

## complaint

Mr R has complained about how Aviva Insurance Limited handled his claim; he feels this caused him further loss.

## background

A leak occurred; Aviva accepted the claim and did repairs but, shortly after, the property became damp again. Aviva said that before it would do anything else Mr R had to re-route his water pipes which were imbedded in the concrete floor. Later Aviva accepted that the two incidents should be dealt with as one claim. It also paid £5,000 compensation. Mr R accepted the compensation but was unhappy that he'd been forced to re-route the pipes. Also, during the second incident his boiler had failed and had to be replaced. Further, when Mr R had been unhappy he'd tried to use his legal expenses cover against the loss adjuster. This was declined because of the link between Aviva and the loss adjuster. Mr R, therefore, asked for his premiums back because he felt this meant the cover was pointless.

Our adjudicator felt the complaint should be upheld in part and told Aviva to pay Mr R's cost for having the pipes re-routed. She didn't think it had to reimburse the cost of replacing the boiler. Aviva objected; it said that replacing the pipes had been necessary and wasn't something covered by the policy. Mr R felt the boiler must, logically, have failed because of Aviva too. He argued again that his legal expenses premium should be refunded. The complaint was passed to me to consider. I issued a provisional decision and have reproduced my findings from that decision below, in italics.

### *my provisional findings*

*I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I feel that the cost of pipes should be covered but I also think that Aviva should pay something towards the cost of replacing the boiler. I don't intend to make it refund any premiums. I'll set out all my reasoning below and both parties will have the chance to respond to my findings.*

### *legal expenses*

*As far as I am aware, all cover of this type will not be available where the issue at hand relates to the home insurance contract. When an insurer deals with a claim for damage, it will often appoint loss adjuster and other contractors. Those appointed act as agents of the insurer. The insurer is responsible for their actions. Therefore, any claim against those appointed is actually a claim against the insurer. I would not expect any legal expenses cover that comes as an 'add-on' to a house policy to offer assistance against the home insurance provider.*

*That doesn't mean though that the cover has no worth. I appreciate that, for Mr R, this was frustrating. But he did have a route to complain about his concerns and the legal expenses cover still existed; offering assistance for many other legal issues. Aviva doesn't need to refund the premium.*

### *boiler*

*Mr R's boiler was old but remained functioning during the first incident. During the second incident a pipe was fractured by Aviva's contractor. The system had to be drained and it was*

*after this that Mr R says the boiler stopped working. There is some detail from Aviva which says there was a large leak on the boiler but it's not clear to me at what point this was identified. Aviva has dealt with the two incidents as one claim but says this is a gesture of goodwill, rather than complete admittance that, but for its failures during the first the second wouldn't have occurred. I think that is debatable. I think if it wasn't debateable, Aviva wouldn't, even as a goodwill gesture, have opted to deal with this as one claim.*

*To balance that, old boilers do fail, sometimes catastrophically and without any warning or evident cause. It is possible that Mr R's boiler would always have failed at this time. But I can't ignore the further stress placed on the boiler by the fractured pipe and on-going/unresolved leaks. Therefore, while I can't fairly find Aviva liable for the loss as a whole, I do intend to make it pay 50% of Mr R's cost to replace the boiler, plus interest.*

#### *re-routing pipes*

*Mr R says he was told he had to do this before the second lot of repairs would be done and in order to keep cover. Aviva says the pipes needed re-routing to prevent further damage and it only recommended that this be done but the fact there had been several leaks means this was necessary. It doesn't feel that it should have to pay for it as it's not something covered by the policy and, in fact, Mr R has to take all reasonable care to protect his property. It also said that re-routing/replacing some pipes is often a necessary part of installing a new boiler.*

*Pipes situated under flooring do represent a significant risk for insurers because, when they leak, damage progresses unnoticed for some time. This means that, often, repair costs for this type of loss are quite high. While I appreciate that this risk was identified there is a difference between a possible loss and a loss that is most likely to occur.*

*If this situation was the other way around and a consumer was saying 'I want the insurer to do this because otherwise the repair might not last', I wouldn't necessarily make the insurer do it. First I'd have to be satisfied that this was 'most likely' the case.*

*Here it seems there was more than one leak but leaks occur for a variety of different reasons. Aviva initially said the pipes needed re-routing because of a risk of corrosion. It did not show that any of the pipes in Mr R's floor were currently corroding. Later it said that joints can be prone to fail in imbedded pipes if expansion isn't allowed for. One joint did fail but I don't think that is evidence that they were all prone to fail or that this occurred because of a lack of allowance for expansion.*

*Further, it seems that Aviva did not think this was necessary at the point of the first incident. It only insisted at the point of the second. Therefore, if the second had been avoided then the request for and cost of re-routing would have been as well.*

*The email correspondence clearly shows that the repair work wouldn't be done until Mr R confirmed he would re-route the pipes. It's not so clear about cover but I think that what was said was enough to make Mr R think cover would be withdrawn if this wasn't done. From the perspective of someone who deals a lot with insurance I can see that Aviva wasn't quite saying that. But the message Mr R heard was clearly enough to make him feel that he had no choice but to take action to re-route the pipes if he wanted his claim to progress and his cover to continue.*

*Aviva has asked for evidence of how the pipes were found; I'm not sure they were ever taken out, rather than just by-passed. In any event the contractor that did the re-routing would have had no cause to assess the state of the pipes in situ because he was just asked to re-route them. If he'd been employed on the basis of reporting on the need for re-routing then that would be different but the message Mr R received left no room for contesting this.*

*In most situations, I wouldn't make an insurer responsible for the cost of something like this. But I take each situation on its own merits. Having taken into account everything that went on here; from the fact that the first repairs were done when it was known the floor was still wet and wouldn't dry, to Aviva's insistence on re-routing; I'm satisfied the only fair outcome is for Aviva to reimburse this cost.*

*As mentioned above, Aviva has already argued that replacing the boiler would have necessitated some pipe re-routing. It may have done but I have found above that Aviva is responsible for 50% of the cost of replacing the boiler. To now try and recalculate a cost for re-routing the pipes, based on whether they needed to be done as part of the boiler replacement, then applying a 50% cost to each that was, would be time consuming and difficult at best. I think it must now fairly just reimburse the cost of re-routing the imbedded pipes, plus interest.*

#### **response to my provisional decision**

Aviva received my provisional decision but made no comment. Mr R said he accepted my provisional decision.

#### **my findings**

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

As Mr R accepted my provisional findings and Aviva made no comment, I see no need to change them. My final decision is the same as that stated provisionally (and detailed above).

#### **my final decision**

I uphold this complaint in part and order Aviva Insurance Limited to make some reimbursement to Mr R. I require it to reimburse 50% of Mr R's cost to replace his boiler and all of his cost to re-route the imbedded pipes, plus interest. Interest is at a rate of 8% simple per year and applied from the date the replacement/re-routing was paid for until settlement is made. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 October 2015.

Fiona Robinson  
**ombudsman**