

The complaint

Mr E complains about how Aviva Insurance Limited (“Aviva”) handled a claim under his home emergency cover.

What happened

Mr E has a home emergency policy with Aviva that provides an annual service and emergency breakdown cover for his boiler.

In mid-February 2021, Mr E called Aviva as his boiler was faulty. An Aviva engineer visited two days later and told Mr E that the boiler was beyond economical repair and shut off the gas supply to it. Aviva’s engineer said that the boiler was obsolete and that parts for it weren’t available so he told Mr E that Aviva would be in touch later that day to arrange a replacement boiler.

Aviva didn’t contact Mr E so he called it back and got a quote from Aviva to replace the boiler six days after it had been shut off. The total cost for replacing the boiler was given as £3,032, less a discount from Aviva of £899 as his previous boiler was beyond economical repair but over seven years old, meaning Mr E needed to pay £2,133 towards the cost of the new boiler.

Mr E thought this price was high and he also got a quote from an independent gas engineer to remove and replace the boiler with an upgraded model. As Mr E was unhappy with Aviva’s service, he had his old boiler removed and the new upgraded boiler fitted by the independent gas engineer at a total cost of £2,800.

Mr E wasn’t happy that his family had been left without heating or hot water during winter so he made a complaint to Aviva. He also wasn’t happy about the price he’d been quoted to install the replacement boiler and the amount of time it took Aviva to deal with his complaint.

Aviva agreed with Mr E that its service was below what he would normally expect. It didn’t provide Mr E with his quote when it said it would, the quote was higher than it should have been and it took longer to respond to his complaint than it should have. In its final response letter Aviva awarded Mr E £583 compensation which it later clarified was £120 for Mr E’s inconvenience plus £463 which is the price Aviva would be able to buy the boiler for.

Mr E remained unhappy with Aviva’s response and brought his complaint to this service.

An investigator looked into Mr E’s complaint and said that they thought Aviva had not acted fairly. They said that Aviva’s offer of £120 compensation wasn’t enough and should be £300. But our investigator said that they thought it was fair of Aviva to offer to pay Mr E £463 which was the amount it would have cost Aviva to source the replacement boiler.

Aviva disagreed with the view because it said it couldn’t be responsible for the delay in fitting Mr E’s boiler as it was Mr E’s decision to have it fitted by another business. So this complaint has been passed to me to make a final decision.

I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

There has been a considerable amount of correspondence between Mr E, Aviva and this service to clarify various points since the view was issued. I want to assure Mr E that I have read all of his and Aviva's submissions carefully, and even though I haven't mentioned everything here I have focused on what I think are the main areas of the complaint.

I think there are two main elements: the cost of replacement of his boiler following it being deemed by Aviva as being beyond economical repair, and compensation for Mr E's inconvenience from being without heating or hot water and the delays in Aviva dealing with his complaint.

On the first issue, the replacement of the boiler, Mr E is unhappy that while he was offered a new boiler under the terms and conditions of the policy, he was quoted a price for extra parts and installation he thought was too high.

On Page Two of Mr E's policy renewal documents, it says that the cover is "Parts, labour and VAT are included". I've thought carefully about this and I think it means that Mr E would be reasonably entitled to expect that the cost of labour to fit the boiler would be included within a claim.

Later in the policy document it says that the cover given by the policy for a boiler older than seven years old is:

Obsolete parts and BER (Beyond Economical Replacement):

"If...the boiler is deemed beyond economical repair and is 7 years or older we will source, replace and install a new boiler but you will be required to pay the installation costs."

It's not clear from the policy what Aviva mean by "installation costs" but from the information I have it seems to me that it means Mr E would have to pay for the costs of labour because his boiler was more than seven years old.

Aviva quoted a discounted price of £2,133 to replace his boiler, which included some extra parts needed to fit it (given here at retail price, not Aviva's cost price) at £632 and Aviva's cost price of the boiler which is £463.

As Aviva service Mr E's boiler annually it knows both the age of it and its type. So I don't think it's fair of Aviva to sell Mr E a policy that sets out to pay for "Parts, Labour and VAT" to replace his boiler, and then have him pay a significant amount towards its replacement.

For Aviva to rely on this part of its cover I would expect it to have brought that fact explicitly to Mr E's attention and I can't see any evidence that it did so.

