

The complaint

Mr M's complaint is about the handling of a claim under his central heating insurance policy with Amtrust Europe Limited.

What happened

I issued a provisional decision on this matter in January 2022, the main parts of which are copied below:

"In February 2021, Mr M made a claim under his policy, as his boiler was not working. Amtrust arranged for an engineer to attend the same day. I understand the engineer determined that a new gas valve and printed circuit board was required, as a result of a leak in the boiler. Due to the cost of repairs, Amtrust referred this to the manufacturer. The manufacturer's engineer inspected the boiler four days later and said the boiler was beyond economic repair. Amtrust says the manufacturer said it would cost around £1,370 to repair the boiler. The average cost of the same make and model boiler was around £855 and so Amtrust said this meant the boiler was beyond economic repair, as the boiler was not worth more than the cost of the repairs. Amtrust said it could not therefore repair boiler under the policy.

Mr M is very unhappy about this. He says:

- Amtrust has not proved his boiler was beyond economical repair and the term is not clear anyway.
- The boiler was repairable but the part needed was obsolete.
- Amtrust should have told him there were problems with the boiler during the previous annual service carried out around two months before it broke down.
- In any event, if it is beyond economic repair, he should be entitled to a replacement boiler under the policy, as his boiler was less than seven years old.
- The policy also provides for a contribution to the new boiler, if it doesn't cover a new boiler.
- He was without heating and hot water for a week and had to buy portable heaters while he got his boiler sorted out.

Mr M had the boiler replaced by his own private engineer and wants the cost (*i.e.* £3,000) to be reimbursed as well as compensation for the trouble caused to him.

Amtrust says the parts were not obsolete and so the new boiler cover provision doesn't apply. It says the boiler was repairable but was beyond economic repair, in those circumstances it says it has discretion to contribute to a new boiler, if it is provided with an invoice within 30 days of the boiler being deemed to be beyond economic repair. It didn't receive any invoice from Mr M, so Amtrust says this contribution is not payable. Amtrust cancelled the policy and refunded the premiums for the remaining period, which totalled £75.17.

One of our investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied Amtrust had acted in line with the policy terms and had not

acted unreasonably.

Mr M did not accept the investigator's assessment, so the matter was referred to me.

What I've provisionally 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. Having done so, I have decided the complaint should be upheld and I will explain why.

Was the boiler beyond economic repair?

Mr M's policy provides cover for the cost of repairs to the boiler. Like all insurance policies this is subject to various terms and conditions, including the following:

"For boilers less than seven years old, if we are unable to source spare parts from our approved suppliers we will replace your boiler with one of a similar specification..."

For boilers older than seven years that have been condemned on the grounds of safety and/or have faulty components which are Obsolete Parts, we will discuss alternative new boiler installation options with you.

If spare parts are available but, in our opinion, your System is considered to be Beyond Economic Repair then we will offer you a contribution, at our discretion, towards a new boiler. This offer is only valid for 30 days from the date of our Engineer visit. We will either provide you with a discount in advance, or a contribution once you have provided proof (i.e. receipt/invoice) of a new boiler being installed within 60 days from when your System was deemed Beyond Economic Repair by our Engineer. We will let you know which one will be applicable at our Engineer visit. We must approve any contribution in advance of work being undertaken."

"Beyond Economic Repair" is defined in the policy as being: "when we deem the cost of parts required to repair your boiler exceeds its current value based on age and condition".

"Obsolete parts" are defined as being "where parts are no longer readily available from our suppliers".

Similar conditions are contained in most boiler insurance policies and I don't think they are unusual or inherently unfair.

If a boiler is deemed to be beyond economic repair, it doesn't mean that the boiler cannot be repaired but rather that the cost of the repairs is more than the boiler is worth. The policy term above means that it is only the cost of the parts (and not the labour costs of fitting them) that is relevant in this assessment; and it is also not the total cost of installing a new boiler, but the existing boiler's *"current value based on age and condition"*.

The £1,370 repair costs quoted by the manufacturer included labour costs. So I agree with Mr M that Amtrust had failed to demonstrate his boiler was beyond economic repair at the relevant time.

Given this, I asked Amtrust to confirm the cost of the parts only. It provided a breakdown of the parts it said were needed:

*"burner assembly £91.00
main heat exchanger £150.00*

gas valve £175 - £225.00
fan - £300.00
flue kit £81.00
conveyor £40-£60”

This comes to a total of between £837 and £907. The cost of a new boiler of similar specification was put at £855. So it is still not clear that the boiler was beyond economic repair, in accordance with the terms of the policy.

