

The complaint

Mr L's complaint is about his central heating insurance policy with Evolution Insurance Company Limited.

The parties will see that I've changed the 'respondent' from the name of the agents that administer the policy and handle claims and complaints on behalf of Evolution Insurance Company Limited. This is because we have no jurisdiction over them for a complaint about the handling of the insurance policy; they are an insurance intermediary, not an insurer.

This is an important legal technicality but it does not affect the outcome of the complaint and, as the agents responded to the complaint on behalf of Evolution Insurance Company Limited, there's no need for it to review the matter again or issue a further final response.

Part of the complaint concerns the actions of the agents Evolution uses to deal with claims and complaints on its behalf. As Evolution has accepted it is accountable for the actions of the agents, in relation to any of the insurance provision, any reference to Evolution in my decision includes the actions of the agents.

What happened

Mr L had two contracts, one for the provision of an annual service (provided by the agents) and one providing insurance cover (underwriter by Evolution) in the event of the boiler breaking down.

The boiler was serviced in September 2023. During the service the engineer said that the fan and a gas valve kit needed to be replaced, as the gas emissions were high, and that the boiler was 'at risk', meaning that it was potentially dangerous. The boiler was therefore switched off. Evolution said this work was not covered by the insurance policy - as it excludes cover for work required if the boiler is at risk - and Mr L was quoted £747 for this work.

Mr L got his own contractor to replace the fan and gas valve. However, Mr L says his contractor told him that the fan and valve were not needed and instead it was the heat exchanger that needed replacing. Mr L says this was due to inadequate servicing by the agents.

Mr L complained, so Evolution sent a contractor to assess the boiler. The contractor said the emission issues that had caused the boiler to be at risk were now worse than before. Evolution says it also spoke to the manufacturer, who told them that if the fan has already been replaced, then it was likely that the heat exchanger needed to be replaced.

Evolution agreed that a new heat exchanger would also be needed but said this meant the boiler was beyond economic repair, as the cost of repair (over £1,000) would be more than the market value of the boiler, which it put at around £200. In addition, it said that as the boiler was still deemed to be at risk, the work is not covered anyway.

Evolution says that after installing the fan and gas valve kit, Mr L's independent engineer found that a heat exchanger was also required. This confirms that both engineers followed the manufacturer's instructions by installing the fan and the requirement of the heat exchanger could only be found after installing the fan. It said its first contractor stripped and cleaned the heat exchanger, and he also stated that the boiler was 'at risk' due to the fan running too slow and the gas valve was not adjusting. It does not accept it misdiagnosed the fault with the fan replacement, and it maintains that it was the correct decision to replace the fan.

Evolution also questioned why Mr L's engineer fitted the fan and gas valve parts if he did not think they were needed and says he has not provided any emissions reading which is concerning.

Evolution did, however, offer to reimburse the cost of the gas valve kit of £158.93, as it agreed it is possible this was not needed. Evolution says it has based this amount on what it would have cost it, as Mr L's engineer has not provided a breakdown of his costs.

Evolution also says that both visits including the one whether the boiler was deemed to be beyond economic repair were under the non-insurance part of the policy. This is because it reaffirmed the 'at risk' diagnosis done at the service visit and the fault was linked to the emissions issue found then; and this visit was not carried out as part of the insurance.

Mr L is very unhappy with this and referred the complaint to us. He has made a number of submissions in support of his complaint. I have considered everything he has said but have summarised his main points below:

- If Evolution had examined the heat exchanger at the service visit, it would have known that also needed replacing and so he would have replaced the boiler instead of wasting money on repairs and then having to replace it anyway.
- The heat exchanger had not been cleaned for years, which was a failure of the service.
- His contractor replaced the fan and the gas valve because that's what he paid him to do based on what he was told by Evolution. He had the parts which were non-returnable, so there was no point not replacing them, even though his contractor could see the heat exchanger was the issue.
- The annual service is part of the contractual obligation in Evolution's role as an insurer, so this is within our remit.
- The heat exchanger should have been covered under the policy.
- He was without heating and hot water for two months, with elderly people in the property.
- The restrictive cover was not clear at the outset.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she did not think there was enough evidence that the diagnosis that the fan needed to be replaced was incorrect; and she was satisfied the repairs were excluded from cover.

