

The complaint

Mr R complains about Royal & Sun Alliance Insurance Limited's ("RSA") decision to decline his claim under his home emergency insurance.

What happened

Mr R says he noticed a problem with his central heating, so he called a contractor – who Mr R says he uses for plumbing and heating issues. Mr R says the contractor noticed water leaking from the boiler and explained the heat exchanger was beyond repair. Mr R says the contractor switched off the boiler which meant he had no heating or hot water. He says the contractor informed him he would contact him with a quote for a replacement boiler. Mr R says he called RSA's claims helpline several times the following day, but the phone wasn't answered. Mr R says he called several times over the next few days but again couldn't get through to anyone. Mr R says he was then contacted by the contractor with a quote which he agreed and asked him to attend to fit the replacement boiler, which he did the same day. Mr R says he continued to call RSA and managed to speak with their claims helpline about a week later when they registered the claim. Mr R says he felt RSA didn't believe him about his attempted contact, so he complained about this as well as the delay in dealing with the claim.

RSA responded and explained they located a call Mr R made to them the day after discovering the problem where he was on hold for less than two minutes before terminating the call. RSA said the next call was over a week later, by which point Mr R had already replaced the boiler. RSA said the policy excludes any costs incurred prior to notification to RSA and the Boiler Replacement Contribution is only applicable where RSA's appointed engineer has deemed the boiler beyond economical repair. RSA said they aren't aware of any extenuating circumstances which prevented Mr R from contacting RSA and the one attempt before replacing the boiler wasn't a reasonable attempt to get through to their claims team. So they didn't uphold the complaint. Mr R referred his complaint to our service as he feels it's unfair for RSA to refuse to pay a contribution towards his replacement boiler.

Our investigator looked into things for Mr R. He thought RSA had unfairly declined Mr R's claim and recommended they contribute £500 towards the boiler replacement and pay £150 compensation. Mr R agreed but RSA disagreed so the matter has come to me for a 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.

Having done so, I've decided to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

I think it's important to stress I've made my decision based on the information I have. I can see our investigator has provided RSA with details of the complaint being made against them and allowed them a number of opportunities to provide information. It's important that we get an account from all parties in order to consider the complaint fully. In this case, while

RSA have disagreed with our investigator's view and referred to their complaint response, they haven't provided the evidence to support their account. I'm satisfied we've taken sufficient steps, and given sufficient time, to enable them to provide the evidence requested. I must be fair to both parties and don't feel it's reasonable, in this case, for Mr R to have to continue waiting for an answer to his complaint.

My starting point is Mr R's home emergency policy document. This sets out the terms and conditions and says, for cover to apply, the situation that arises must fall within the definition of an emergency under each respective section of cover in the policy. It defines a contractor as "A *qualified person approved and instructed by [policy administrator] to undertake emergency work.*" Under a section headed 'Claims' it says, "*Please note that if you should engage the services of a contractor prior to making contact with the [policy administrator] any costs that you incur are not covered by this insurance.*" Mr R's policy includes a Boiler Replacement Contribution cover which provides a limit of £500 towards the cost of a replacement boiler. The terms and conditions say, "*Subject to acceptance of a claim...where your boiler has failed and is deemed by the contractor and us to be uneconomical to repair, we shall contribute (upon production of an original receipt for payment) towards the cost of a brand new like for like replacement.*"

There's no dispute between the parties that Mr R didn't register a claim before the installation of the replacement boiler or that the contractor who replaced the boiler wasn't appointed by RSA. RSA have declined the claim on the basis the policy excludes any costs incurred prior to notification to RSA and the Boiler Replacement Contribution is only applicable where RSA's appointed engineer has deemed the boiler beyond economical repair. So, in declining the claim, I'm aware RSA have acted in line with the terms and conditions of Mr R's policy.

But I also need to think about whether Mr R has been treated fairly here. And, I don't think he has. Mr R's testimony is that he made several calls to RSA over a period of a few days prior to the boiler being replaced. And, although RSA say they only have evidence of Mr R making one call during this time, they've provided no evidence showing this. I think it's also important to note that I haven't received any evidence of call records from Mr R showing he made several calls to RSA prior to instructing the contractor to replace the boiler. So, in the absence of evidence from either party demonstrating how many calls were made, I've thought carefully about the information I do have.

