

## The complaint

Mr B and Mrs B complain that Aviva Insurance Limited (Aviva) has refused to pay a claim for the replacement of their boiler under the home emergency section of their buildings and contents policy. They want the claim paid and compensation for the inconvenience.

## What happened

Mr B and Mrs B had a policy with a firm I'll call B, who carried out servicing and repairs on their central heating boiler. They also had a home emergency policy with Aviva, administered by Homeserve, but I'll just refer to Aviva, in this decision, except where further clarification is required. This policy provided for a payment of £500 if their boiler was not working and deemed beyond economic repair (BER).

In summary, Mr B and Mrs B say the boiler had broken down with B attending on 26 June 2020. It had advised that the boiler should be replaced and that parts maybe unavailable to repair it. Mr B says he contacted Aviva in July 2020, to report a fault with the boiler and to enquire whether Aviva would pay the £500 contribution if parts were unavailable.

Aviva says Mr B told it he wanted to replace the boiler immediately as a preventative measure in case it broke down in winter. But due to a mistake it sent an engineer to inspect the boiler on 14 July 2020 even though it was working. Aviva says the engineer reported the boiler was "*in working condition*". And that Mr B had said B was replacing the boiler and he just wanted Aviva to pay the £500 contribution. Mr B says that he showed the engineer water leaking from the boiler. But when he told the engineer that B was dealing with the replacement the engineer didn't carry out any inspection, saying it was best left to B.

Mr B says B returned and fitted a part to the boiler and traced the ongoing leak to a failed diverter valve. Mr B says B adjusted the boiler so that it only provided hot water only pending replacement of this part, which it subsequently advised was obsolete.

Mr B and Mrs B replaced the boiler and having done so raised a claim with Aviva for the £500 BER contribution. Aviva declined the claim. Mr B and Mrs B complained about this. Aviva said it had made the right decision. It said the policy would only pay out if the boiler was BER having already broken down, and when it had attended it was working. But it offered £50 compensation for the confusion caused by it attending when the boiler was working and the amount of phone calls that had been made. Mr B and Mrs B didn't accept this.

Mr B and Mrs B sent a letter from the manufacturer of their old boiler, confirming that the diverter valve part was obsolete. They said this part was required to stop the boiler from leaking. Aviva disagreed and said the policy didn't provide for what Mr B wanted as the boiler was in working condition before it was replaced.

Mr B and Mrs B referred their complaint to our service. Our investigator looked into it, but he didn't uphold the complaint.

He said there was no evidence that the boiler wasn't working before it was replaced as required by the policy Terms and Conditions (T&C's), even if parts were obsolete. So, Aviva hadn't acted unfairly in declining the £500 contribution towards replacing the boiler. Mr & Mrs B disagreed and sent an extract from Aviva's internal records which showed a staff member had recommended their claim should be paid.

Our investigator didn't change his view. He said there was no evidence that the boiler wasn't working on 14 July 2020 when Aviva's engineer attended, so the claim didn't meet the policy terms and Aviva hadn't acted unreasonably in declining the claim.

As Mr B and Mrs B don't agree it has come to me to decide.

### **My provisional decision**

I issued my provision decision on 21 July 2022; I explained the reasons why I was planning to uphold the complaint. I said:

*I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.*

*Unfortunately, this claim became very confused. It appears that Aviva hasn't had sight of all the evidence, which I'll explain below. If it had I think things could have been resolved much earlier. I've sent copies of this evidence from B to Aviva and asked whether it wanted to reconsider the claim in the light of it, but it hasn't responded. As Mr B and Mrs B have been waiting a sometime for their complaint to be resolved I've decided to issue this provisional decision.*

*When bringing any insurance claim, the onus is on the policyholder (Mr B and Mrs B) to prove their claim is covered under the T&C's of the policy. Here, these required that the boiler wasn't working and was also BER.*

*I think Aviva initially considered things fairly and was seeking proof there was a valid claim after Mr B and Mrs B had unwittingly by-passed Aviva's normal claims procedure by "pre-empting" the BER event in having their boiler replaced without giving it chance to confirm these requirements.*

*That is clear from Aviva's final response letter of 22 January 2021, where it says it had contacted the boilers manufacturer (who'd confirmed the part was obsolete) to ask if it had attended a breakdown, but said hadn't heard back from it.*