In addition, Amtrust says that the heat exchanger, fan and conveyor would have been excluded from cover anyway, as the policy excludes cover for damage caused by corrosion and/or sludge, which is what it says was wrong with these parts. The policy does exclude this and so Amtrust would have been entitled to refuse to replace/repair these components.

However, the policy does not provide any guidance as to whether the cost of parts not covered by the policy would be included when assessing if the boiler is beyond economic repair for the purposes of the policy. In my opinion, it would not be reasonable for a boiler to be deemed beyond economic repair – and thereby allow an insurer to refuse any cover at all – where the costs that would make it beyond economic to repair would never fall to the insurer to pay anyway. Given this, I am not persuaded that Amtrust has established the boiler was beyond economic repair. I therefore need to consider what should have happened.

Before I do so, I would like to make clear that I do not accept Amtrust’s reason for not paying the contribution towards the new boiler, which was due if it were beyond economic repair. It says this was offered to Mr M during a phone call with him. However, having listened to this call, I do not think this was sufficient to mean that it was then Mr M’s responsibility to provide the invoice for his new boiler and because he did not do so within a certain time, Amtrust no longer has to pay this. The boiler contribution was mentioned [in that call] but Mr M was still not happy with the diagnosis of the boiler at that stage. The contribution was not mentioned to Mr M again after this, as far as I am aware and no offer was made in writing. I do not think it is fair or reasonable to refuse a policy benefit on the basis Mr M did not provide an invoice within a certain time, when this delay has not caused Amtrust any prejudice. As it is, because I do not think that Amtrust has established the boiler was beyond economic repair, this benefit is no longer relevant.

Should the boiler have been repaired?

As stated, I do not think Amtrust has clearly established that the boiler was beyond economic repair, according to the policy definition (*i.e.* having assessed the cost of the parts only).

There is also not enough evidence to establish, as far as I am aware, that the boiler was not repairable because one or more parts were obsolete. Mr M said that a part was not available but I’ve seen no independent evidence to support this and Amtrust says the parts needed were available but needed to be ordered. I am not therefore persuaded that the boiler was not repaired due to the parts needed being obsolete.

So, it appears the boiler was repairable and not beyond economic repair. It seems to me, given all this, that Amtrust should have provided Mr M with clear information about the repairs required and the costs involved and provided him with the option of meeting the cost of the repairs to the components not covered under the policy, and for it to cover the cost of the remaining repairs.

It is impossible to say now what he would have chosen to do if he had been given that

option. I have to take account of the fact that Mr M decided not to pay to have his boiler repaired himself but chose to replace it instead. However, he may not have done so, if he'd known Amtrust would have paid part of the repair costs.

I do not think I can require Amtrust to reimburse the entire cost of the new boiler. Overall, having considered everything, I think it would be reasonable for Amtrust to pay a sum to reflect the cost of the parts it says would have been covered (*i.e.* the burner, gas valve and flue kit) and an amount towards labour costs of replacing these parts. I therefore consider that the sum of £600 to be appropriate.

This is not a precise calculation and is a 'rough and ready' estimate on my part but it is the best I can do on the evidence currently before me. Either party can produce further and better evidence in response to this decision if they do not accept the figure I have proposed.

Should Mr M have been notified of the risk of damage to the boiler during an earlier annual service?

Mr M's boiler was inspected each year by Amtrust and I note in 2019, the engineer said the heat exchanger was blocked and the boiler was at risk. From the notes it appears the engineer turned the boiler off and advised that it be replaced. It is not clear what happened after that. There was then a service in December 2020, when nothing was noted as being of concern.

The annual service is essentially to check the boiler is working safely. So while an engineer might mention if they think there may be issues with certain components, I am not able to say that it did anything wrong in not doing so in December 2020.

Service provided

Mr M is also unhappy with the way the claim was handled. In particular he says he and his family were left without heating and hot water for longer than necessary.

Mr M took out this policy to cover emergency situations such as happened here. Amtrust might operate a model where it calls in the manufacturer for certain repairs, however, I think this did add to the time Mr M was left without a working boiler. There was a three/four day wait for the manufacturer to visit and then a further three days or so before the manufacturer provided its findings.

This was at a time of extremely cold temperatures and with a young child in the house. It was also during a lockdown period, so I assume Mr M and his family were at home more than normal. In addition, I do not think Amtrust handled the matter fairly having received the manufacturer's findings, for the reasons set out above. I consider that some additional compensation is warranted for this and think the sum of £200 would be appropriate.

