

The complaint

Mr J complains that following the breakdown of his boiler his insurer, Astrenska Insurance Limited refused to pay the £250 towards a replacement that he is entitled to. Other parties have acted on Astrenska's behalf, but I have just referred to Astrenska here.

What happened

I sent the parties a provisional decision in August 2022, in which I set out the following background information to the complaint and my provisional findings.

Mr J is landlord of a let property and holds a home emergency policy with Astrenska. He had a boiler installed but after three years it had many issues with call outs for repairs. Eventually he got a gas engineer to look at it and was told it wasn't safe and needed to be replaced. Mr J contacted Astrenska and it sent an engineer to inspect the boiler, but the engineer couldn't gain access. Later engineers from another contractor declined to attend on behalf of Astrenska as they didn't want to be held responsible for missing parts.

Mr J replaced the boiler at his own expense and requested Astrenska make the contribution in his policy of £250 towards the replacement. Mr J said Astrenska initially agreed but then declined without explanation or reviewing his own gas engineer's report.

Astrenska responded to Mr J's complaint saying its engineers agreed the boiler was in a 'potentially dangerous state', but not beyond economic repair. It said the work had recently been carried out by Mr J's own engineer who had replaced parts and deemed the boiler to be beyond economic repair and therefore the replacement boiler contribution was not valid.

Mr J said Astrenska's engineer hadn't inspected the boiler or spoken to his engineer, so he didn't know how they reached their view about his boiler. He said he paid an engineer because of Astrenska's delay and it had refunded him this payment. His engineer had replaced a 'diverter valve'.

Mr J was dissatisfied with Astrenska's response and referred his complaint to us. He said if Astrenska hadn't agreed to contribute towards a new boiler he wouldn't have had it replaced.

Our investigator initially recommended the complaint be upheld. She said the policy provides a contribution to a new boiler if the old boiler is deemed beyond economic repair. Although this hadn't been declared by the insurer's engineer, she said Astrenska's agent had assured Mr J he would receive the contribution and so it was fair that this is now paid to him.

Astrenska disagreed with the investigator, saying it didn't recognise the call recording on which the investigator had relied in reaching her view. The investigator then said the phone recording didn't identify the callers or the claim and so the claim didn't have to be paid.

Mr J disagreed with the investigator and gave the name of the agent he spoke to, the time of the call and his number. He said he couldn't believe his insurer were disputing the authenticity of the call. Mr J requested an ombudsman review his complaint.

My provisional findings

Mr J's policy with Astrenska states:

*'In the event **your domestic boiler** is declared **beyond economic repair** we will make a contribution of £250 towards replacing it **Beyond Economic Repair** is defined in the following way: In the opinion of **our approved engineer** the cost of repair is more than the cost of replacement.*

Approved Engineer or Engineer is defined in the following way: *A qualified person approved and instructed by the **helpline** to undertake **emergency** work.'*

Astrenska declined to pay the policy contribution as Mr J's boiler hadn't been assessed as beyond economic repair by its engineer and parts and work had been carried out by Mr J's engineer. Mr J said he'd been promised he would receive the contribution and Astrenska should make good on this promise. He provided his recording of the call. Astrenska says it has no record of this and doesn't recognise the call.

I listened to Mr J's calls with the claims' handler including the disputed call referred to by Mr J and the investigator. I realise the call isn't complete in that the introduction is missing but I thought as evidence of a conversation between the parties it was scarcely to be doubted.

During the call the agent said it didn't have to review the boiler as it was deemed beyond economic repair and the insurer would pay towards the new boiler. The agent then noted Mr J's account details further reinforcing the decision that he would receive the payment.

I could see why Mr J put his faith in this call and disposed of his old boiler. By changing its decision, Astrenska prejudiced Mr J's position in that he couldn't evidence his boiler's poor condition. I don't think Mr J would have been tempted to replace his boiler if this wasn't necessary and Astrenska's engineer agreed the boiler was in a 'potentially dangerous state'.