*I think there is independent evidence from B that the boiler was BER and it's fair that the claim should be paid. When B attended to carry out various repairs it completed and left a checklist document with Mr B and Mrs B summarising what had been done and any observations. Mr B had sent these documents to our service, but some pages appeared to be missing, so I asked him for complete copies which he provided.*

*Mr B says he'd already sent these documents to Aviva in support of his claim. I asked it about this, and it said it hadn't seen anything from B. And I note its final response letter makes no reference to evidence from B, despite Aviva having contacted the boiler manufacturer directly to ask if it had attended a breakdown.*

*Aviva has said the boiler was working when it attended on 14 July 2020. That isn't disputed, but Mr B says there were still problems and parts were awaited and the documents from B clearly show this. When B attended again on 27 July 2020 it changed a part, but the boiler was leaking, requiring a further part, which subsequently proved to be obsolete.*

*So, whilst neither Aviva or the manufacturer had attended to witness the ongoing problem, B had, and its evidence is both expert and independent of Mr B and Mrs B. I'm satisfied this*

*evidence shows the boiler was leaking and couldn't be repaired as the part wasn't available, which is also not in dispute.*

*I've thought about what the policy provides for and I think it's fair to consider the boiler was BER at this point. I don't think it was reasonable for Mr B and Mrs B to put up with a leaking boiler (that potentially might cause damage to Mr B and Mrs B's property), whilst waiting for the obsolete part to fail completely before being able to bring a successful claim. So, I think it's fair that the claim should now be paid.*

### **Other complaint points**

*Mr B has raised some points about how Aviva has handled this complaint and other complaints he has made to it. I'm only considering this complaint here. And our service can't usually consider complaints about how a business has handled a complaint as this isn't itself a financial service and often falls outside our jurisdiction.*

*I do think this claim and the complaint became excessively confused. But, unless some further evidence changes my mind against upholding this complaint (as I've provisionally decided to), I think it's likely that my decision will also resolve Mr B and Mrs B's concerns regarding this complaint. But if Mr B and Mrs B have any further comments, I will of course consider them.*

### **Putting things right**

*At this stage I think the boiler wasn't working in an normal, reasonable manner and was BER. As I think Mr B and Mrs B have now proved their claim, Aviva should pay the £500 BER contribution, which I think provides a fair outcome to this complaint.*

*I think there was some confusion following Mr B initially contacting Aviva about claiming for the boiler and this should have been properly clarified as it acknowledges. I think the £50 compensation it has already offered for the inconvenience caused by this is fair.*

*I asked both parties to let me have any further information or comments they wanted me to consider.*

### **Response to provisional decision**

Aviva said it disagreed with my decision. It said the boiler was working when it had attended and under the policy terms the £500 BER contribution wouldn't have been paid. It said Mr B and Mrs B appeared to be claiming on both the policy with it and also their policy with B by asking it to make repairs. It asked whether Mr B and Mrs B were entitled to a "pay-out under the cover they've got with B as they can't claim twice?"

Mr B and Mrs B provided a substantial response. They were happy that I thought the BER contribution of £500 should be paid but said that £50 compensation was inadequate. They said this wasn't "fair and reasonable" and didn't cover the costs they had incurred in copying and posting documents. They said they had been led down a "blind alley" for several months by Aviva, with responsibility for the policy passing like a "parcel" between Aviva and Homeserve. They said:

*"Aviva complaints specialists had marked their own homework, manipulated claims references and in retaliation to our resolve imposed a gagging order".*

Mr B and Mrs B said their letters to our service of 28 January and 8 June 2022 should be "revisited as they didn't believe they had been given full consideration".

### **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.

Having done so, I've decided to uphold the complaint along the lines set out in my provisional decision.

As for its question about Mr B and Mrs B claiming on two policies, Aviva answers this itself in its final response letter of 22 January 2021, where it says:

*"Your Aviva policy includes a £500 beyond economic repair /obsolete parts clause whereas the (B) policy does not."*

This is also my understanding, so I'm satisfied Mr B and Mrs B weren't dual insured and claiming for the same event twice.

I've taken into account everything Mr B and Mrs B have said I'll set out the reasons for my decision about the claim and the matter of compensation separately below. But for both a key factor in my decision is what I think Aviva knew when Mr B and Mrs B made their claim and when it subsequently reviewed this in considering their complaint. As at that point I don't think Mr B and Mrs B had fairly proved their claim and unfortunately much effort was extended by them in revisiting the same arguments with Homeserve and then Aviva without providing the further evidence they did have.