Mr L does not accept the Investigator's assessment, so the matter has been referred to me.

Preliminary matters

Mr L says that the boiler service is part of Evolution's contractual obligation to him and is within our remit. He says he could not have boiler insurance that did not include the requirement for a service. And Evolution says that the diagnosis is linked to the emissions issue, it is not part of the insurance cover.

The documents are clear that the annual service is not provided by Evolution. Instead it is provided by the agents they use to handle the insurance cover on its behalf but not in relation to the service, which is not an insurance provision. While the initial fault was identified during the boiler service, the complaint I am considering is what was diagnosed and whether the repairs needed should have been covered under the insurance cover or not. I do not think it makes a difference that this was initially identified during the annual service, as Evolution has suggested.

I realise that from a customer perspective there is an overlap here but it is only the insurance activities that are in our jurisdiction. As the Investigator has already explained, the diagnosis of the fault, and decision on whether the necessary repairs are covered, are insurance activities but the servicing is not. Therefore I cannot consider Mr L's complaint about the standard of servicing and whether this has led to the failure of any parts of his boiler. I can consider the diagnosis and the refusal of cover.

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 L's policy provides cover for:

"BOILER BREAKDOWN

What we can cover

Repairs or assistance in an emergency following the breakdown of your boiler which results in a major loss of heating and/or hot water or an uncontrollable water leak, unless your boiler is beyond economic repair.

If we've assessed that your boiler is beyond economic repair we will provide you with a £250 contribution to a new boiler from ..., either through a discount or cashback.

- Your replacement, if you choose to accept it, will be provided and installed by our sister company It may not be the same make or model or fitted in the same place.*
- We will refund your excess in the event of a boiler replacement."*

"Beyond economic repair

Boilers have a working life of, usually, 7 to 20 years. Their value reduces over time. If, after an engineer visit and assessment repair costs are more than the current value of the boiler, we won't carry out a repair."

The policy also has the following general condition:

"Gas Safety

There may be situations when, for reasons of safety, we declare your boiler 'at risk' or 'immediately dangerous'.

'At Risk' is a potentially dangerous appliance where one or more faults exist and which, as a result, may endanger life or property. An example of this is inadequate ventilation. In these circumstances, we have a duty to switch the appliance off and advise you not to use it.

'Immediately Dangerous' is a dangerous appliance/installation which if left connected to a gas supply/ is an immediate danger to life or property. Examples of this are combustion products entering the room, and gas escapes. In these circumstances, we have a duty to disconnect the appliance from the gas supply.

You are responsible for the cost of work we undertake to address an 'At Risk' or 'Immediately Dangerous' appliance."

So, any work to rectify a boiler at risk is not covered. This is restrictive and Mr L has said it was not made clear how restrictive the cover was when he first bought the policy. However, any complaint about his understanding of the policy before taking it would have to be addressed separately.

The level of emissions from the boiler (confirmed by Evolution's contractor and Mr L's own contractor) meant the boiler was unsafe, so I am satisfied that it was reasonable to deem it 'at risk'. As such the policy exclusion above does apply and the repairs required to rectify the emissions issue are not covered by the insurance policy. (This includes the heat exchanger but I will address this further below.)

Mr L is also unhappy as he says the cause of the issue was misdiagnosed and as a result he paid for the replacement of the fan and gas valve unnecessarily. Mr L says the heat exchanger should have been checked first and if it had the boiler would have been deemed uneconomical to repair at the outset and he would not have had to pay for the fan and gas valve to be replaced.

Evolution agreed to refund the cost of the gas valve but said the fan was required. Evolution has refunded the amount it says it would have cost it to replace the gas valve, as Mr L had not provided a breakdown of his contractor's costs for this part of the work. In the absence of any other evidence about this cost, I think this is reasonable.

