

complaint

Mr Y complains that Royal & Sun Alliance Insurance Plc (“RSA”) says that it won’t replace his boiler under his home emergency insurance policy.

background

Mr Y has a home emergency policy with RSA. He rang it in July 2018, because he had no hot water. An engineer visited, and said that the problem was caused by sludge in the water within his boiler. RSA said that he wasn’t covered for any repairs or for a replacement boiler.

But Mr Y said that RSA told him that if he got an independent report which contradicted what RSA said, it would reconsider. So Mr Y got that report, and sent it to RSA. But Mr Y said that RSA just sent out another engineer, who still wouldn’t fix it or install a new boiler. Mr Y said that the engineers all said different things about what was wrong.

Mr Y said he’d had to pay for a new boiler himself, and he should’ve been covered under his policy for that. So he wanted RSA to reimburse him.

Mr Y also said that RSA had been charging him the wrong amount for his policy.

RSA said that its first engineer had said that there was sludge in the boiler, and that Mr Y wasn’t covered when that’s what caused a breakdown. The notes from that visit say that the engineer showed this sludge to Mr Y. But Mr Y then got in touch, to say that he didn’t think this was right, and he got his own report, which didn’t find any sludge. So RSA sent someone out to give a second opinion. That person said that there was evidence of heavy scaling, sludge, and signs of corrosion on the boiler. He said that he hadn’t fired up the boiler, as it would need considerable repairs before that could be done. He thought that the boiler was beyond economical repair. RSA’s letter to Mr Y says its engineer told Mr Y this.

RSA wrote to Mr Y, and said that he wasn’t entitled to a new boiler. His boiler was over ten years old, and there was a strong presence of sludge.

Our investigator didn’t uphold this complaint. He said that the policy excluded damage to Mr Y’s boiler if that was caused by sludge or scaling. Both of the engineers RSA had sent had found sludge within the system, so he thought this exclusion would apply in this case.

Mr Y didn’t agree. He said that we should’ve listened to the conversations that all three of the engineers involved in this case had had with RSA. He said that RSA had changed its arguments, at sometimes saying that there was sludge, sometimes scaling, sometimes debris. And none of the engineers had said that was what caused the fault. Mr Y said that the first engineer who came out had told him that the fault had happened because of the unusual temperatures this year.

Mr Y said that he had been promised by RSA that it would send another engineer, and he’d understood that this engineer was going to do repairs, but instead that engineer just said that the boiler was beyond economic repair.

Mr Y also said that RSA hadn’t done his boiler service last year. He thought that it had violated the terms of his agreement, and he thought that this might also have contributed to the problems he’d had with the boiler.

my first provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. This is what I said then:

- I looked at whether Mr Y had been overcharged for this policy, and whether a service had been missed.
- I'd seen Mr Y's latest renewal document. That said that Mr Y pays for his annual policy in monthly instalments. The first instalment was for £22.49, but the next eleven instalments were larger. They were £33.74. I didn't think that RSA had been charging Mr Y more than he agreed to pay.
- I'd also seen RSA's list of visits to Mr Y's home. That showed that a service was done in April 2017. I could see that a scheduled service in May 2018 was cancelled, but Mr Y's policy ran from January to December, so RSA still had several months in which to provide an annual service of Mr Y's boiler, at the time when it broke down. So it didn't look to me as if RSA had missed last year's annual service under Mr Y's policy.
- Next I looked at what Mr Y said about his boiler. Mr Y said that he expected the second RSA engineer who visited would replace his boiler. But I'd checked RSA's notes on this, and I thought it was doing what it had offered to do, which was to reconsider its decision about Mr Y's boiler because he had got his own engineer's report. I didn't think it was likely that RSA had offered to replace the boiler at that point.
- Mr Y also said RSA should've paid for a new boiler for him, if the old one had broken. RSA said it didn't have to do that, because of what caused the problem. It had shown us that Mr Y's policy says it doesn't have to do repairs to "*damage caused by or arising from sludge, scale and other debris in the central heating boiler and related pipework.*"
- Mr Y said that RSA referred sometimes to sludge, sometimes to scaling, and sometimes to debris. He said it didn't seem to know which was causing the problem. But I thought that sludge and scaling are just sorts of debris that can accumulate in a central heating system. And if they, or any other sort of debris, cause damage, then Mr Y's policy wouldn't cover him for repairs.
- But Mr Y said that RSA hadn't shown that any sludge, scaling or other debris in his central heating system was what actually caused the breakdown.
- I thought that was probably right. Unfortunately, I didn't think that helped Mr Y. I said I'd explain why not.
- I did think that RSA had consistently said that there was some sort of debris, whether it was sludge or scale, circulating in Mr Y's central heating system. And it had shown us that Mr Y wasn't covered for repairs, if the damage was caused by debris. But I wasn't clear that RSA had done enough to link what had gone wrong in this case with the exclusion that it identified. I didn't think that I could be sure that Mr Y's boiler broke down because of this debris in the system. For RSA to rely on the exemption it pointed to, it would have to show not just that there was debris of some sort in the system, but also that this was what caused the damage.