### **The claim**

The policy terms and Conditions (T&C's) say the boiler is covered for "*failure*" and if it can't be repaired because of a lack of parts it will be "*declared*" BER, having been "*assessed*" by "*our engineer*". So, there are several requirements to making a successful claim on a BER basis.

I've thought about what the policy intends to provide for and what's fair here to both parties. In this case, I think there was a "*failure*" with the boiler and it's clear that the part wasn't available. It's also clear that when the boiler was replaced Aviva hadn't "*declared*" it BER and consequently the normal claims process hadn't been followed.

The onus is on the policyholder to prove their claim. It isn't unreasonable for Aviva to require evidence to support the claim. When Aviva contacted the boilers manufacturer to see if it had attended a breakdown it was seeking this further evidence. And despite Mr B and Mrs B having further evidence from B of a "*failure*", it doesn't seem this was made available to Aviva at the time. Much of the subsequent argument about the claim focuses on part availability and overlooks the key point, that there also needed to be evidence of a breakdown or "*failure*".

Whether the boiler had a fault when Aviva engineer attended is disputed. Aviva says the boiler was in working condition and Mr B and Mrs B were acting only on a preventative basis, which the policy didn't provide for.

The evidence isn't clear here. Mr B says in the disputed telephone conversation the purpose of the visit was not due to a breakdown. And, that his enquiry was about whether the BER contribution would be paid if it did breakdown, as parts were becoming unavailable. In several letters Mr B confirms this. His letter to Aviva of 5 March 2021, says listening to this call will confirm:

*"that the Engineer was NOT attending my boiler ... for a BREAKDOWN."*

But in his letter to our service of 28 January 2022 Mr B says:

*"You have completely missed and then ignored the irrefutable fact that the visit on*

*the 14/07/2020 was due to a logged BREAKDOWN.*

*At the time of the visit water was leaking from our COMBI boiler and (sic) which was pointed out to the HOMESERVE engineer."*

Mr B and Mrs B say the engineer wasn't interested in this problem and didn't make a note on the job sheet. But the engineer did note B was attending over multiple ongoing problems and had recommended replacement.

In his letter to our service of 28 January 2022 Mr B also says:

*"There is no engineering dispute regarding the fact the boiler was leaking water."*

As it was referred to in B's job sheet of 27 July 2020.

However, a leak wasn't mentioned on B's job sheet from 26 June 2020. So, there's no independent evidence the boiler was leaking when the Homeserve engineer attended.

Whatever the explanation here, I think it was clear to Mr B and Mrs B from Homeserve's subsequent letters (detailed below) that the engineer's visit hadn't progressed the matter and that Homeserve required further evidence before it would accept a BER claim. And Mr B doesn't mention the leak in his subsequent letters to both Homeserve and Aviva, focusing instead on parts availability. I consider this aspect further in respect of the issue of fair compensation below.

But in terms of the claim, I think B's job sheet from 27 July 2020, which notes the leak and the part needed to repair it, which subsequently proved to be obsolete, provides evidence of both a breakdown and lack of parts to make a repair. And that's why I think the BER claim should be paid.

Whilst the boiler was still operational (although Mr B says B had disabled the central heating function on 27 July 2020, presumably to stop or reduce the leak), I don't think it's reasonable to say it was working in the normal accepted sense. It's quite possible for a boiler to be "working" when it has been condemned as dangerous and has to be isolated from the gas supply on safety grounds. If the required parts were unavailable to repair that dangerous boiler, I think that would be a BER event.

Mr B and Mrs B's boiler wasn't dangerous, but it wasn't working normally. I don't think it's reasonable to tolerate an ongoing leak, and in the circumstances here I think that Mr B and Mrs B have proved their claim and it's fair that the BER contribution of £500 should be paid.

## **Compensation**

I've considered what Mr B and Mrs B have said. I need to be fair to both sides and view matters impartially. The compensation already offered by Aviva was for the initial misinformation about the claims process. I think that's fair.

I've thought carefully about whether it is reasonable that additional compensation be paid. But I don't think it's fair that it should. There are several reasons why I think this. Some of what Mr B and Mrs B refer to in their response to my provisional decision relates to the handling of the complaint itself. This isn't something our service can usually consider as it is outside our jurisdiction. And, they also refer to matters relating to separate complaints about Aviva, which I am not considering here, for example about subject access requests.

