

The complaint

Mr J is unhappy that Aviva Insurance Limited declined his claim for a faulty boiler under his home emergency policy.

What happened

Mr J has a home emergency policy underwritten by Aviva covering his boiler, electrics, and pipes. It was purchased in December 2020 and a boiler health check was carried out on the boiler, which it passed.

On 16 August 2021 the boiler stopped working so Mr J had no heating or hot water. He notified Aviva and an engineer came out the next day. He said that he needed to order parts but would be back.

On 20 August Mr J called Aviva as he had heard nothing and was told that the report from the engineer hadn't yet been received and could take another 24 hours.

Eventually, on 26 August, Mr J was informed that his claim would not be covered as the engineer had reported that the boiler had been tampered with. Mr J raised a complaint which was rejected by Aviva.

Our investigator reviewed the complaint and thought Aviva had done nothing wrong in declining the claim. She said that the policy terms and conditions allowed Aviva to reject a claim if any attempted repair or modifications were done. She felt that Mr J hadn't provided any evidence that the engineer was wrong.

Mr J disagreed and asked that the complaint be reviewed by an ombudsman.

Because I disagreed with our investigators' view, I issued a provisional decision. This gave both Mr J and Aviva the chance to comment on my thinking and/or provide further information or evidence before I make my final decision in this case.

My provisional decision

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
The exclusion that Aviva have relied on states:

"The following are also excluded from cover:....

h) any defect, damage or breakdown caused by malicious or wilful action, negligence, misuse or third party interference, including any attempted repair or modification to the elements covered by this policy, which does not comply with British Standards;"

The report from the engineer states:

“boiler is not to mfi as expansion vessel has been modified outside of boiler and is on floor. Electrics in boiler have been tampered with... boiler condition is very poor and there is an electrical crackling sound coming from somewhere in boiler... shut down and made safe. Have explained situation to owner and have advised not to put fuse back in as boiler is BER. Boiler needs o much more doing to it and is not worth the cost and hassle.” (sic)

The information around the claim is very sparse and the sequence of events is not entirely clear. So, it is a difficult complaint to decide on one way or the other.

It is possible that the health check carried out in December should have recorded the boiler as being in a poor condition and Mr J shouldn't have been offered the chance to insure it.

Regarding the boiler health check the policy says:

“If during your Boiler Health Check HomeServe Identify any pre-existing problems detailed below, your boiler and central heating system will not pass the Boiler Health Check and we will be unable to offer any cover for the boiler or central heating system until the pre-existing problems are fixed.

Pre-existing problems:

- The boiler Is Beyond Economic Repair*
- Maintenance work Is required*
- The boiler Is one that we are unable to service or source parts for*
- The condition of the boiler and/or central heating system does not meet our required standard*

In the event that a pre-existing problem is Identified, you will be advised of what work needs to be completed, by when, and where possible HomeServe provide you with a quote to complete the necessary work. If you wish them to do so.”

As far as I can see, after the health check, Mr J wasn't advised that the boiler needed work to be done for it to be accepted for cover or told the boiler didn't meet the required standard.

If I had evidence that the boiler health check hadn't been carried out correctly, I may have been minded to recommend that Aviva refund the cost of the policy, as it should never have been sold to Mr J.

However, without any such evidence, I have no option but to assume the boiler was in a good condition when the health check was carried out.

In that case, Aviva are asserting that it was tampered with at some point between December and August. However, it's difficult to see why Mr J would try to repair the boiler himself when he has an insurance policy to cover repairs. And even if he did, it is likely that this was after the boiler had broken down and wasn't the actual cause of the breakdown.

The exclusion quoted above applies when a defect, damage or breakdown *is caused* by third party interference. I don't see that Aviva have provided any evidence that the

boiler breakdown was due to the inferred interference. They haven't provided any photographs, diagrams, or anything to substantiate their claim that interference has taken place.

The onus is on Aviva to prove that an exclusion should apply, and I don't believe Aviva have done that - unless they have evidence they've not yet provided to us, or to Mr J.

Mr J has two young children so naturally purchased a new boiler in order to have hot water reinstated. So, it's now not possible to obtain a further report to support either him or Aviva.

Without any evidence to suggest otherwise, I'm minded to conclude that Aviva have not acted fairly and reasonably in declining Mr J's claim. The engineer concluded that the boiler was beyond economic repair. In these circumstances, the policy states:

"If upon making a claim your boiler is deemed to be Beyond Economic Repair, or the parts required to repair your boiler are obsolete, we will arrange for HomeServe to source, replace and install a new boiler. However, if the boiler is aged 7 years or over you will be required to pay a contribution of £500 in addition to any excess."

