

The complaint

Mr S has complained about the service provided by ARAG Legal Expenses Insurance Company Limited ('ARAG') following a claim for boiler break-down under his home emergency policy. For the avoidance of doubt, the term 'ARAG' includes reference to its agents and contractors for the purposes of this decision.

What happened

Mr S called ARAG to say that the boiler at his rental property had stopped working in February 2024. He requested assistance from ARAG as his insurer at the relevant time. He said that an ARAG engineer eventually attended the property after numerous phone calls. The engineer informed Mr S that a power flush was needed and that the issue was due to a maintenance issue. Mr S said that the boiler was checked each year due to required landlord safety checks. Mr S then called his own plumber, who said a power flush wasn't needed, and provided a quote to repair the boiler. Mr S ultimately decided to replace the boiler.

ARAG considered that it had fairly declined the repair of Mr S's boiler in this instance, and it referenced the terms and conditions of the relevant policy. Following Mr S's complaint, ARAG maintained its position and Mr S referred his complaint to this service.

The relevant investigator didn't uphold Mr S's complaint. She wasn't persuaded that the rejection of the claim by ARAG due to maintenance issues was incorrect and wasn't persuaded that the system didn't require a power flush. Therefore, she considered work needed to be carried out under the terms of the policy as normal maintenance of the system, which wasn't covered by the emergency policy.

Mr S was unhappy about the outcome of his complaint and the matter has now been referred to me to make a final decision in my role as Ombudsman.

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.

The key issue for me to decide is whether ARAG applied the terms and conditions of the policy in a fair and reasonable manner in declining to cover repairs to Mr S's boiler. I consider that it did so, and I'll explain why. In reaching this decision, I've also considered the submissions of the parties as summarised below.

I turn firstly to Mr S's submissions in support of his complaint. He said that the relevant engineer reported that a '*power flush*' would be required to repair the boiler fully as the heating was working but there was no hot water, and that he hadn't maintained the boiler adequately. Mr S said that he'd done so, '*and every year stringent checks are carried out as required by the legislation relating to gas boiler safety necessary for tenanted properties.*' He said these checks had been carried out by a registered gas engineer.

Mr S then called his own plumber and was advised that a power flush wasn't needed for the boiler to be repaired and he quoted for the repair cost, in direct contradiction to ARAG's stance. Following multiple requests and phone calls, Mr S said that ARAG reluctantly agreed to re-inspect, but sent the same engineer who again insisted upon a power flush. Mr S's own plumber again insisted it wasn't needed to repair the boiler.

Mr S said that ARAG then became '*very difficult*' and accused Mr S of not maintaining the boiler and stating that it wasn't responsible for repairing the boiler in any event. It said that its photographic evidence showed that power flushing was necessary, and as it was a maintenance issue, it wouldn't carry out a repair. In view of the impasse, Mr S then engaged an entirely new plumbing company to assess the situation. The new company again stated that a power flush wouldn't be required to repair the boiler and that a power flush wouldn't necessarily prolong the life of the boiler. ARAG again insisted that its engineer's report was correct. Mr S said that both contractors advised that it would cost ARAG a substantial amount to repair the boiler and that it was looking for exclusions under the policy as both agreed that the boiler was well looked after.

As the boiler failure happened in February, and the tenant needed hot water due to the cold, he had to act, and obtained two quotes which were for over £900 for the repair of the boiler. In conclusion, Mr S said that ARAG didn't fix the hot water, even though this was the whole point of having emergency cover. Mr S also stated that ARAG had misquoted him. He'd said that he said he'd be looking to get the boiler flushed, not that he had indeed done so. Ultimately, Mr S bought a new boiler with a 10-year guarantee, as he felt that from his experience with ARAG, that if he'd spent over £900 on the repair, then ARAG '*would still find an excuse not to repair it the next time it broke down.*' Mr S felt that ARAG was taking advantage of landlords and still taking premiums annually. He and his wife had found the experience to be very distressing.

I now turn to ARAG's submissions regarding Mr S's complaint. It said that Mr S raised a home emergency claim in February 2024 regarding the boiler breakdown. It said that Mr S was informed that an engineer would attend on the same day. It confirmed that the engineer reported that a power flush would be required to restore the boiler to full working order as the heating was working but there was no hot water.

Having considered its engineer's report, ARAG considered that the issues with Mr S's boiler were maintenance-related. As maintenance issues weren't covered under the policy, Mr S was advised to contact a private contractor, or his main insurer to seek further assistance. It noted that Mr S then confirmed that his contractor had replaced the boiler towards the end of February 2024. It stated in its final response letter that Mr S had called to confirm that the system had been flushed in mid-February 2023, however there was still no hot water. It confirmed that a manager had nevertheless telephoned Mr S to advise that the claim couldn't go ahead in any event due to maintenance issues.

ARAG noted that Mr S's engineer had advised that a power flush wasn't needed, and that he'd since provided an invoice for the replacement boiler. ARAG relied upon photographs supplied from its engineer's visit which it said showed '*contaminated water as proof of his diagnosis.*' It said that although Mr S's engineers' reports suggested there was no need for the system to be flushed, it argued that this was after Mr S's call, in mid-February 2024, where it said that Mr S confirmed that the boiler had already been flushed.

