

## **complaint**

Ms P's complaint is about the service provided to her under a central heating insurance policy provided by certain underwriters at Society of Lloyd's.

## **background**

I issued two provisional decisions on this matter, in December 2018 and January 2019. I provisionally determined that the complaint should be upheld and that the underwriters should repair Ms P's boiler. Following some further information, I changed the decision I intended to make and issued a second provisional decision.

I have copied part of the second provisional decision, which sets out the background of the complaint and the submissions of both parties and my findings below:

*"Ms P tried to arrange the annual service of her boiler, which is provided as part of her cover. Two appointments were arranged, and Ms P arranged time off work, but the engineer failed to turn up to either.*

*A third appointment was arranged but the engineer arrived an hour early, as a result Ms P was not home. Ms P was told by the underwriters to arrange a fourth appointment. Ms P says she then received a call from the engineer that had turned up early to "vent his anger" about the job for him had been cancelled. Ms P says he was extremely rude to her.*

*When the appointment finally happened, the service was carried out and the engineer advised Ms P that some repairs were needed to her boiler: replacement of the air switch, PCB and a sensor.*

*While Ms P was waiting to hear from the underwriters that they would cover the repairs to the boiler, Ms P reported a leak from a radiator. The same engineer came out to repair it. He told Ms P that as he had been to service the boiler, this call would be deemed a 'recall' and that he would not be paid for it. He also told Ms P that he was still waiting for the underwriters to confirm he could order the replacement parts needed.*

*Ms P says she didn't hear anything from him or the underwriters, so she contacted them again. Following this, a different engineer came out and confirmed that the parts previously identified did need to be replaced. He assured Ms P that the parts would be ordered.*

*However, the job was then passed onto a third engineer who wanted to come and look at the boiler himself to see what parts were needed. Ms P was unhappy with this, as two engineers had already both diagnosed that parts needed to be replaced and she just wanted the repairs carried out.*

*The underwriters apparently assured Ms P that the next visit would be to replace the parts as diagnosed by the previous engineers. However, a fourth engineer contacted Ms P the day before that repair visit to tell her he would be coming the next morning to assess the boiler.*

*When Ms P was finally able to talk to the underwriters about this, she was told the third engineer was unwell and so another engineer would have to attend but he would not replace parts that he had not himself identified as needing replacement.*

*The fourth engineer attended and said that the parts the previous engineers had said were needed did not need to be replaced. The fourth engineer said that different parts costing around £90 were needed and he would order those and return to repair the boiler.*

*Ms P says she heard nothing further and so tried to call the engineer direct but his number was unobtainable. When she spoke to the underwriters, on 20 December 2017 they told Ms P the boiler was beyond economical repair and so they would not do the repairs after all.*

*Ms P says she asked for evidence that the boiler was beyond economic repair, given she was told the parts would cost £90 but the underwriters told her that this information was not available.*

*I understand the boiler has been working only intermittently and needs to be rest regularly since November 2017.*

*The underwriters say the fourth engineer recommended that the boiler be replaced because he thought the parts would not be enough to repair the boiler, due to its condition. However, they acknowledged that there had been errors and delays on its part and offered £700 towards the cost of a new boiler (being what it would have cost it to do the repairs) and £300 compensation for the inconvenience caused by their handling of the claim. I understand it has paid this sum to Ms P already.*

*Ms P is extremely unhappy with the handling of her claim and has made a number of submissions, which I've summarised below:*

- *Two independent engineers came to the same diagnosis about what was wrong with her boiler, which the underwriters now say isn't correct.*
- *If the underwriters don't trust those engineers opinion on that, how can it be sure they serviced the boiler correctly and that the fault is not a result of anything they did?*
- *One of the engineers told her that as the boiler was probably older than 10 years, the underwriters would not be prepared to repair it. If this is the case, why have the underwriters been taking payment for the insurance all this time?*
- *Why did it pass on her personal number and address to engineers without first notifying her?*
- *Why was the fourth engineer's phone number unobtainable following his visit to my house?*
- *Why did the fourth engineer say the boiler was beyond economical repair yet the previous two had agreed (independently) on what needed repairing?*
- *She has had to keep chasing the underwriters who failed to keep her informed and failed to return phone calls when they said they would.*
- *The underwriters have paid different engineers to attend but who are not prepared to do the repairs.*
- *She was asked not to contact the engineers directly or discuss anything with them, which would indicate to her that the underwriters' procedures are not transparent enough.*
- *She asked for recordings of all the relevant telephone conversations, but these have not been provided.*
- *If the boiler is not repaired promptly, could this be causing more damage?*
- *Following the last appointment, Ms P says she received a letter telling her the annual service on the boiler was due and that the engineer had been trying to contact her to arrange an appointment. This was clearly incorrect.*

