



complaint

Mr and Mrs L complain about Amtrust International Underwriters Ltd's handling of their home emergency insurance claim for a faulty boiler.

background

Mr and Mrs L had a home emergency insurance policy, underwritten by Amtrust. The policy was provided in connection with Mr and Mrs L's bank account, but is no longer included as part of the benefits of that account.

In late March 2010, Mr and Mrs L registered a claim with Amtrust because of a fault with their boiler, which was causing the pressure to drop. An engineer attended the following day and re-pressurised the boiler. However, in May 2010, Mr and Mrs L contacted Amtrust to say they were still waiting for parts to be fitted to their boiler.

After some further delay an expansion vessel was fitted in June 2010 but while carrying out this work the engineer identified that the boiler was leaking, He advised that 'o' rings and a filling loop were required. Mr and Mrs L say a replacement filling loop was necessary only because Amtrust's engineer had broken the original filling loop key.

During an attendance in July 2010, Amtrust's engineer noted that Mr and Mrs L's boiler was working but making a whistling noise. And later, that a new combustion case seal was required. In July 2010, Mr and Mrs L were informed that the policy limit of £1,000 had been reached and there was an excess of approximately £95 to pay. They refused to pay this, as they did not consider that all the attendances had been necessary and the repair should have been carried out within the policy limit. Amtrust agreed to waive the excess.

Based on the information I have seen, there appears to have been approximately five missed appointments during the above time. Amtrust's records for the period from July to October 2010 are incomplete but it seems that the problems with Mr and Mrs L's boiler pressure had not been resolved in this time.

In late December 2010, Mr and Mrs L reported that the boiler was only providing a small amount of hot water.

Amtrust replaced the combustion case seal in December 2010 and it was also noted during this attendance that a new pump and pipe were required.

Mr and Mrs L reported to Amtrust at the end of January 2011 that they now had no hot water at their property.

During late January and early February 2011, Mr and Mrs L contacted Amtrust on a number of occasions to report that their boiler was leaking and to say that they now had neither hot water nor heating. An engineer attended but was unable to locate the source of the leak.

Towards the end of February 2011, Amtrust replaced the pump in Mr and Mrs L's boiler. However, the pipe previously identified as required was not replaced, as the incorrect one had been ordered. The plate heat exchanger was replaced and the diverter valve and expansion vessel pipe cleaned during this attendance. Amtrust then diagnosed that a

powerflush was required and said this procedure was not covered under the terms and conditions of Mr and Mrs L's policy.

Unhappy, Mr and Mrs L complained to Amtrust, who said their policy limit had been exceeded and its engineer had recommended that no further works be carried out on the boiler until a powerflush was done. However, Amtrust offered to pay Mr and Mrs L £500 compensation as a gesture of goodwill.

As Mr and Mrs L remained dissatisfied, they brought their complaint to the attention of this service for consideration.

Our adjudicators investigated the complaint and recommended that Amtrust should attend and carry out repairs to the boiler (including a powerflush if necessary) in order to restore Mr and Mrs L's heating and hot water – or alternatively, reimburse Mr and Mrs L for the cost of having such repairs carried out privately. Our adjudicators also recommended that Amtrust should pay Mr and Mrs L a total of £2,000 compensation.

Amtrust did not accept our adjudicators' recommendations – saying it has now withdrawn these policies and therefore does not have the facility to appoint engineers to carry out further repairs. It also says that it is not responsible for further repairs in any event.

Amtrust does accept that there were some failures in the service provided and some delays on its part that could have been avoided. However, it says that it is not responsible for any delay in having the boiler repaired after February 2011 – their records show that the boiler was working at that point. In addition, Amtrust says that there is nothing to indicate that Mr and Mrs L were without heating or hot water between March 2010 and February 2011 for more than a few days

However, Amtrust increased its offer of compensation to £1,500.

