

The complaint

Mr and Mrs G complain about Aviva Insurance Limited (Aviva) who declined to make a contribution towards a replacement boiler, under their home emergency policy.

What happened

Mr and Mrs G's boiler was leaking carbon monoxide. They called an engineer who condemned the boiler unsafe and immediately issued a danger do not use report. Another engineer later attended, who found that an internal flue component had failed and needed to be replaced. He sought a replacement part but was told that the part was obsolete and advised Mr and Mrs G that their boiler was beyond economical repair (BER) and to buy a replacement boiler, which they did.

A few weeks later, Mr and Mrs G contacted Aviva, as they realised that they could obtain a £500 contribution towards the cost of the new boiler, under their policy. Aviva asked them to provide a detailed report from their engineer for it to consider. Mr and Mrs G obtained the report and sent this to Aviva.

On receiving the report, Aviva declined to offer any contribution toward the boiler as it said that the report had indicated that the flue was damaged, and the replacement part was discontinued. Further, that the boiler hadn't broken down. And as there was no breakdown in line with the policy terms, and because the flue was excluded under the policy, there would be no contribution made.

Mr and Mrs G complained to Aviva, who maintained its position in its final response to them. So, they referred a complaint to our service.

One of our investigators considered the complaint and thought that it shouldn't be upheld. He said that the flue was excluded from the policy as it wasn't an integral part of the boiler. So, he felt that Aviva had fairly applied the policy terms.

Aviva accepted the view, Mr and Mrs G did not. They said that the replacement part sought was for an integral flue which was an internal part of the boiler and this made it fall within the policy terms. They also explained that the boiler had broken down (using the dictionary definition of the word broken) as the failure was due to the breakdown of a component within the boiler resulting in the leaking of carbon monoxide, rendering it incapable of producing heating and hot water. So, they asked for a decision of an 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.

I considered the complaint and I thought the complaint should be upheld. I issued a provisional decision on 20 April 2022 and asked both parties to send me anything else by 18 May 2022. In my provisional decision I said:

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of the complaint.

Having done so, I'm minded to uphold this complaint, which I will explain why I think this is fair.

Aviva said that the flue wasn't covered under the terms of the policy as the policy states that flues are not covered unless there are integral to the boiler. And as many flues are external to the boiler, Mr and Mrs G's flue wasn't covered.

Mr and Mrs G explained that the flue wasn't an external flue but an integral flue that was an internal component of the boiler. And as it was an internal part, it was covered as the policy provided for this.

Mr and Mrs G provided details of the part that was required for their boiler, which I have looked up. The part is an integral flue, which is internal to the boiler. So, I don't agree with Aviva's initial position that the part wasn't covered under the policy. And it follows, that it was unfair to have declined to make a contribution to the cost of the new boiler. I note that Aviva has now accepted this.

I have next considered Aviva's other reason for declining to make a contribution. In its final response, it said that as there had been no breakdown of the boiler (as Mr and Mrs G's engineer had merely turned the boiler off) which meant that this wasn't covered under the policy terms.

I have reviewed the policy terms and although there is no definition of what Aviva considers to be a breakdown, the policy stipulates under the 'what is covered' section: 'You are covered for a failure of your gas boiler'. In circumstances where there is no actual definition in a policy for something like a breakdown, we look at its ordinary meaning. And having looked at the ordinary meaning of breakdown this is when something fails and there is a loss of function or a failure of a machine to function.

Mr and Mrs G provided Aviva with a copy of the 'Danger Do Not Use' report. I have had sight of this report. The report indicates that the boiler was deemed immediately dangerous. The gas supply was disconnected and the reason for the disconnection, was because the boiler was deemed too dangerous to health. Plus, it gave Mr and Mrs G a warning that had they continued to use the boiler this would place them in breach of gas safety regulations. Consequently, Mr and Mrs G said they were unable to obtain heating and hot water from the boiler, as to do so would be a danger to their health.

Based on this evidence, I am satisfied that the boiler could not be operated in the usual way without it emitting harmful gas that could not only effect health, but also prevented Mr and Mrs G obtaining heating and hot water. The boiler itself had been disconnected as opposed to simply having been switched off. The policy provided cover in circumstances where a boiler could not produce hot water or heating, which I think was the case here. So, I'm persuaded that the boiler had broken down as it could not function in the correct way.

Finally, I have reviewed Aviva's additional reason why a contribution wouldn't be made towards the cost of the replacement boiler. It said that Mr and Mrs G didn't report the fault to them at the time. But having reviewed Aviva's final response, it gave two reasons for declining, which in summary were: that there was no initial break down of the boiler as it had been turned off. And that the flue wasn't an integral part of the boiler.

There was no mention of Mr and Mrs G not reporting the fault with Aviva as a reason to decline. And having looked at the evidence, it seems that Aviva raised this as a reason only after Mr and Mrs G referred their complaint to our service. And only after Aviva had accepted that the flue was covered under the policy. I think had this been a strong reason, Aviva would've relied on it earlier. Moreover, it asked Mr and Mrs G to provide a report from their engineer as to the reason why the boiler was BER. Accordingly, I think it gave Mr and Mrs G an expectation that a contribution would be made. Consequently, having declined the contribution based on these circumstances, I think is unreasonable.

Taking all of these circumstances into consideration, I don't think Aviva acted fairly when it declined to make a contribution to Mr and Mrs G's replacement boiler. It only later agreed that the part that failed in the boiler was integral to it.

I also think that Mr and Mrs G would've suffered from an amount of distress and inconvenience because of Aviva's actions. So, I think it's fair and reasonable that this is reflected in compensation of £100 for the trouble and upset caused.

Putting things right

Responses to my provisional decision

Both parties responded that they had nothing further to add to my provisional decision. So, my final decision will be the same as my provisional decision.

My final decision

For the reasons mentioned above, I uphold Mr and Mrs G's complaint.

To put matters right, Aviva Insurance Limited are to make a contribution towards the cost of Mr and Mrs G's replacement boiler of £500.

Aviva Insurance Limited are to pay Mr and Mrs G £100 compensation for the trouble and upset caused.

Aviva Insurance Limited must pay the above amounts within 28 days of the date on which we tell it Mr and Mrs G accepts my final decision. If it pays later than this it must also pay interest from the date of my final decision to the date of payment, at 8% a year simple.

If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 16 June 2022.

Ayisha Savage
Ombudsman