*Ms P wants her boiler fixed but also assurance that the underwriters will only give that job to engineers that are qualified and willing to complete the work; that the engineers that had her phone number, no longer have it; if she continues with this policy that the underwriters will seek her permission before passing her contact details to any engineer; and that she will not be discriminated against in relation to any future claims due to this complaint.*

*Ms P is also unhappy that the premium for her cover has gone up significantly. However, on renewal the underwriters also changed and this is not therefore a matter for the underwriters named in this complaint.*

*One of our adjudicators looked into the case. She initially didn't think it should be upheld but she later changed her mind and stated that the underwriters should have repaired the boiler. If it failed in the future the underwriters would have to consider any future claim in line with the terms of the policy in the normal way.*

*The underwriters do not accept the adjudicator's assessment of the complaint. They have made a number of further points, which I've summarised below:*

- *A gas safe qualified engineer said the boiler was likely to fail even if the parts were fitted and so it was not unreasonable for the underwriters to rely on his advice to deem the boiler beyond economic repair.*
- *This was not speculation*
- *The boiler was over 10 years old which further supports the likelihood that other parts would fail*
- *There's no evidence the boiler is able to be fixed*
- *The underwriters asked for a 'team leader' engineer to comment. He apparently said that the boiler casing had been damaged by water and due to the parts that were needed, and the age of the boiler, "Pressure switch, pump and expansion vessel, the engineer also stated there was no flue collar on the flue which allowed rain to run down the flue and onto the top of the boiler causing the chassis on the top to rust which would have compromised the structural integrity of the boiler. Due to the parts required, age of the boiler, labour involved and the potential that the boiler chassis could have been compromised, I would say this boiler was definitely BER. "*

*As the adjudicator was unable to resolve the complaint, it has been passed to me.*

### **my findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*The policy provides cover for damage to a boiler up to £2,000 for each claim. It says that if the boiler can't be repaired "we have the option to replace the boiler with one of equivalent specification or as close as possible" but only if the insured boiler is less than seven years old. If it is between seven and ten years old, the policy provides for a contribution of £400 towards a new boiler.*

*The policy doesn't state what will happen if the boiler is repairable but that it would not be economically viable to repair and the policy doesn't define 'beyond economical repair'.*

*I am not satisfied that it has been established Ms P's boiler is unrepairable and that therefore a replacement required. The underwriters have asked why the fourth engineer's word on this has not been accepted by the adjudicator but as Ms P has pointed out, two other equally qualified engineers apparently determined that the boiler was repairable.*

*I note a more senior engineer has also commented but there is no specific breakdown of what is needed and reasoning as to why it is not worth repairing.*

*I also note that one of the underwriter's internal notes says:*

*"20/12/17 - ...Plumbing and Heating advised pressure gauge, expansion vessel and PRV faulty - these parts will not repair boiler as other parts will fail due to condition of the boiler job sheet 1415828 confirms findings as follows: signs of multiple leaks over time, scale on HEX pipework, no collar on flue allowing ingress of water and top is rusty - gauge on front damaged. Engineer confirms that potentially this could cost ... [us] a lot of money due to poor installation. Recommended replacement.... confirm boiler BER."*

*So it may not be economically viable for the underwriters to repair the boiler, but that is not the test. The contract of insurance it entered into with Ms P doesn't provide the underwriters with the right to refuse to repair on this basis, only if it can't be repaired. It might be that the repair wouldn't last very long but this also hasn't been proven. In order to be able to refuse to repair on this basis there would have to be convincing evidence that the repair would last for such a short time, or not work at all, that it would not be reasonable to carry it out. No such evidence has been provided. And I also anticipate that the condition of the boiler will only have deteriorated since this was first reported in later 2017, so it will be difficult to obtain reliable evidence about that now.*

*In addition, just because the boiler is over 10 years old does not mean it is bound to fail or that it is not covered. There is no such exclusion of cover in the policy.*

*It therefore seems to me that the boiler is repairable but the underwriters made a financial decision it was not viable to repair it. But as there is no definition of ber in the policy, I would need to be satisfied that it would cost more to repair than to replace the boiler. There's no evidence to support this. The costs estimate was £350 plus labour, and the underwriters have made a payment of £700 in lieu of the repairs. I've no evidence to dispute that figure. Underwriters said this is about the cost of a new boiler and so is reasonable*

*In the context of a policy which provides cover for repairs up to £2,000, I don't consider the underwriters have established it was beyond economic repair. In the absence of any definition, it seems to me that the reasonable assumption for a consumer to make is that if it would cost more than £2,000 to repair it... or more than it would cost to replace and fit a new boiler, whichever is the lesser that [the boiler] would be beyond economic repair. It may be that the underwriters will have to come and complete more repairs in the future and this might cost them a "lot of money" but that is the bargain they entered into with Ms P in return for her premium.*

*On the evidence currently available to me there is not enough evidence to safely conclude that the underwriters were entitled to refuse to repair the boiler. I therefore agree with the adjudicator that they should have carried out the repairs that were identified initially at the end of 2017."*

In my first provisional decision I determined that the underwriters should carry out the repairs up to the policy limit. I also determined that the underwriters would have needed to pass on Ms P's contact details to the engineers but it should have explained the process to her so she would know what to expect.