My provisional decision

I intend to uphold this complaint and require Amtrust Europe Limited to do the following:

- pay the sum of £600 towards the cost of the new boiler in lieu of the repairs that should have been carried out; and
- pay the sum of £200 compensation for the distress and inconvenience caused by the handling of the claim."

Responses to my provisional decision

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

Amtrust has confirmed it accepts my provisional decision and has nothing further to add.

Mr M has also responded. He is generally happy with my provisional findings but has asked that the following points also be taken into account:

- The policy terms allowing Amtrust to refuse cover if a boiler is uneconomical to repair unfairly favour Amtrust, who wrote the contract.
- The boiler had been condemned as dangerous and there was a lack of clear communication around whether it could be repaired, so he only had one alternative which was to replace the boiler.
- Amtrust serviced the boiler without any reference to any faults. If the fault had been identified earlier, it could have been rectified before it became a major malfunction.
- He had to act quickly, as he and his family (wife and three children) were without heating and hot water during the coldest week of the year (temperatures at the time were -7 degrees). He had to go with the first quote available and did not have a chance to find the best price.
- As Amtrust cancelled the policy, he lost the cover for the electrics and drainage as well.
- He has been financially disadvantaged and as a minimum he should be reimbursed the costs he has incurred, so he is "*financially neutral*".

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 can understand why Mr M is unhappy at having to pay for a new boiler, when his boiler was not that old, and he had cover with this policy. However, for the reasons set out in my provisional decision, I do not think that I can reasonably require Amtrust to reimburse the entire cost of the new boiler.

I have to consider what Amtrust did wrong and try as far as possible to rectify that. The boiler was apparently repairable. While there was a lack of clear information about the repairs required, I do not think Amtrust said it could not be repaired, rather that it was uneconomical to do so. Mr M said that a part was obsolete and therefore the boiler was not repairable but there's no independent evidence to support that.

I considered that Amtrust should have repaired the boiler and repairs that it should have carried out under the policy are estimated to have cost £600. As stated some of the repairs required were not covered by the policy, so Mr M would have had the cost of those repairs in any event, even if Amtrust had not done anything wrong. Mr M replaced the boiler and while I can understand why he did so, and the confusion about the repairs and parts might have contributed to that decision, I remain of the opinion that Amtrust is not responsible for that cost. I do, however, take Mr M's point about not having a chance to shop around for the best price, as the situation was urgent.

With regard to the previous annual services and whether Amtrust should have identified a fault with the boiler sooner, I remain of the opinion that there is not enough evidence that Amtrust acted wrongly here. As mentioned in my provisional decision, the engineer that inspected the boiler in 2019 did apparently identify that the heat exchanger was blocked and the boiler was at risk. From the notes it appears the engineer turned the boiler off and advised that it be replaced. The heat exchanger was one of the components that caused the

failure of the boiler in February 2021 (and is not covered by the policy). It appears that Mr M did not have this replaced although it is not entirely clear. There was then a service in December 2020, when nothing was noted as being of concern.

Again, as stated in my provisional decision, the annual service is essentially to check the boiler is working safely. So while an engineer might mention if they think there may be issues with certain components, without any further evidence, I am not able to say that Amtrust did anything wrong in not doing so in December 2020. In addition, Mr M had already been told that there was a problem with the heat exchanger. Overall, I am not persuaded that Amtrust is responsible for the failure of the boiler.

I therefore remain of the opinion that Amtrust should pay Mr M a sum in lieu of the repairs it should have carried out. Neither party has provided any further evidence about the cost of repairs, so I remain of the opinion that the sum of £600 is appropriate for this.

With regard to the compensation I proposed. Mr M says he lost the additional electric and drainage cover the policy provided. The policy document I have seen provides cover for the boiler and central heating system. I cannot see that he had additional cover for the electric and drainage systems and, even if this is not right, Mr M has not said he wanted the policy to continue. I do not therefore think I can reasonably make any award for this.

However, I do accept that Mr M had little chance to shop around when getting the boiler replaced and, while there is no evidence that he would have paid less, I do accept it would have been a stressful situation. This was at a time of extremely cold weather and he and his family were without heating and hot water for considerably longer than necessary due to the delays I have already decided were due to Amtrust.

Having considered all the evidence again and taken account of Mr M's submissions, I think the sum of £300 in compensation would be more appropriate.

My final decision

I uphold this complaint and require Amtrust Europe Limited to do the following:

- pay the sum of £600 towards the cost of the new boiler in lieu of the repairs that should have been carried out; and
- pay the sum of £300 compensation for the distress and inconvenience caused by the handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 March 2022.

Harriet McCarthy
Ombudsman