The facts show Mr R has breached one of the terms and conditions here as the boiler wasn't declared uneconomical to repair by RSA's own contractor – so this doesn't strictly meet the terms relevant and necessary for the Boiler Replacement Contribution to apply. That said, I've considered relevant provisions of the Insurance Conduct of Business Sourcebook ("ICOBS") here. Firstly, ICOBS: 8.1.1 R says an insurer must not unreasonably reject a claim and, secondly, ICOBS: 8.1.2A G sets out the circumstances where it would be unreasonable for an insurer to reject a claim. This section refers to the Insurance Act 2015. The relevant provision which applies here is S.11 of the Insurance Act 2015 which refers to terms which aren't relevant to the actual loss. This goes further to say:

"11. (1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—

- (a) loss of a particular kind,*
- (b) loss at a particular location,*
- (c) loss at a particular time.*

(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred."

I'm required to take account of the law, and regulatory rules, when reaching fair and reasonable decisions and so it's right that I take account of both ICOBS and the Insurance Act 2015 when reaching my decision. And, in summary, this says, if there has been non-compliance by a customer of a term within the policy, a claim rejection by an insurer would be unreasonable unless the circumstances of the claim were connected to the non-compliance of the term.

When applying ICOBS: 8.1.2A G and S.11 of the Insurance Act 2015, it's clear a loss has occurred and the term requiring RSA's contractor to deem the boiler beyond economical repair hasn't been complied with. So, RSA can only rely on Mr R's breach of this term to justify their decision to decline the claim if his non-compliance has increased the risk of the loss which occurred. Looking at the information, I don't think that's the case here.

I've looked at the relevant terms applicable to the Boiler Replacement Contribution. I believe the main requirements for a contribution to be made under this section of the policy are for there to be a need for emergency work and for a qualified person to deem the boiler beyond economical repair. Mr R has provided a job report from the contractor who carried out the work. The contractor is from a company which specialises in plumbing and heating issues – so I believe it's reasonable to treat the contractor as a qualified person.

The report goes into detail about the contractor's investigation of the boiler and the specific problem. It refers to the condition of the heat exchanger which was causing a leak as well as water damage to the electrics. So, in view of this, I'm persuaded by Mr R's testimony that the contractor had to switch off the boiler. That being the case, Mr R says he was left with no heating and hot water. And, looking at the terms and conditions of Mr R's policy, it says the insurance covers a breakdown of the primary heating system which results in the loss of heating and hot water. So, I'm satisfied this falls within the policy's definition of an emergency. The report also sets out the contractor's assessment that the boiler is "unrepairable" and "would not be cost effective to repair..." – so their advice was to replace it. So, I'm satisfied that a qualified person has deemed the boiler uneconomical to repair. Mr R has also provided an invoice showing the amount paid to the contractor for replacing the boiler.

So, while I agree RSA's own contractor didn't deem the boiler beyond economical repair, I can't say this non-compliance with the term of the policy is connected to the circumstances of the claim. I can't see that, RSA's own contractor not examining the boiler or not deeming it beyond economical repair, has resulted in the loss occurring or it becoming worse.

I acknowledge RSA, and other insurers, would want their own expert to carry out an examination as this would give them certainty around a boiler being unrepairable and would help validate a claim. But I'm not persuaded Mr R's non-compliance with the term increased the risk of the loss occurring in the particular circumstances of this case – or that RSA's own contractor not being able to examine the boiler has left reasonable doubt about the authenticity of the claim. I say this because, as mentioned above, the evidence shows a suitable expert has examined the boiler and deemed it beyond economical repair. In accordance with ICOBS and the Insurance Act 2015, RSA is unable to exclude or limit their

liability under the policy. I see no reason to depart from the law here and as such I'm not persuaded RSA have applied their terms fairly when considering Mr R's claim.

My role requires me to say how a complaint should be settled quickly and with minimal formality. So, taking into account all the information, I think it's fair and reasonable in the circumstances for RSA to pay Mr R the Boiler Replacement Contribution limit of £500. I think it's also fair and reasonable in the circumstances for RSA to pay Mr R £150 compensation for the upset and inconvenience caused by the decision to decline his claim.

Putting things right

I've taken the view that RSA have unfairly declined Mr R's claim for the boiler contribution, so they should pay Mr R the £500 limit. RSA should also pay Mr R £150 compensation for the upset and inconvenience caused.

My final decision

My final decision is that I uphold the complaint. Royal & Sun Alliance Insurance Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 May 2023.

Paviter Dhaddy
Ombudsman