

The complaint

Mr C has complained about the service he received from DAS Legal Expenses Insurance Company Limited (DAS) when he made a claim under his home emergency policy when a boiler breakdown left him without hot water.

References to DAS in this decision include references to its claims administrators.

What happened

Mr C contacted DAS on 12 April 2021 to report that his boiler wasn't providing hot water. He is the carer for a vulnerable family member, so this was classed as a priority. A DAS engineer attended the same day and identified that the problem lay with a blocked heat exchanger. It was recommended that he had his hot water system power flushed.

DAS says it attempted to contact Mr C by phone the following day to confirm the next steps and to advise him that an engineer would not attend again until a power flush had been done and that as a power flush wasn't covered by his policy, he'd have to pay for this privately. It says that as it wasn't able to speak to Mr C on the phone, it left a voicemail message with this information.

Mr C didn't hear any more from DAS, so contacted it on 15 April to complain about the lack of communication. Mr C said he'd been under the impression that the engineer would be returning to finish the repair and that someone would be contacting him to do the power flush that had been recommended. Mr C said he didn't receive the voicemail message left on 13 April.

DAS issued a final response letter on 16 April. Its position is that it had recommended a system clean before the heat exchanger plate could be cleaned, and that as a power flush wasn't covered by his policy, Mr C would have to arrange for this privately.

Mr C brought a complaint to this service. Our investigator's view was that DAS should've agreed to undertake the power flush as part of the repair as the policy doesn't specifically exclude power flushing.

DAS doesn't agree with our investigator's view. It accepts that the policy doesn't specifically exclude power flushing, but says it doesn't need to as the build-up of sludge is something which occurs over time and is a routine maintenance issue and not a sudden event, and his policy doesn't cover routine maintenance.

Mr C says he's still without hot water as he believes it's DAS's responsibility under his policy to fix it.

As DAS didn't agree with our investigator's view, Mr C's complaint was referred to me to make a final decision from this service. I issued a provisional decision as my view differs from that of our investigator. Both DAS and Mr C have commented on my provisional decision and I've taken those comments into account in coming to this, my final decision.

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.

I've looked at the terms of Mr C's policy.

Firstly, I'm satisfied that the lack of hot water meets the definition of an emergency.

“Emergency - The sudden or unexpected occurrence of an insured incident during the period of cover, which necessitates immediate corrective action to:

(a) ...

(b) ...

(c) relieve unreasonable discomfort, risk or difficulty to an insured person.”

“Insured person” is defined as “*You and any person who lives in or is staying at your home.*” This would therefore include Mr C's vulnerable family member.

Secondly, I'm satisfied that the policy covers the loss of hot water as the policy expressly covers the Main heating system, and this is defined as “*The main hot-water or central heating system in your home*”.

The policy includes the following exclusions upon which DAS relies:

What is not insured?

Claims related to normal day to day home maintenance

Home maintenance

Normal day-to-day home maintenance that an insured person should carry out or pay for (such as servicing of heating and hot-water systems).

The policy also includes the following condition:

Keeping to the policy terms

An insured person must:

(a)

(b) maintain your home in a reasonable condition, carry out any inspections or services of fittings in accordance with the manufacturer's instructions and complete any necessary maintenance to the structure of your home;

Unlike some other home emergency policies, Mr C's policy doesn't expressly say that the cost of a power flush is excluded. DAS says that it is. It argues that the build-up of sludge that needs to be removed by a power flush is a gradual process and is covered by the obligation to undertake normal day to day home maintenance.

In my view, power flushing can't reasonably be regarded as normal day to day home maintenance. It can't be considered, for example, as equivalent to annual servicing. Mr C's boiler had last been serviced in October 2020, some six months before his boiler broke down. Had that service disclosed the presence of sludge and if a power flush had been recommended at that time, in my view a failure to follow that recommendation would amount to a failure to maintain. And Mr C's policy does contain the following exclusion:

“Failure to carry out previously recommended repairs

Any insured incident which arises from an insured person's failure to carry out work or repairs that an insured person has previously been advised to undertake to avoid the insured incident occurring or recurring.

As there's no suggestion that Mr C had previously received advice to have a power flush, I

don't consider it can be said that he'd failed to maintain his boiler.

So as my view is that a power flush is not normal day to day maintenance, the blockage in the heat exchanger should be considered to be a repair that is covered by Mr C's policy. If DAS's diagnosis is correct, cleaning or replacing the heat exchanger should restore Mr C's hot water, thereby alleviating the emergency.

I don't consider that DAS has dealt fairly with Mr C in requiring him to have his system power flushed as a condition of it cleaning or replacing the heat exchanger. I consider that the loss of hot water was an emergency for Mr C and that DAS should've done what was necessary to restore his hot water either by cleaning or replacing the heat exchanger. That would've addressed the emergency.

I accept that this would not be a permanent repair whilst there was still sludge in the system, and this would need to be addressed by Mr C as a maintenance matter, and outside his policy. A power flush might be necessary. If Mr C didn't address this, DAS could decline any further claims. But Mr C would then have the opportunity to obtain quotes for having this done, and time to make any necessary arrangements.

I'm therefore partially upholding Mr C's complaint and am requiring DAS to undertake the necessary repair to get Mr C's boiler operational (subject to any other policy terms and conditions), but without the pre-condition that he previously arrange for a power flush at his expense.

I also agree with our investigator that there was an initial delay in communicating with Mr C as to DAS's position on Mr C's complaint for which compensation of £100 for his inconvenience would be fair and reasonable.

I don't consider that it is appropriate to require DAS to pay compensation for the fact that Mr C continues to be without hot water from his boiler as it would've been reasonable for Mr C to have had it repaired by a third party and then sought to have the cost of this reimbursed to him by DAS.

My final decision

For the reasons I've given above, I require DAS Legal Expenses Insurance Company Limited to undertake the necessary repair to Mr C's boiler to restore the supply of hot water as soon as possible (subject to any other policy terms and conditions), and to pay him £100 compensation unless such sum has already been paid to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 January 2022.

Nigel Bremner
Ombudsman