Turning to ARAG's engineer's report, this recorded that a plate was blocked, and a new plate and heat exchanger was required. It also recorded that the water quality '*isn't great*'. The engineer added that '*the water is so bad it will block the new plate quickly*' and so the system needed to be flushed beforehand. It recorded that this was to happen before his return. On return, the engineer recorded that as the recommended power flush wasn't done,

'the plate has been fitted onto black water' and that the system was *'still struggling – likely due to the systems water quality.'* He then referenced the parts that would be required but he still felt that a flush had to happen first, or it would be a waste of time.

I now turn to my reasoning for not upholding this complaint. The starting point for insurance claims will be the wording of the policy itself, as this forms the basis of the contract between insurer and consumer. In this case, the Landlord Emergency section of the policy does, in principle, cover the main hot-water or central-heating system of a property. This would be where the relevant incident was sudden, unexpected and required immediate corrective action, for instance to relieve unreasonable discomfort, risk to health or difficulty to tenants. The sudden failure of the boiler in the winter months would amount to such an incident.

The standard exclusion clauses in the policy do, however, make it clear that cover wouldn't be in place for *'normal day-to-day maintenance... [that the Landlord] should carry out or pay for.'* The cost of providing a replacement boiler is similarly excluded. There is also an exclusion in place where a repair is uneconomical, where *'any repair to a boiler... is more than the cost of replacing it.'*

On the basis of the wording of the policy and the available evidence, this is a finely balanced decision. I can appreciate that Mr S paid for his landlord insurance policy, and so thought that the 24-hour assistance offered by ARAG for his unexpected boiler breakdown would be honoured. I can also appreciate that he understandably wished to deal with the issue on an urgent basis so as not to leave his tenants without hot water during the winter months.

I can see that ARAG's engineer reported that the plate was blocked and that a new plate was required. He indicated that the system needed to be flushed as he thought that without this action, the new plate would be blocked quickly. The photographs in the report support the engineer's conclusion that the system's water was of poor quality at the time and brown in colour. On his return visit, the engineer did fit a new plate despite him reporting that his recommended power flush hadn't happened. He found that circulation was still struggling, and he considered that this was likely to be due to the water quality. He also considered that the fitting of further parts, including a pump head, would be a waste of time without the flush having been carried out. There is conflicting evidence on the necessity for a power flush and Mr S's contractors were clear that this wasn't necessary.

The engineer's report didn't specifically state that the breakdown itself had occurred due to the quality of the water or due to lack of maintenance. However, this is certainly the implication of the wording of his report, as he states that the plate was blocked and that without a power flush, it would become blocked again quickly. After fitting a new plate, the circulation still struggling and was *'likely to be due to the system water quality'*. Unfortunately, Mr S's reports also don't provide any counter-argument as to the reason for the original breakdown although one contractor does state that *'the diverter in the diaphragm is gone'* This might suggest a problem other than wear and tear.

I've noted that the photographs attached to ARAG's engineer's report, indicate that the water quality was indeed poor and would logically need flushing through. It's therefore understandable that the engineer would recommend a power flush to ensure that the boiler worked to its optimum efficiency after the fitting of new parts, however this doesn't equate to a breakdown caused by maintenance failure. Also, the evidence and records produced by Mr S do show that he had ensured regular checks and maintenance of the boiler, and that indeed that it had been checked in October 2023.

Nevertheless, on the balance of probabilities and from the available evidence, I'm satisfied that it was fair and reasonable for ARAG to consider that breakdown had been due to a maintenance failure. Whilst it's clear that the boiler was checked, Mr S's records aren't a full

maintenance record, with the quality of the water being checked. The safety records show, under the heading of whether the appliance was serviced, it said 'no'. The same engineer merely stated in a subsequent e-mail that during his visit in October 2023, the hot water had been working fine with no issues. This doesn't equate to a full service and flush if necessary. In the circumstances, I consider that ARAG applied the policy exclusion relating to maintenance failure in a fair and reasonable manner.

In addition, I note from the brief reports supplied by Mr S's that one of his contractors made it clear that *'the boiler was repairable but not financially viable'* and also that; *'the boiler was beyond economical repair'*. In all the circumstances, Mr S's own experts were indicating that the boiler had reached the end of its useful life in any event and, would *'highly advise new boiler as boiler 10 to 15 years old'*. Whilst this doesn't alter the fact that an insurer must honour its commitments under a policy, it does show that Mr would have been required to purchase a new boiler shortly afterwards, even if this particular claim had been successful.

As to Mr S's concern that he'd been misquoted in a telephone conversation with ARAG in mid-February 2024, I've listed to the relevant telephone call and, whilst it doesn't alter my decision, I agree with Mr S that there is room for this to be interpreted in two ways. The call-handler said he'd advised that further works weren't covered and that Mr S would need to seek a power flush. In response, Mr S repeated twice; *'I've done that'*. As such, Mr S wasn't necessarily saying that a power flush had been completed and he may merely have meant that he'd approached his contractors about the prospect of a power flush.

In conclusion, I can't say that ARAG applied the terms and conditions of the policy in an unfair or unreasonable manner in declining to cover repairs to Mr S's boiler on this occasion.

My final decision

For the reasons given above, I don't uphold Mr S's complaint and I don't require ARAG Legal Expenses Insurance Company Limited to do any more in response to his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 April 2025.

Claire Jones
Ombudsman