I will now address the diagnosis of the fan. I have considered the undated report provided by Mr L's contractor, which says:

"After attending ... on the 12/10/2023 to fit spark electrodes, gas valve and fan that the customer had ordered because they had been previously diagnosed by a 24/7 engineer.

When doing the combustion analysis it was apparent that the manufacturer levels were not achievable. I then removed the heat exchanger front door and found it to have the air ways badly blocked, using the Worcester cleaning tool for this model I attempted to clean said air ways.

Unfortunately because of lack of correct servicing as per the manufacturer instructions this heat exchanger is now blocked and requires replacement. It is my opinion as a Gas Safe registered engineer that the initial diagnosis was incorrect and that neither the gas valve or the fan would have been required."

Mr L says his contractor replaced the fan and the gas valve (which he had already purchased) because that is what he instructed them to do based on Evolution's diagnosis. Mr L also says he could not return the parts in any event, so it made sense to fit them. I also note that Mr L's contractor changed the electrodes, which were not mentioned by Evolution's contractor.

Mr L's contractor has said the initial diagnosis was incorrect and he does not think the new gas valve or fan were needed and I note he says he fitted them because that was the

previous diagnosis by Evolution's contractor and Mr L had provided the parts. However, it seems unlikely to me the contractor would fit parts without testing themselves that they were needed. And the report confirms that Mr L's contractor did not check the heat exchanger until after fitting the fan and gas valve and then running tests, which showed the emission were not at the required levels. If it was reasonable to expect the heat exchanger to be checked first, it does raise a question as to why he did not do this.

I also note the comments made to Evolution by the manufacturer. This supports that as there was evidence that the fan was running too slow and given the emissions results, that it was not unreasonable to replace the fan initially.

While the heat exchanger also needed replacing, having considered everything provided to me, I do not think there is enough convincing evidence that the replacement of the fan was not a reasonable diagnosis at the time. And I am not persuaded that it has been established, more likely than not, that the only part that needed to be replaced was the heat exchanger.

I am not therefore persuaded that Evolution needs to reimburse Mr L for the cost of the replacement of the fan.

Mr L has also said the replacement of the heat exchanger should have been covered under the policy but given the evidence from Evolution's contractor and his own contractor, it seems the fault with the heat exchanger was contributing to the emissions levels and so to the fact the boiler was 'at risk'. As such the cost of the new heat exchanger would also be excluded from cover. In addition, Evolution says the cost of this meant the boiler was beyond economic repair in accordance with the policy terms. It appears that Mr L has not disputed this. I have not however, made any finding about this, as I don't think I need to in order to fairly determine the outcome of this complaint. I say this because I have already determined that the cost of the replacement heat exchanger is excluded due to the boiler being at risk.

Mr L says the heat exchanger also needed replacing because it was not cleaned regularly during the annual services. As stated, I cannot address any complaint about the annual services.

However, Mr L is also adamant that if he had been told the heat exchanger needed replacing at the outset, he would have replaced the boiler then and would not have incurred the cost of replacing the other parts. It is impossible to know for sure what Mr L would have decided at the time. Mr L might have decided to replace the boiler but he might have decided to repair it. Just because it was uneconomic to repair according to the policy terms does not mean it was irreparable.

I do not consider that the fact Evolution did not tell Mr L that the heat exchanger also needed to be replaced means that it is responsible for the cost of replacing the boiler, or repairing it. I say this because, for the reasons set above, it was not unreasonable to diagnose the need to replace the fan first; and it is not uncommon for some parts to be repaired or replaced and then for other problems to become apparent. Again, I also bear in mind that Mr L's own contractor did not check the heat exchanger before replacing the other parts either; and I do not find it persuasive to say he did this solely because Mr L relayed a diagnosis from another contractor.

The repairs were not covered and Mr L was told this relatively promptly. So while he was without a working boiler for some time after that and I appreciate this would have been difficult for him and his family, the time taken to get his own contractor to work on the boiler is not down to anything Evolution did wrong.

Having considered everything very carefully, despite my sympathy for the position Mr L was in, I do not consider that I can reasonably make any award against Evolution.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 November 2024.

Harriet McCarthy
Ombudsman