And so although I could see that Astrenska's engineer had difficulty inspecting Mr J's boiler I agreed with the investigator's initial findings that Astrenska raised and then disappointing Mr J's expectations and should pay the policy contribution towards his new boiler.

I thought Astrenska should have been able to identify its agent from the call recording and it had prolonged Mr J's claim. I thought he had suffered inconvenience and Astrenska should pay him the boiler contribution of £250 as well as £50 compensation for his inconvenience.

My provisional decision and the parties' responses

I provisionally decided to uphold the complaint and require Astrenska to pay Mr J the £250 contribution set out within his policy towards his new boiler. And to require Astrenska to pay Mr J £50 compensation for his inconvenience during this prolonged claim.

Mr J had no further comment to make. Astrenska disagreed with my provisional decision.

Astrenska questioned the validity of the call, saying there's no record of it and it couldn't be identified. It said even if it had provided incorrect information, it's not fair to have to cover a claim in error when it's not covered by the policy. It said my provisional decision was just an opinion whereas the evidence it holds is factual.

Astrenska said it understood our service only considers the facts of the case and not opinions of the customer, the insurer or our own and said, *'This means you are also*

concluded [sic] it happened at a certain stage within the claim with no basis'. It said I had ignored the evidence and facts about the claim not being covered and I should rely on 'the facts available from each party'.

Astrenska said that Mr J prejudiced his own position in not allowing it to validate the claim, leaving him without cover. It said we only have Mr J's word that his own contractor, who is unidentified, said the boiler was not economical to repair.

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.

Astrenska seems to suggest that as it has no evidence of the disputed call, it didn't take place and the complaint can't be upheld. I don't share its confidence about this.

Astrenska says our service should rely solely upon the facts and not opinions, but doesn't suggest what I should do when these are disputed. In this situation an ombudsman must decide what they think is the most likely to have happened. We do this based on the balance of probabilities, i.e. what we think is more likely than not to have taken place. By its nature, this process involves forming an opinion and this is what I've done to reach an outcome to Mr J's complaint.

The act of parliament that created the Financial Ombudsman Service makes provision for this approach at section 228(2) where it states; '*A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case*'. So we can see that the law makes explicit provision for decisions to be reached based on an ombudsman's opinion.

Having listened to the call recording again, I think the call took place and Mr J was assured that the contribution outlined in the policy would be made by Astrenska. I appreciate that Astrenska thinks Mr J prejudiced his position by disposing of his boiler and its engineer hadn't said it was beyond economic repair. But I think that was understandable in the circumstances as he's been assured it didn't need to be inspected and his account details for payment were noted.

Astrenska said that Mr J prejudiced his own boiler by disposing of it before its engineer could inspect it. However, in my view Astrenska prejudiced Mr J's position by suggesting it didn't need to inspect it. As I said in my provisional decision, I don't think Mr J would have been minded to replace his boiler if this wasn't necessary and Astrenska's engineer agreed the boiler was in a '*potentially dangerous state*'.

And so, although I could see that Astrenska's engineer had difficulty inspecting Mr J's boiler I agreed with the investigator's initial findings that Astrenska raised and then disappointed Mr J's expectations and should pay the policy contribution towards his new boiler. I think Mr J acted reasonably in the circumstances by disposing of his boiler.

Putting things right

Having reconsidered what happened with Mr J's claim I remain of the view that he had reasons to believe his claim would be paid and acted accordingly and consequently I think it was unfair of Astrenska not to do so. And I think the fairest way to put this right will be for Astrenska to make the contribution to Mr J's new boiler set out in the policy.

My final decision

For the reasons I have given in my provisional decision and here, it is my final decision that the complaint is upheld. I require Astrenska Insurance Limited to pay Mr J the policy contribution of £250 towards a replacement boiler and I require it to pay him £50 compensation for the inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 September 2022.

Andrew Fraser
Ombudsman