- But I'd considered all the evidence, from Mr Y and from RSA, including the call between RSA and its engineer. And I did think that RSA had established that Mr Y's boiler was, whatever the cause of the breakdown, likely to be beyond economic repair. I noted that both RSA and Mr Y said that it couldn't just be fixed. He needed a new boiler.
- RSA had shown us a list of parts that it knew needed to be replaced. It didn't know if those parts alone would've made the boiler work. It said the boiler might've needed more work than that. But it had shown us that the list of things that it had initially identified as needing replacement, already added up to more than the cost of a new boiler.
- I also noted that Mr Y had actually had a new boiler installed.
- Mr Y's policy says that a boiler is beyond economic repair if it would've cost more than 75% of the cost of a new boiler, to fix the old one. I thought that Mr Y's old boiler was beyond economic repair. And that meant Mr Y wasn't covered for repairs to his boiler.
- Mr Y didn't want RSA to do repairs. He wanted a replacement. But I didn't think I could fairly ask RSA to pay for Mr Y's new boiler. That's because I didn't think that Mr Y was actually entitled to a new boiler either, under the terms of his policy.
- Mr Y's schedule for 2018 said that his boiler was ten years old at the time his policy last renewed. If the boiler was newer when it failed, then he'd be entitled under his policy to a contribution towards the cost of a new boiler. If it was very new, he'd be entitled to a replacement. But if the boiler was ten years old or over, then his policy said he wouldn't get any contribution at all towards the cost of a new boiler.
- I thought Mr Y's boiler was ten years old at the start of the policy year. So he wasn't entitled to any contribution to a new boiler, under the policy.
- I said I didn't think I could uphold this complaint. I realised that RSA could've done more to show what had actually caused the damage to his boiler. But whatever had caused it, the boiler did seem to be beyond economic repair. So RSA didn't have to fix the old boiler. And Mr Y's policy was clear that he wasn't entitled either to a free replacement boiler, or to any contribution towards a replacement boiler, because of the age of the boiler that broke down. So I didn't think that RSA had to do any more.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mr Y sent a detailed reply to our service, disagreeing with my decision. RSA didn't reply to the provisional decision, but it responded to our request for further information on the points that Mr Y raised.

my second provisional decision

I looked at the evidence that Mr Y sent us, asked RSA some further questions. Then I changed my mind. So I issued a second provisional decision on this complaint and explained why I now proposed to uphold it. This is what I said then:

- Mr Y said that he hadn't been shown sludge in his boiler, or told this was the cause of the breakdown by the first engineer. He said that he didn't think this was the problem. In my first provisional decision, I said I didn't think that RSA had done enough to show that sludge had caused the breakdown of Mr Y's boiler, but I said that this didn't help in this case, because I didn't think he was covered for repairs because of the amount of work

needed to the boiler. And I didn't then think he was covered for a replacement, because of the boiler's age.