I also provisionally determined that an additional payment of compensation (over and above the £300 already paid) should be paid. This matter went on for some considerable time. Ms P's boiler started failing over a year ago and she has had the continued worry of it failing in the cold weather last year and this year. She also had several appointments with engineers which were unproductive. Overall I considered that the total sum of £450 is appropriate (to include the £300 already paid).

In response to this, Ms P told us that she had had the boiler replaced and so it was no longer appropriate to direct that underwriters carry out more repairs. What follows is an extract from my second provisional decision.

*"Ms P said the cheapest quote she found for replacement of the boiler was £2,460 and she is therefore £1,460 out of pocket.*

*The adjudicator asked for further details and Ms P then confirmed she'd had a new boiler installed in early September 2018. The copy of the invoice provided shows this cost £2,163, including VAT. Ms P says she couldn't wait any longer: the problems with the boiler started in November 2017 and while waiting for the outcome of this complaint, it continued to deteriorate and eventually stopped working. During the warmer weather Ms P says she was able to suffer cold showers and no heating but she could not continue to do so once the weather turned colder.*

*Given that she had little trust in the local engineers sent by the underwriters, and she had only a £700 contribution from them, Ms P decided that she should borrow the money to replace the boiler, rather than have it repaired.*

*Ms P also says that the constant uncertainty about whether her boiler would work each day, and therefore whether she would have heating or hot water caused her a huge amount of stress and inconvenience, including not being able to invite her family to stay with her over Christmas 2017.*

*Ms P has also said that the underwriters renewed the policy in 2018 and deducted the first month's premium from the £1,000 it paid her for the contribution to the new boiler and compensation. She cancelled the policy thereafter...*

*I don't think it was unreasonable for Ms P to have decided to replace the boiler and not repair it. However, that now means that it can't be repaired and so the outcome that I provisionally determined, is no longer practical.*

*As stated in my first provisional decision, there is no other evidence about the cost of the repairs that were initially deemed to be required. The underwriters said they would have cost £700 and it appears this sum was paid to Ms P in early 2018. As the boiler has been replaced, and there's no evidence that her own engineer explored repairing it, there is now no evidence to support that the repairs might have cost any more than £700. Therefore, it*

*seems to me that I can only reasonably conclude that the payment of £700 in lieu of repairs already made is sufficient.*

*On the evidence currently available to me therefore, I don't consider that the underwriters need to pay any more towards the cost of the new boiler.*

*I remain of the opinion, however, that the total of £450 is appropriate for the distress and inconvenience caused by the handling of the matter.*

*Finally, Ms P says that the first premium due for the next policy period was deducted from the payment the underwriters already made to her in early 2018. I have no further evidence about this but it would seem to me reasonable that the premium taken be reimbursed, given that the boiler was effectively no longer covered."*

### **responses to my second provisional decision**

I invited both parties to respond to my second provisional decision with any further information or arguments they want considered.

The underwriters have not responded.

Ms P has responded and says she is very disappointed with the outcome although she understand my reasoning. She wants the following comments recorded:

- She is still bewildered that the underwriters did not do the repairs if they thought it would only cost £700, as my insurance cover was for £2,000 each and every repair. It would have saved a lot of time, money, upset and inconvenience to all parties concerned. This is all the more important as her insurance cover was coming to an end so, if they thought there would have been further repairs, they could have addressed that at renewal.
- The initial recommendation by the adjudicator was made in May 2018 and the delay in forming this final decision has compromised that decision.
- She complained about the underwriters taking the premium at the time and it was refunded.
- The £450 compensation does not in any way provide compensation for the distress and inconvenience caused during the past 15 months.

### **my findings**

I've considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has provided any further information, I see no reason to change my provisional findings. I remain of the opinion that the £700 already paid to Ms P in lieu of repairs is sufficient.

I note Ms P's comments about the compensation but I also remain of the opinion that this is appropriate having taken account of all the circumstances and awards made by this service in similar cases.

I also note what Ms P says about the time taken to reach this decision. I have asked the adjudicator to respond to this as a complaint about our service.

**my final decision**

I uphold this complaint against Society of Lloyd's and require it to pay Ms P £450 compensation (less the £300 already paid) for the distress and inconvenience caused to her by the handling of this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 1 April 2019.

Harriet McCarthy  
**ombudsman**