So, I'm minded to require Aviva to reimburse Mr J what he has paid for a new boiler, upon receipt of an invoice, minus any excess or contributions due, plus 8% simple annual interest. Mr J was without hot water for over a week. I believe Aviva could have told him sooner that his claim would not be covered so I'm also minded to make an award of compensation for that, and the stress and inconvenience caused."

And I went on to say that I was minded to award £150 compensation for Mr J's trouble and upset.

The responses to my provisional decision

Mr J hasn't responded to my provisional decision. I assume that's because he agrees with the outcome I proposed.

Aviva did respond. They sent a copy of the original health check report and a copy of the report from the engineer who visited when the claim was made, along with photographs that engineer took at the time.

The original health check report simply confirms that there wasn't a problem with the boiler when Mr J took out his policy.

Aviva also asked their technical experts to comment on the report and photographs provided by the engineer who dealt with the claim.

Aviva's technical experts say an external expansion vessel has been fitted to the boiler. As I understand it, in itself, this isn't contrary to the manufacturer's instructions or the relevant standards and regulations. But where such a modification has been made, the pipe or fittings connecting the boiler to the expansion vessel must not have valves.

They say the photographs of Mr J's boiler show that the connecting pipework in this case has an isolation valve. This means the boiler has been modified in a way which does not comply with the manufacturer's instructions or with the relevant standards and/or gas safety regulations.

Aviva say that means Mr J's boiler was not covered under his policy (see the relevant policy term quoted above in my provisional 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 taken into account the new information Aviva have sent in response to my provisional decision. It hasn't changed my mind about the outcome of this complaint. I'll explain why.

The health check report simply confirms what we already knew. Aviva sent an engineer to check Mr J's boiler before Mr J was offered the cover provided by the policy. His report said there was nothing wrong with Mr J's boiler and that it could be covered without any work needing to be done beforehand.

Aviva haven't suggested that report was inaccurate or mistaken. But they've provided evidence to suggest the boiler had been modified (in a way that would exclude it from cover) by the time the claim was made.

Aviva haven't provided any indication as to what they think happened here. They seem to stand by the health check report. But maintain that the boiler had been modified by the time the claim was made.

The evidence Aviva provided about the engineer's visit after the claim was made is reasonably compelling. As is the technical explanation of how and why the modifications don't meet the relevant standards.

So, assuming the boiler was (inappropriately) modified before the claim was made, there are only two possible explanations.

One, the boiler was modified by Mr J after the health check and after he bought the policy and was on cover. Or two, it was modified before Mr J took over the property and those (inappropriate) modifications were missed at the boiler health check.

In either case, I think Aviva should pay for the replacement of Mr J's boiler (less any excess or contributions set out in the policy).

If the boiler was modified before the health check, then the health check failed to pick up that the boiler needed rectification work before the policy was put in place. In that case, Mr J understandably assumed he was covered. And he didn't carry out any work on the boiler.

If he had been told about the problem which subsequently came to light, he would no doubt have sought insurance elsewhere and/or paid for someone to re-fix the external expansion tank in line with the relevant requirements. And he would then have been covered when his boiler broke down – and he would have had a replacement boiler paid for by his insurer.

The alternative explanation is that Mr J's boiler was compliant with all the regulations at the health check, but he then modified it himself whilst he was on cover. I think this is less likely for two reasons. First, because Mr J says he didn't. And second, because why would he make the modifications when the boiler was on cover anyway? If his boiler broke down, he would simply call Aviva.

However, even if it were true and Mr J *did* modify the boiler, then the modifications could only be explained as a response to a problem with the boiler. And in that case, Mr J's

modifications wouldn't be the *cause* of the boiler breaking down. And so, the relevant exclusion in the policy wouldn't apply.

In essence, Aviva still haven't provided any evidence to suggest that the modification in question was in fact the *cause* of the boiler breaking down. And for the reasons I've set out immediately above, it's very unlikely the modification *was* in fact the cause.

In summary, I think Aviva should pay for the replacement boiler (less any excess and contributions as specified in the policy) whether the boiler was modified before the health check – which found no problem with the boiler at all – or after.

Putting things right

As per my provisional decision, I'm going to require Aviva to reimburse Mr J for his new boiler, on receipt of an invoice, less any excess or contributions required by the policy terms. I'm also going to require them to add 8% simple interest on to that amount, to reflect the fact that Mr J was deprived of that money for a period of time.

I'm also going to require Aviva to pay Mr J £150 for his trouble and upset, for the reasons set out in my provisional decision.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mr J's complaint.

Aviva Insurance Limited must:

- reimburse Mr J for the cost of his new boiler, less any excess and/or contributions required in the policy terms;
- pay Mr J 8% simple interest on the above amount, calculated from the date of Mr J's payment for the new boiler to the date Aviva pay Mr J;
- pay Mr J £150 in compensation for his trouble and upset.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 May 2022.

Neil Marshall
Ombudsman