solely between 2 July and 29 July 2019. I am therefore satisfied that it is more likely than not the fault with the boiler that meant it had to be replaced, arose during the period of cover and the boiler replacement section of cover was in place.

In my opinion it would therefore be reasonable for Aviva to meet the claim. As stated in my provisional decision the policy would only cover the cost of the replacement boiler and not the cost of installation. Mr S's engineer has confirmed that the boiler cost £1,150 and so Aviva should reimburse Mr S this cost.

I also still consider that a total of £350 compensation is appropriate for the wrongful handling of the claim and cancellation of the policies. This should include the £154 policy refund, as if the policy had been kept in place, as it should have been then Mr S would have had to pay that; and any premiums due from February 2019 to July 2019. So Aviva only needs to pay the remaining balance.

My final decision

I uphold this complaint against Aviva Insurance Limited and require it to do the following:

1. reinstate the policy for July 2018 to July 2019; and
2. pay the sum of £1,150 for the replacement boiler; and
3. pay £350 compensation for the distress and inconvenience caused by its handling of the claim (less the premium refund of £154 and premiums due from February to July 2019).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 June 2021.

Harriet McCarthy
Ombudsman