- Mr Y said he'd never told RSA he needed a new boiler, he just asked RSA to fix the old one. And he repeated that he'd been told the second engineer RSA sent was going to do that. I set out in my provisional decision that if Mr Y's boiler was, as I thought, beyond economic repair, then RSA didn't have to do repairs. Its only obligation would be to make a payment towards the cost of a new boiler, if this one was less than ten years old at the time his policy last renewed.
- Mr Y said it wasn't true that a service was cancelled in May 2018 or that his boiler was serviced in April 2017. I asked RSA about this, and it sent us the service document for Mr Y's boiler from April 2017. That document made me think that a service was carried out then. And a 2018 service was cancelled in May, but as I'd said in my provisional decision, Mr Y's policy ran from January to December, so RSA still had several months to do the annual service on Mr Y's boiler. I understood it didn't do that service, because the boiler wasn't working, and had been deemed beyond economic repair.
- I didn't think that RSA failed to provide Mr Y with service appointments, or that missed services were likely to be what caused the problem in this case.
- Mr Y said that RSA didn't tell him that his boiler was more than 10 years and wouldn't be covered, either when he renewed or as part of this complaint. He said that if that was the case then RSA shouldn't have kept taking his money.
- I thought, when I wrote my first provisional decision, that Mr Y's boiler was ten years old at the date of last renewal. I thought that because RSA sent us what it said was Mr Y's last renewal document, which stated the age of the boiler as ten years. But Mr Y sent us his renewal document from the year before. That said that his boiler was then eight years old at the start of the previous year's policy. So there was clearly a discrepancy.
- I asked RSA about this, and it said it was sorry about any confusion. It said that Mr Y's boiler was actually nine years and ten months at the start of his last renewal period. RSA didn't explain how it made a mistake about this.
- RSA didn't think this made any difference. It said that the fault was due to a blockage caused by scale in the heat exchanger, so Mr Y wasn't covered. But my first provisional decision was done on the basis that I didn't think that RSA had established that it was more likely than not that Mr Y's boiler breakdown was caused by sludge, scale or other debris. So I thought it was important to reconsider my previous conclusions on whether Mr Y could have a contribution towards the cost of his boiler, once I knew how old it really was.
- The provisions of Mr Y's policy on boiler replacement say that RSA can replace an insured boiler, if they can't repair it. I thought this included situations where RSA decided that the boiler was beyond economic repair. The policy sets out limits on how much RSA will pay for that -
*"Boiler replacement limits are subject to the age of the boiler at the **initial policy start date**;
If your boiler is less than 7 years old at the **initial policy start date**, we will pay up to £2,500 for the boiler replacement."*

- The policy also says there's no cover under this section for
"Boilers 10 years old or over at the initial policy start date or at policy renewal date"
- I previously thought that Mr Y couldn't claim under this section, because his boiler was ten years old at his last policy renewal date. But it wasn't, quite. What Mr Y sent us, and the further information we'd obtained from RSA, made clear that at the initial policy start date, Mr Y's boiler was less than seven years old. And at the last policy renewal date, it was less than ten years old. So, subject to further argument from RSA, my revised provisional view was that Mr Y was entitled to a contribution of up to £2,500 for a new boiler.
- Mr Y sent us invoices for £2,190 that he paid for a boiler, and for fitting. There was no excess for this section of the policy set out on his renewal document. So I said I thought that RSA should pay Mr Y £2,190 to reimburse him for what he's paid for a new boiler.
- I hadn't previously awarded Mr Y any compensation in this case. That wasn't because I didn't think that this has been distressing for him. It was because I didn't think that distress was RSA's fault. I didn't think RSA had done anything wrong. But I now thought that RSA did make a mistake when it turned down his claim. So I thought that it should pay Mr Y £100 in compensation for the distress that caused him.

I invited the parties to make any final points, if they wanted, before issuing my final decision. RSA replied to object. Mr Y didn't reply.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

RSA hasn't suggested that I'm in any way mistaken about what Mr Y's policy entitled him to, if his boiler was, as I've decided, likely to be beyond economic repair. It just asked that I looked at a picture of scale buildup on Mr Y's boiler. It said it thought that this was sufficient evidence. It didn't agree with my decision, and asked for it to be reviewed.

I'd like to confirm to RSA that I considered this picture before I reached my first provisional decision. And I'm aware that Mr Y's policy has an exemption for *"damage caused by or arising from sludge, scale and other debris in the central heating boiler and related pipework."* But as I said in my first provisional decision, for RSA to rely on that exemption, it would have to show not just that there was debris of some sort in the system, but also that this was what caused the damage. RSA would need to set out why it thinks that the debris in Mr Y's system, and the breakdown of his boiler, are linked. This picture doesn't do that. RSA hasn't done that. So I continue to think that RSA isn't able to rely on this exemption in this case. And that, in turn, leads to the conclusions set out above.

I'll now make the award I proposed in my second provisional decision.

my final decision

My final decision is that Royal & Sun Alliance Insurance Plc must pay Mr Y £2,190 to cover what he's paid for a new boiler, and £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 20 July 2019.

Esther Absalom-Gough
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