

The complaint

Mr C's complaint relates to his central heating insurance policy with Aviva Insurance Limited.

Aviva is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Aviva has accepted it is accountable for the actions of the agent, in my decision, any reference to Aviva includes the actions of the agents.

What happened

Mr C held boiler and central heating insurance cover with Aviva since December 2016. The insurance cover provided for repairs in the event of a fault with his boiler or central heating system, and the cost of a new boiler (but not installation due to the age of his boiler) if it was deemed to be uneconomic to repair. Mr C also had a contract with Aviva for the provision of an annual service and safety check.

Aviva sent Mr C renewal documents in December 2023. Mr C says the price had increased significantly, so was considering his options. Mr C says he had not had a service carried out under the contract with Aviva since 2021 (as the contractor Aviva sent refused to comply with the Covid-19 risk protocol) and he therefore paid privately for an annual service and safety check in 2021, 2022 and 2023. Mr C says he had therefore not derived any benefit from that part of the contract with Aviva.

Mr C contacted Aviva to discuss the renewal. Aviva said it could remove the service agreement but this would mean the existing policy would have to be cancelled and a new policy set up. Mr C says he asked specifically if the already existing cover would continue unchanged and was told there would be no change to the cover provided. A new policy with a new premium was agreed and arranged.

However, Mr C says he shortly afterwards received letters saying he had cancelled the policy and that as he had a new policy, Aviva would need to carry out a boiler health check and check the central heating. Mr C is very unhappy with this, as he said Aviva had confirmed his policy would continue unchanged and as there was no requirement for a boiler health check under the previous policy, this meant Aviva confirmed there would not need to be one for the new policy. Mr C complained to Aviva about this in February 2024.

Aviva wrote to Mr C in April 2024 to say it was cancelling the cover for the boiler, as the boiler check had failed (although it was not carried out). Mr C complained but Aviva maintained the boiler check was required. Mr C therefore referred the matter to us. Shortly afterwards, Aviva said it would refund the premiums Mr C had paid for the new policy and pay £150 compensation but it could not reinstate the old policy, or waive the boiler health check requirement for the new policy.

One of our Investigators looked into the matter. She thought Aviva's offer was reasonable.

Mr C does not accept the Investigator's assessment, which he says is flawed and unfair to him. Mr C has made a number of points in response to the Investigator's assessment. I have

considered everything he has said but have summarised his main points below:

- Aviva didn't just fail to mention there would need to be a boiler health check with the new policy, as stated by the Investigator, but Aviva's agent expressly told him there would be no need for a boiler health check and there would be no change in the cover he had. This is relevant to the compensation appropriate for the fact he made the decision to change the policy based on this statement to him by Aviva.
- A call recording should be available to confirm this.
- The policy gives Aviva the right to impose sanctions on the cover provided following the boiler health check. So it could change the cover even though his boiler had been accepted for cover since 2016.
- And the possibility he *might* still have cover for any problems identified by the boiler health check is not acceptable given he previously had a contract that bound Aviva to carry out any repairs required to the boiler and source and provide a replacement boiler if not economically repairable. He is therefore worse off as a result.
- Aviva contracted with him (by way of the phone call) that no boiler health check would be needed and it has dishonoured the agreement.
- Aviva says it could not reinstate the previous policy but there is no reason it could not have been reinstated, given it was cancelled through no fault of his own.
- The £150 offered by Aviva is at the lower end of the range on our online guidance for inconvenience and worry caused. He has had to spend several hours pursuing this complaint and will also have to spend time in the future organising a new boiler or repairs that should have been covered by his policy with Aviva.
- The sum of £750 would be more appropriate compensation for the inconvenience, stress and worry caused to him and because Aviva took the entire eight weeks deadline for responding to his complaint, despite the fact that all Aviva had to do was to check the voice recording of the relevant telephone call but Aviva also misrepresented the situation in its final response letter of February 2024 and has prolonged the period of worry for him.
- As to his financial loss, he has paid exactly £2,359.56 in insurance premiums to Aviva, from December 2016 until Aviva withdrew cover in March 2024. He has therefore invested long-term in the insurance policy so as to be sure that when his boiler eventually fails he is covered for a replacement. This amount and the cost of a replacement boiler (likely to be around £1,200 not including installation) should therefore also be a reference point when assessing compensation. Although given that Aviva would know that insurance such as this is intended to cover the life of the boiler, compensation should be nearer the £2,359.56 he paid for the insurance.
- His position is supported by the law and insurance principles, as Aviva has not acted in good faith. This lack of good faith should also be borne in mind when assessing compensation.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

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.

Mr C says he was expressly told there would be no change in cover when discussing the renewal of his policy and therefore no need for a boiler health check. Aviva has not provided a recording of the call in question so I cannot be certain what was said. However, Aviva has not specifically disputed Mr C's account that he was told cover would continue unchanged and was not told there'd need to be a boiler health check. I am therefore satisfied it is reasonable to proceed on the basis that this is accepted as having been what Mr C was told

during the relevant phone call.