Mr and Mrs L did not accept this offer. They say:

- £1,500 would not cover the cost of replacing the boiler which is now required as a direct result of Amtrust's failure to repair it properly.
- They have been without heating and hot water for over two years and it does not adequately reflect the suffering caused.
- They have incurred significant additional expenses – extra fuel bills, electric heaters, buckets and pots, as well as the cost of showering at the local swimming pool – due to Amtrust's errors.
- They have lost earnings for five days at least, due to missed appointments.
- Significant damage has also been caused to their property, they say due to Amtrust's errors: continuous flow of water from the external overflow pipe causing damage to the render and a corresponding damp patch inside; extensive damage to the internal décor, plasterwork, floorboards and floor tiles due to the ongoing leaks; shower hose and mixer damaged because of "icy" water flowing through the system.
- The lack of heating and hot water has caused them and their children to have "fallen constantly very ill" and has caused back and shoulder problems carrying buckets of hot water upstairs to bathe.
- They have had to heat up water on the stove causing significant amounts of steam, which has spoiled food in the cupboards, and they say has started affecting the functioning of their fridge and freezer and other electrical appliances and has caused the downstairs lights to 'blow' regularly.

- They are unhappy with the service and attitude of most of the engineers that attended – they say they wasted time and carried out inadequate work; one put tissues on the sides of the boiler to stop it making a buzzing noise.

Mr and Mrs L have provided a number of photographs showing damage to wallpaper and damp patches in and outside their property. It seems that they want Amtrust to pay for the boiler to be replaced.

As our adjudicators were unable to resolve the complaint to the satisfaction of both parties, the matter has now been referred to me for final determination.

findings

To decide what is fair and reasonable, I have considered all the evidence and arguments we have been given about the complaint.

Mr and Mrs L's policy provides cover for Amtrust to carry out temporary repairs in the event of the failure of the boiler, central heating or hot water system. However, Amtrust's liability is not unlimited and is subject to the terms, conditions and exclusions which are set out in the policy.

Mr and Mrs L's policy excludes cover for *"more than 3 successful claims or £1,000 in total in any rolling 12 month period"*.

Amtrust says the works carried out on Mr and Mrs L's boiler to date total £1,610.50 and, therefore, it is not liable to carry out any further repairs. However, as the policy limit is a rolling one over 12 months, I am not persuaded that the above exclusion applies. One 12 month period would have been triggered by the March 2010 claim, but a new one – with a new £1,000 limit - would have begun in March 2011, and March 2012.

In any event, Amtrust has not provided a breakdown of the figure of £1,610.50 and Mr and Mrs L submit the total includes costs (such as the replacement filling loop) which should not be included in this total. I am not therefore persuaded that all of Amtrust's attendances and all of the parts fitted added value to Mr and Mrs L's claim and should be counted against the claims limit.

Amtrust also says that as this has been treated as one claim, it is subject to the £1,000 limit, even though it has extended into more than one 12 month period. I am not persuaded by this. The policy does not state that each claim is limited to £1,000, only that the policyholder is limited to a maximum of £1,000 in any 12 month period.

As Mr and Mrs L's policy also excludes cover for *"normal day to day maintenance"*, Amtrust submits a powerflush procedure is therefore not covered under their policy.

However, I agree with our adjudicator's findings that most policyholders would not consider a powerflush to constitute normal day to day maintenance of a central heating system and I have seen no evidence that boiler manufacturers recommend a powerflush procedure be carried out as part of the general maintenance of the appliance or system.

Even if I were to accept Amtrust's submissions that a powerflush falls within the exclusion outlined above, if it wants to rely on this to avoid any further repairs then it has to demonstrate that the boiler would not have broken down, and their claim would not have

arisen, but for the failure to have a powerflush carried out. I have seen no evidence to support this.

In addition, I am inclined to agree with Mr and Mrs L's observations that, if the reason for the breakdown of their boiler was a failure to have a powerflush carried out, it is likely that this should reasonably have been apparent to Amtrust from the outset and certainly before February 2011.

For the reasons I have outlined above, I consider Amtrust is responsible for carrying out further repairs to the boiler. If a powerflush is required in order to resolve the fault then Amtrust should also carry out this procedure, as it is not excluded under the policy and I do not consider that it constitutes 'day to day' maintenance.