In relation to this complaint, whilst the claim was declined, I don't think it is fair to say Aviva

was at fault at the time because Mr B and Mrs B consistently told both Homeserve and Aviva that the boiler was working rather than pointing out there was a problem which couldn't be repaired as evidenced by B's job sheet.

Homeserve wrote on two occasions after the engineers visit, but before the boiler was replaced. Both letters advised what was required for a BER claim to be made. In response Mr B and Mrs B appear to have focused on parts availability rather than also providing evidence of the existing breakdown. Subsequently they referred to the relatively poor efficiency rating of the old boiler, which isn't relevant to whether it was BER or not. So, even if there was an error over the engineers visit (and there's no evidence of that) I think Mr B and Mrs B were made aware of what was needed to claim successfully on their policy.

Homeserve's letter of 25 August 2020 advised Mr B he couldn't claim *"as the boiler is working"*. It said he should contact it if the boiler did breakdown and it would arrange for an engineer to attend. Mr B replied to Aviva on 28 August 2020 saying Homeserve had:

*"stated the obvious that the boiler is still working and which was never claimed otherwise".*

Mr B does not say that the boiler is leaking.

Homeserve reconfirmed its position in a further letter of 17 September 2020. Mr B called it on 21 September 2020, as the boiler was being replaced. The notes of the call are that Mr B felt he'd:

*"done everything he possibly can to show us the boiler is BER". There is 26 parts that are obsolete."*

But there isn't any reference to the leak. And, whilst Mr B did have further evidence there was a *"failure"* as well as a lack of parts it doesn't seem he made this available at the time. Mr B's letter to Aviva of 8 October 2020 doesn't say the boiler had been leaking but suggests that a condition of the policy required him to take action to avoid an *"Emergency"*. Hence the replacement of the boiler in view of:

*"it's age and the ever increasing number of obsolete parts and breakdowns over the past 12 months."*

Following further calls with Mr B, Aviva messaged Homeserve on 3 December 2020 and forwarded the evidence about the part being unavailable. It also notes that Mr B said he had evidence from B that the boiler required replacing but that:

*"I do not have a copy of these files as the insured does not deal with digital correspondence."*

Mr B and Mrs B say they did provide B's job sheets noting the leak to Aviva. But it says it hadn't seen these before our service sent it copies. It isn't clear what happened here. But I'm satisfied Aviva hadn't previously seen these checklists. If it had I think it would have referred to them in its final response letter to the complaint of 22 January 2021. And it wouldn't have contacted the manufacturer to ask if it had attended for a breakdown. Aviva's letter doesn't refer to a leak from the boiler and states that obsolete parts are only:

*"relevant in the event that parts were needed to actually fix the boiler which is not the case in this instance".*

And:

*“The £500 you are seeking is not what the policy is intended for in the circumstances”.*

So, I think both Homeserve’s and Aviva’s letters are clear in setting out why both the claim and then the complaint were rejected. But Mr B and Mrs B continued to argue that the boiler was being replaced as a preventative measure because parts were obsolete rather than because of an actual breakdown. Had B’s job sheet of 27 July 2020 been referred to earlier perhaps this misunderstanding would have been cleared up sooner.

I’ve thought about the impact on Mr B and Mrs B. I understand their frustration over what has happened. But they didn’t follow the claim’s process and they hadn’t evidenced a breakdown with the boiler, so at that point they hadn’t met the conditions for a claim to be accepted. I don’t think it’s fair to hold Aviva responsible for this. And Mr B and Mrs B weren’t prevented from replacing the boiler by Aviva’s decision.

So, in the circumstances here I think it is fair that the claim has now been evidenced and should be paid. But I think that awarding further compensation above the £50 already offered would be unreasonable as I don’t think Aviva has treated Mr B and Mrs B unfairly given the information provided to it at the time.

### **My final decision**

For the reasons I’ve given above and in my provisional decision, my final decision is that I uphold this complaint against Aviva Insurance Limited.

I direct Aviva Insurance Limited to pay the £500 BER contribution provided for by the policy. I further direct Aviva to pay the £50 in compensation it has already offered to Mr B and Mrs B.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Mrs B to accept or reject my decision before 27 December 2022.

Nigel Bracken  
**Ombudsman**