As Mr E decided to source a replacement boiler himself due to the service issues he had faced, and because he decided his contribution towards Aviva's price was too high, Aviva offered to pay him the equivalent of what it would have cost for Aviva to purchase the new boiler, which is £463.

I've thought carefully about this point. The ability for an insurance company to limit its exposure to the cost it would incur using its own supply channels is widely used in the industry, but it is usually applied into an insurance contract using a policy condition. I can't find a similar phrase in Mr E's policy terms and conditions, so I don't think it's fair for Aviva to

rely on it.

Ultimately, Mr E has been paying a premium of about £413 per year at current rates for Aviva to insure his boiler against breakdown, and he has paid the equivalent of this amount for several years. I don't think it's fair of Aviva to sell Mr E a policy that sets out to replace his boiler when if it fails, and then be able to limit its payment to £463.

I have mentioned above that Mr E has replaced his old boiler with a new upgraded model for a cost of £2,800 via a third-party gas engineer. I haven't seen a breakdown of what Mr E was charged for, but if I use Aviva's costings it's possible to estimate that Mr E paid about £600 for additional parts and about £1,000 for labour.

Using those figures and deducting them from Mr E's bill of £2,800 would tell me that the cost of his replacement boiler would be around £1,200. I am minded that I ask Aviva to pay this amount to Mr E because I think it's fair on both parties. I have said above that I don't think it's fair for Aviva to restrict its payment to £463, but I also think Mr E should bear some of the cost of having his new boiler fitted and the new parts used.

The second issue is the service Mr E had from Aviva, which Aviva have already agreed was poor and offered Mr E £120 compensation for his inconvenience. I think that Aviva's poor handling of the early part of the claim meant Mr E felt he had to take matters into his own hands. Faced with no heating or hot water in winter, during a covid lockdown and having to chase Aviva for its quotation is poor service, and I do not think £100 is sufficient. I do appreciate Aviva's response that it did initially provide service to Mr E within two days, but I agree with our investigator that £300 is a more appropriate figure due to the length of time Mr E has had to wait for responses from Aviva.

Response to my provisional decision

Mr E responded to my provisional decision and agreed with it. Aviva didn't agree. It said it didn't think it was fair for it to pay more than its replacement cost for the boiler.

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.

In Aviva's response to my provisional decision, it refers to other cases that have been subject to decisions by this service in which its costs have been limited to its own replacement costs for the boiler rather than another amount.

My role is to examine each case on its own merits and judge whether Aviva's actions are fair and reasonable. As a service, we don't set a precedent when making awards. Each case is assessed on its individual facts, and the impact on the complainant, and that's what I have considered when making my decision.

It seems to me that Aviva sold Mr E a policy stating on page two that the cover is for "Parts, Labour and VAT" for a boiler that Aviva know the make, model and age of.

Then, if the boiler breaks down and is deemed obsolete, Aviva apply a term limiting its payment towards replacement of that boiler. This term is found in Mr E's renewal documents on page 15.

This term is applied at Aviva's sole discretion and I can see from Mr E's evidence that the third party engineer he used did say the old boiler was repairable. It seems to me that Aviva

is able to apply this exclusion when it serves to protect itself, and I don't think the exclusion has any benefit to Mr E.

I think this is a very significant policy exclusion and as such it should have been expressly pointed out to Mr E when he renewed his policy. Aviva hasn't responded to this point, so I don't think it's fair and reasonable for Aviva to rely on the exclusion.

I have previously said that I don't think it's fair for Aviva to limit its payment to £463 (its replacement cost) because a policy condition saying this does not appear in Aviva's policy wording.

Aviva didn't respond to this point so, as I have said in my provisional decision, I also don't think it's fair for Aviva to apply it in Mr E's claim.

Having made those decisions, I must then consider how much Aviva should pay towards Mr E's replacement boiler and for his inconvenience. As Mr E has accepted my provisional decision, and because Aviva hasn't provided further evidence, I think the figures in my provisional decision represent a fair and reasonable settlement.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. I direct Aviva Insurance Limited to pay Mr E:

- £1,200 for the replacement cost of an equivalent boiler.
- £300 compensation for his distress and inconvenience.

As Mr E has already paid for the cost of a new boiler, I also require Aviva Insurance Limited to pay interest at 8% simple on the figure of £1,200 from the date Mr E paid the invoice for the new boiler to the date he tells us he accepts my decision (assuming he does accept it).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 July 2022.

Richard Sowden
Ombudsman