Amtrust has said it is no longer in a position to arrange for an engineer to carry out these repairs. Therefore, it seems to me that the fair and reasonable outcome is for Mr and Mrs L to have the work done privately and upon production of appropriate proof of the cost Amtrust should reimburse that cost, subject to the policy limit of £1,000.

As Mr and Mrs L have not yet arranged for a private engineer to inspect their boiler, it has not been established whether the boiler is capable of being repaired. They seem to suggest that it now needs replacing entirely.

The policy only provides for temporary repairs and I am not persuaded that a home emergency policy, which provides for temporary repairs, should be interpreted as providing cover for a replacement boiler.

Mr and Mrs L are adamant that – regardless of the policy terms – Amtrust's engineers have made the condition of their boiler worse and that effectively they 'broke' it. However, there is no convincing independent evidence that the engineers made the boiler worse (other than the early breaking of the filling loop).

In the circumstances therefore I am unable to conclude that, even if it is now irreparable, Amtrust is responsible for the cost of replacing the boiler.

If, however, the boiler is repairable but Mr and Mrs L decide for economic reasons to replace it anyway then it would seem fair and reasonable to me that Amtrust pay what the repairs would have cost (subject to the remaining policy terms including the £1,000 limit).

Turning to the other issues, it is not clear exactly how long Mr and Mrs L were without heating or hot water entirely. Amtrust says it was only for a few days whereas Mr and Mrs L say it was for almost two years. From the evidence provided to me, it appears that they did have heating and hot water albeit intermittently for some of this time but Mr and Mrs L felt compelled to turn the boiler off in July 2011, due to concerns about its safety.

In any event, I do not consider that it is necessary for me to establish exactly how much longer the repairs took than would otherwise have been the case or how long they were without heating and hot water or which areas of work were unsatisfactory, as it is clear that some of the work was unsatisfactory and there were avoidable delays on the part of Amtrust.

I have given Mr and Mrs L the benefit of the doubt and accept that they were without the use of their boiler for significantly longer than Amtrust has conceded.

Mr and Mrs L have also said that the lack of heating and hot water has resulted in other damage to their property, including the décor and damage to pipes.

There is little by way of convincing evidence that any such damage is a direct result of failures on the part of Amtrust. I am also mindful that – although they say they were told not to get an independent engineer – Mr and Mrs L could have taken steps to minimise the damage and have the repairs carried out themselves once it was clear that the relationship between them and Amtrust had broken down.

With regard to the external damage, Mr and Mrs L say that Amtrust failed to stop water continually flowing from an external overflow pipe, which has caused damage to the render and a corresponding damp patch internally.

The policy does not cover external overflows. However, it seems that they suggest that this water would not have been escaping, if it were not for the problems with the boiler. There is no convincing evidence that this is the case, as far as I am aware. However, it seems that they were able to easily divert the water to prevent further damage. Therefore, even if this water would not have been flowing out of this pipe but for some error on the part of Amtrust, it seems to me that it is not fair and reasonable to attribute all the resultant damage to it, when the damage could have been avoided if Mr and Mrs L had taken those steps earlier.

Given all the circumstances of this case, I consider it reasonable to look at the overall situation and make a global award that is proportionate to the harm suffered above and beyond that which naturally and inevitably flowed from the initial claim. This award will also reflect the damage caused to the property due to the delays, the numerous missed appointments and additional heating costs which Mr and Mrs L will have incurred, amongst other things. In the absence of independent evidence as to these costs, it seems appropriate to incorporate these into a global award for distress and inconvenience.

Overall, in my view, a payment of £2,000 compensation is warranted for the distress and inconvenience suffered by Mr and Mrs L in the circumstances. This is in line with awards made for cases where there has been *exceptional* distress and inconvenience.

my decision

My final decision is that I uphold this complaint.

Amtrust International Underwriters Ltd must reimburse Mr and Mrs L for the cost of having their boiler repaired by a private engineer, up to the policy limit of £1,000, upon submission of an invoice or quotation.

Amtrust must also pay Mr and Mrs L £2,000 compensation for the distress and inconvenience caused by its handling of their claim.

Harriet McCarthy
ombudsman