

## The complaint

Mr M has complained that Aviva Insurance Limited ('Aviva') unfairly declined to settle his claim under his home insurance policy in connection with a pipework leak

## What happened

Mr M had a home insurance policy with Aviva for the year up until February 2020. In December 2019, Mr M said that he'd noticed boiler pressure issues at his home. The problem got worse and he called in an engineer at the end of January 2020 who identified that the pressure problems were due to a water leak in the heating pipework.

In February 2020, Mr M found a company specialising in leak detection. It recommended a power flush to remove leak sealant in the pipework before it could proceed. Mr M arranged for this to take place and the leak detection company then discovered the leak, as well as un-related leaks. A company was then engaged to access and repair the leak and a further company engaged to carry out the reinstatement work. The total cost of the work was £3,778.00.

Mr M contacted Aviva and eventually confirmed that he wished to submit a claim in October 2020 for the cost of tracing and accessing a leak in his underfloor heating pipe. Aviva stated that the cover for tracing and accessing a leak only applied if there was damage to the building. Aviva declined the claim and said that no damage had occurred as a result of the leak. Aviva has also said that it couldn't be sure that the leak was present when Mr M's policy was active. It therefore declined Mr M's claim and said that it remained of the same view following a complaint by Mr M.

Mr M complained to this service. As well as complaining about the fact that Aviva declined his claim, Mr M said that Aviva had appeared to accept the claim in November 2020. He complained also about undue stress caused and lack of empathy by Aviva.

Our investigator came to the view that the loss of function to Mr M's boiler amounted to damage which was a direct consequence of the leak. The word 'damage' is not defined in the policy document and the investigator said that he had; *'taken this as it's normal meaning, which is "physical harm that impairs the value, usefulness, or normal function of something. In this case, it is reasonable to say Mr M's boiler is damaged as its normal function is impaired'*. As a result, he said that the claim should be reconsidered.

The investigator said that the engineer suspected a leak, prior to the end of the policy period. He said that this view was confirmed by the comments from subsequent visits. As the fault with the boiler was reported in January 2020 and the symptom matched that of a leaking pipe, as confirmed by the engineer, the investigator thought that the leak started whilst the policy was active.

In conclusion, the investigator didn't think Aviva had acted fairly and reasonably in relation to Mr M's claim. He thought that Aviva should reconsider the claim and that if there were no valid exclusions, the claim should be paid. He said that Aviva should also pay Mr M £100 compensation for the inconvenience caused.

Aviva are not satisfied with this view and the matter has therefore been referred to me to reach a decision in my role as 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.

It's my role to consider whether Aviva acted fairly and reasonably in applying the terms and conditions of Mr M's home insurance policy.

Firstly, I have considered whether any damage which occurred took place when Aviva's policy was active. In this respect I agree with our investigator that the evidence of the engineer who visited in late January and early February 2020 is persuasive in identifying a suspected leak in the under-floor heating pipe which was consistent with the boiler problems experienced in December 2019 and January 2020.

I will next look at the terms and conditions of Mr M's home insurance policy: -

#### *'Section G*

##### *Tracing and accessing leaks.*

*If the buildings are damaged due to water escaping from water tanks, pipes, equipment or fixed heating systems in the home, we will pay the reasonable cost of removing and replacing any other part of the buildings necessary to find and repair the source of the leak and making good. We will not pay more than £5,000 for any one incident.*

##### *Buildings*

*a. The home, swimming pools, ornamental ponds and fountains, hard courts, terraces, patios, drives, footpaths, walls, fences, gates, hedges and fixed tanks providing fuel to the home.*

*b. Fixtures, fittings and decorations.*

*These must all be at the address shown.'*

Aviva's surveyor has made the following comments in relation to the investigator's findings:

- pressure loss in the boiler could have been affected by maintenance issues.
- tracing and accessing would operate to access a leak where water damage caused, not for a separate functionality/efficiency issue.
- he questions if the power flush was necessary.
- he raises the possibility of a number of issues operating at the same time.
- as the pressure loss issue existed for 10-11 months, the sub-floor leak would be more significant if this was the cause.

Looking next at the facts of this case in the light of the policy terms and conditions, I think Mr M's boiler is included within the definition of 'buildings' as 'buildings', are defined widely by the policy to include "*fixtures, fittings and decorations*". I also agree with our investigator's view that the boiler has been damaged as its normal functioning has been impaired.

I turn then to the comments of Aviva's surveyor as to whether there was 'damage', what may have caused any such damage and whether all the accessing and tracing work was necessary.

I'm satisfied that the under-floor pipe leak did cause the boiler pressure problem and that this amounted to *damage* to the boiler. It would also be reasonable to give '*damage*' its common

dictionary meaning, which is *"physical harm that impairs the value, usefulness, or normal function of something"*.

Our investigator noted continuation of the pressure issue before and after parts were replaced. I agree with the investigator that the boiler pressure issue was more likely than not to be a direct result of the leak.

I also accept the evidence of the engineers' final visit in May 2020 as being persuasive. The report confirms a direct link between the escape of water and loss of function of the boiler. The engineer wrote; *"existing problem underground underfloor pipe leaking this is why when the boiler drops pressure air then creates in the system this is why boiler overheats and turns off so customer need to sort out the leak before we can do anything else"*.

The leak detection company insisted on a power flush before being able to trace the leak and I'm satisfied on the balance of probabilities that this was required as a part of the accessing and tracing of the problem.

In addition, and although our investigator did not reach a view in this respect, I do consider that the underfloor leak also caused damage to the concrete below the surface which appears to be crumbling and damp from the photographic evidence which has been supplied by Mr M.

Finally, I consider that Aviva had given a clear indication in November 2020 that it would be willing to settle the claim. Aviva has not been able to produce a record of the relevant telephone call however I'm satisfied that it did take place on the balance of probabilities. Mr M has provided a consistent account of events throughout and has kept and produced methodical records. In addition, in an e-mail from Aviva in early November 2020, it states; *"My understanding from the report is that the leak is coming from under the bathroom sink, if so I am happy for the repairing of the leak, which will involve carefully removing the base unit and part subfloor under that area, to repair to the issue"*.

I'm satisfied that Aviva gave the impression in November 2020 that it was willing to settle Mr M's claim and in the circumstances, he has been caused additional delay and inconvenience in having to pursue this complaint.

In conclusion, I'm satisfied that the conditions of the cover provided for tracing and accessing the leak are met and I can't say that Aviva has acted fairly and reasonably in all the circumstances. Mr M's claim should be reconsidered on this basis.

### **My final decision**

For the reasons given above, I uphold Mr M's complaint against Aviva Insurance Limited and I require Aviva to;

- settle the claim on the basis that the conditions of the policy around tracing and accessing the leak have been met. If there are no valid exclusions, the claim should be paid within 28 days of Mr M's acceptance of this Final Decision.
- to pay interest on the claim calculated from the date 3 March 2020, being the date of the last invoice for works for the tracing and accessing of the leak, and making good at 8% a year simple interest\*
- to pay Mr M £100 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 10 September 2021.

\*If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Claire Jones  
**Ombudsman**