Having considered everything Mr C has said, I also accept that Mr C would likely not have gone ahead with the change of policy, if he had known of the need for a boiler health check. I say this because there's no evidence there was such a significant difference in the price of the policy options that it would have outweighed his concerns about the boiler health check. I therefore have to consider the impact, if any, this has had on him and what is required to put this right.

Mr C says Aviva did not act in good faith, and in fact suggests it acted in bad faith towards him, and that its conduct should be taken into consideration in assessing appropriate compensation. I have seen no evidence of a lack of good faith. Even on Mr C's testimony of what was discussed, it seems to me an oversight or misunderstanding about what setting up the new policy would entail, rather than a deliberate attempt to mislead Mr C. In any case, even if I am incorrect about this, I have no power to punish Aviva for anything it has done wrong. I do not have the power to fine or penalise Aviva for its actions, as we do not regulate financial businesses.

Mr C also says Aviva verbally contracted with him to provide the same cover with no boiler health check. While I acknowledge that what Mr C was told over the phone by Aviva led him to agree to the new policy, I am not persuaded that any statement in that call forms the binding contract between Mr C and Aviva. The contract between them is as set out in the policy terms sent to him, which include the "*welcome letter*" dated 11 December 2023, which set out the need for the boiler health check: "*Don't forget, you need to book a Boiler Health Check within 90 days of buying your policy*". Mr C may have assumed this did not apply to him but it does form part of the contract terms and so I do not consider that I can reasonably require Aviva to waive the requirement.

I also note that Mr C did not contact Aviva about it within the 28 day cancellation period. If he had done so, then it might have been possible to cancel the change of policy. However, given the time that passed from the start of the new policy and the formal complaint about the boiler health check, I also consider it not unreasonable that Aviva said it cannot reinstate the previous cover.

Mr C is concerned, especially as the boiler and central heating system will be older than when he started the cover in 2016, about future breakdowns not being covered if Aviva found something amiss in the boiler health check. Mr C says that the fact Aviva would have had the right to apply sanctions to the policy following the boiler health check means he is worse off than before and the fact his cover *might* not have been affected (if the boiler had passed the boiler check) is not sufficient.

However, the health check did not take place, so it is impossible to know if there would have been any issue with the cover going forward. While I appreciate he did not think this should have been requested, Mr C has not therefore experienced a financial loss but says it is inevitable that he will do at some point in the future. I accept that Mr C has lost the peace of mind he had with the original policy and that if a fault had been found during the boiler health check, there might have been a potential loss of opportunity to claim for repair, or to claim for a new boiler if his were deemed beyond economic repair due to any such fault.

Mr C says that compensation should therefore be assessed with reference to the cost to him of a replacement boiler, as he would have continued the original policy until his boiler could no longer be repaired. I have considered what Mr C has said. However, it is impossible to accurately predict if and when the boiler might have broken down or become uneconomic to repair. And, while I appreciate the point Mr C has made about this, he has not allowed the boiler health check to take place, so this potential loss has not been established. It seems

just as likely to me that the boiler would have passed the boiler health check and cover would have continued unchanged. While Mr C says that should never have been asked of him in the first place, and while I accept the fact he was not aware of the need for a boiler health check if he changed the policy, the fact he refused to allow Aviva to carry out that check means I do not have any convincing evidence to support that he has suffered the loss he suggests. I do not therefore consider the potential cost of a replacement boiler is appropriate level of compensation here.

Mr C also refers to the cost of the insurance since 2016 and says this amount is a valid reference point for assessing compensation due to him. However, Mr C has received the benefit of the cover in exchange for those premiums up to renewal in December 2023. I do not therefore agree that this is an appropriate starting point for compensation either.

Having considered everything very carefully, I consider the refund of premiums paid of the new policy and the sum of £150 compensation to be reasonable. This reflects the fact Mr C would likely not have taken the new policy, if he had known there'd need to be a boiler health check and is in my opinion reasonable compensation for the trouble caused to him.

Mr C has also said that additional compensation is warranted given the time taken by Aviva to respond to his complaint, as well as the time involved in him pursuing the complaint. However, complaint-handling is not a regulated activity in its own right, so I cannot consider Aviva's handling of Mr C's complaint. And we do not generally compensate for the time taken to pursue a complaint.

My final decision

I uphold this complaint against Aviva Insurance Limited and require it to do the following:

1. Refund Mr C the premiums paid for the new policy since December 2023, together with interest at 8% simple per annum from the date each premium payment was made to the date of reimbursement; and
2. pay Mr C the sum of £150 compensation for the distress and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 December 2024.

Harriet McCarthy
Ombudsman