

complaint

Mr B complains that Astrenska Insurance Limited is responsible for damage in connection with a home emergency insurance policy.

background

The Financial Ombudsman Service deals with complaints against insurance companies and other regulated financial firms. Where we receive a complaint about a claim under an insurance policy we deal with it as a complaint against the insurance company that was responsible for dealing with that claim.

In our final decision we name that insurance company but we don't name any other company or individual.

Mr B owns a flat that he lets to tenants. He had a landlords' home emergency policy bearing the name of an insurance intermediary. The insurance company responsible for dealing with claims was Astrenska.

On Sunday 3 February 2019 there was a leak from a radiator pipe. Mr B called for help under the policy. So he was making a claim under the policy.

Where I refer to Astrenska I include the intermediary, engineers and others insofar as I hold Astrenska responsible for their actions.

Astrenska sent a plumber who isolated the radiator and re-pressurised the system to restore heating and hot water.

But on the morning of Wednesday 6 February the tenants reported there was no heating or hot water and the boiler was leaking water. Astrenska sent an engineer.

Mr B complained to the intermediary that on 3 February the plumber had left the filling loop partially open, which over-pressurised the boiler and caused damage to it including its pressure relief valve (PRV) and expansion vessel.

Astrenska sent a final response letter. It said the filling loop being partially open dislodged sludge, which caused the parts to fail. But as sludge wasn't covered by the policy Astrenska wouldn't cover Mr B's claim. It said it was sending Mr B £20.00 for poor service.

Unhappy with that response, Mr B brought his complaint to us.

On about 18 April 2019 Mr B engaged a private plumbing and heating company to replace the boiler. Its invoice was for £1,451.00.

our investigator's opinion

Our investigator treated the complaint as against the intermediary – whom she referred to as Astrenska. She recommended that the complaint should be upheld in part.

She thought that there had been scale and sludge in the system. So she didn't recommend that Astrenska should pay the full cost of the new boiler.

She thought that if the filling loop hadn't been left open, the parts wouldn't have failed when they did. She recommended that Astrenska should pay Mr B compensation for half the costs of the boiler.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Astrenska on 17 March 2020. I summarise my findings:

I wasn't minded to find it fair and reasonable that Astrenska should rely on the policy exclusion of failure caused by sludge.

Mr B had a boiler that was seven years old. He had a reasonable expectation that it would continue to work for several more years to come. To put it another way, he had a reasonable expectation that he wouldn't have to pay for a new boiler for several years to come.

Instead he paid for a new boiler in April 2019. The invoice included a power flush and a magnetic filter. But I thought that's common practice.

Subject to any further information from Mr B or from Astrenska, my provisional decision was that I was minded to uphold this complaint in part. I intended to direct Astrenska Insurance Limited to pay Mr B:

1. £725.00 towards the cost of installing the new boiler; and
2. simple interest on that amount at the yearly rate of 8% from 18 April 2019 to the date it pays him. If Astrenska considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr B agreed with the provisional decision.

Astrenska didn't agree with the provisional decision. It says in summary, that:

- The morning after the repair, the landlord said the boiler pressure was dropping and he asked for another visit. Astrenska contacted the tenant and asked to check the boiler pressure and confirmed it was fine and had not dropped and there were no leaks on the boiler. It is therefore unclear what was happening here, but when checked the day after the repair, there were no leaks and no pressure issues according to the tenant.
- If the landlord has suggested the pressure had dropped, has someone else tried to re-pressurise the boiler and left the filling loop slightly open?
- The engineer is less likely to leave the filling loop open; they re-filled the system after the repair and would have closed this once it reached the correct pressure. When opening the valve, you can hear the water entering the system. It is possible that the pressure dropped later due to air in the system and was re-pressurised by the tenant.
- This system appears to have been in poor condition internally with failure of internal parts, e.g. the pressure release valve should dump any excessive pressure from the system.

my findings

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

Astrenska's file includes a note that Mr B's boiler was seven years old.

The policy included repairs to the central heating system and its boiler. But I see that was subject to a financial limit of £500.00.

The policy had the following exclusion:

"any water pressure adjustments or failure caused through hard water scale or sludge".

The policy didn't cover an annual service.

From an inspection certificate I see that an independent plumber did an annual service on 30 January 2019. His later statement said the boiler was in perfect working order. I don't accept that this shows that the boiler was free from sludge.

But I find it likely that the plumber would have noted if the boiler was suffering from a failed PRV and a failed expansion vessel. So I find that it was free of such faults.

When Mr B called for help on 3 February 2019, he received a dozen calls. In its final response letter, the intermediary apologised that it had caused confusion and inconvenience by appointing two firms.

The final response letter also said the following:

"On the balance of probabilities I would be of the opinion that the operative inadvertently left the filling loop open"

So I find it more likely than not that on 3 February 2019 the plumber had left the filling loop at least partly open when he should've left it closed.

All the technical evidence says that this would cause the system to fill to the mains water pressure. And if that was over the set limit of safe pressure, then the PRV would release water continually to reduce the pressure. But, as the final response letter said:

"the PRV failed, which in turn caused the expansion vessel to fail"

In the final response letter, the intermediary also apologised that – after he rang for help on 6 February – Mr B was transferred to the firm who had sent the plumber on 3 February.

Astrenska sent another engineer. He said the boiler needed replacement of the PRV, expansion vessel, diverter body and motor. He also said the system contained sludge and that - before the parts were fitted - a power flush was required.

Astrenska said the boiler was beyond economical repair ("BER"). So I don't find it fair for it now to say that Mr B should've got the boiler repaired.

The final response letter included the following:

“when the filling loop was left partially open this would have displaced the sludge and caused the parts to fail.”

Astrenska’s complaints handler later told us the following:

“...the most likely reason that the valve did not shut [is] because the valve’s seat had deposits of limescale, magnate or similar on it.”

But that doesn’t explain why the PRV failing in the open position would cause over-pressurisation.

In any event, Mr B is no longer making a claim for replacement of the PRV, expansion vessel and other parts under the policy. Rather he is complaining that those parts were damaged by the failure to close the filling loop - for which Astrenska is responsible.

So I don’t find it fair and reasonable that Astrenska should rely on the policy exclusion of failure caused by sludge.

I’ve thought about what’s fair and reasonable to try to put Mr B back in the financial position he would’ve been in if Astrenska hadn’t failed to close the filling loop.

He had a boiler that was seven years old. He had a reasonable expectation that it would continue to work for several more years to come. To put it another way, he had a reasonable expectation that he wouldn’t have to pay for a new boiler for several years to come.

Instead he paid for a new boiler in April 2019. I’ve seen the invoice. It included a power flush and a magnetic filter. But I think that’s common practice.

Overall I find it fair and reasonable to direct Astrenska to pay Mr B £725.00 towards the cost of installing the new boiler.

As Mr B has been out of pocket since 18 April 2019 I also find it fair and reasonable to direct Astrenska to pay interest at our usual rate.

my final decision

For the reasons I’ve explained, my final decision is that I uphold this complaint in part. I direct Astrenska Insurance Limited to pay Mr B:

1. £725.00 towards the cost of installing the new boiler; and
2. simple interest on that amount at the yearly rate of 8% from 18 April 2019 to the date it pays him. If Astrenska considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr B how much it’s taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 9 May 2020.

Christopher Gilbert
ombudsman