

complaint

Mr and Mrs S complain about how Aviva Insurance Limited dealt with their home emergency claim. My references to Aviva include its agents.

Mr and Mrs S are joint policyholders and complainants. As Mr S has corresponded with Aviva and us on their behalf for ease of reference I've mainly referred to Mr S.

background

On 6 December 2017 Mr S reported to Aviva that his had boiler broken down. Due to his wife's health conditions Aviva classed them as vulnerable customers.

On 7 December Aviva's contracted engineer attended but left as he had no access to the boiler. Mr S says he offered to move the kitchen unit but the engineer wouldn't wait. On 12 December a second engineer attended. When he checked the boiler details against the Gas Safe Register Technical Bulletin he found the boiler was listed as containing asbestos. He told Mr S he couldn't work on the boiler and left.

Mr S believed his boiler didn't contain asbestos. Aviva sent a third engineer, from a different contractor, who also said the boiler had asbestos. On 14 December Aviva spoke and wrote to Mr S to say its engineers wouldn't work on a boiler with asbestos but it would pay for the boiler to be privately repaired, subject to the policy terms and limits.

On 18 December Mr S sent Aviva an email from the boiler's manufacturer who said the boiler doesn't contain asbestos. Aviva wrote to Mr S on 22 December that the information didn't change it position. Mr S says he got the letter after Christmas. He arranged for an engineer to repair the boiler privately on 4 January 2018.

Mr and Mrs S complained to us that Aviva left them without heating or hot water for 30 days. They want Aviva to pay £336.73 for the private repair costs, £161 for the electricity cost of heating the house while the boiler was broken and compensation for their distress and inconvenience which Mr S detailed. He said Aviva's service had been 'totally unacceptable' particularly as they were vulnerable customers. Mr S also added that Aviva hadn't supplied emergency heaters and didn't offer £500 towards a new boiler when he was looking into that option, as the policy provided.

Aviva said it wasn't able to do the repair in line with the policy terms. It had agreed to pay for a private repair as a gesture of goodwill due to Mr S' and his wife's vulnerability.

Our investigator thought Aviva had acted reasonably in understanding the boiler contained asbestos and hadn't done anything wrong in refusing to repair the boiler. It didn't need to pay towards heaters or a new boiler. But he did think some delay could have been avoided if the first engineer had accessed the boiler. Our investigator said Aviva should pay £125 compensation for the distress and inconvenience as had Mr S known five days earlier that Aviva wasn't going to repair the boiler, he might have got a private engineer to do the repair before Christmas.

Aviva agreed to pay £125 compensation. Mr S said that wasn't enough. He sent in various evidence which he said showed his boiler had no asbestos. He said Aviva hadn't substantiated its belief that the boiler had asbestos. He believes Aviva didn't repair the boiler because it had no experienced gas engineers available at the time.

my findings

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

I uphold this complaint in part. Aviva has now made a fair and reasonable offer to pay £125 compensation for Mr and Mrs S' distress and inconvenience. I'll explain why.

There is contrary evidence as to whether the boiler contained asbestos. The evidence from the boiler manufacturer says the boiler doesn't contain asbestos. Another booklet from the manufacturer says asbestos was banned from use in boiler manufacture in 1984. Mr S says his boiler was made later.

The engineer who did the private repair says there was no disturbance of asbestos containing materials in carrying out the repair as the asbestos in the boiler is limited to the rope seal used as a flue gasket which would only be disturbed if the boiler was taken off the wall. So his evidence is there was asbestos but it wasn't disturbed.

The two Aviva's engineers who did access the boiler said it contained asbestos. The Gas Safe Register technical bulletin shows the make and model and specific number of Mr and Mrs S' boiler as containing asbestos. Aviva's technical gas compliance adviser told it that the particular Gas Safe Register technical bulletin is the industry guide for appliances that contain asbestos.

I think Aviva acted reasonably in following the industry's guidance in the technical bulletin. It could reasonably understand the information was accurate. I've seen Mr S' points about the bulletin saying it's not an exhaustive list and anyone concerned that asbestos may be present should get advice from the manufacturer. But that wording is for when some is concerned there is asbestos and a boiler isn't listed. I don't think it means an item listed as containing asbestos may not be correct.

Aviva doesn't allow its engineers to work on boilers that contain asbestos. The policy excludes 'situations where because of health and safety and with your prior agreement, another engineer has to be brought in who we do not employ, e g to handle asbestos'. As Aviva could reasonably understand the boiler did contain asbestos it didn't need to cover the repair. It's paid Mr S the cost of the private engineer to do the repair.

Aviva acted fairly in not doing the repair and in paying for the private repair.

Aviva told Mr S its position on 14 December. That could have been bought forward by up to five days if the first engineer had accessed the boiler and seen the boiler type. The policy says:

'Creating access

On arriving at your property, the engineer will aim to locate the source of the incident. If direct access is not available (for instance if there are floor tiles or floorboards, or any of your possessions (such as storage boxes or furniture) in the way) the engineer will need to create access. If you want the engineer to do this, you will be asked to confirm this in writing while the engineer is at your property'.

So the first engineer could have got access.

It's possible the extra five days may have meant Mr S could have got a private repair done before 4 January. I've not seen any evidence of any attempts Mr S made to find a private engineer to repair to know if it would actually have made a difference. He had an engineer lined up to replace the boiler around 19/20 December but as Aviva didn't confirm it would pay towards that Mr S didn't get the boiler replaced. It's not clear why he didn't ask that engineer to repair his existing boiler as Aviva had already confirmed it would pay for a private repair.

Mr S and his wife clearly had a very uncomfortable 30 days without hot water and heating in particularly cold weather and I'm sorry to hear how it affected them. Mr S has also said they paid about £160 for electricity during that period.

However, for the reasons I've given I don't think Aviva is responsible for Mr and Mrs S not having hot water and heating for all that period. I think the £125 Aviva has now offered is a reasonable amount of compensation for their distress and inconvenience including a contribution to the electricity bill for the five days delay that might have made a difference.

As to the other matters Mr S raised, the policy gives £500 towards a new boiler if the existing one is declared beyond economical repair. That wasn't Mr and Mrs S' situation so Aviva didn't need to pay the £500. The policy says if parts need to be ordered and it will take over 72 hours to arrive from the engineer's first visit Aviva will deliver two electrical heaters. But that also wasn't the situation. It wasn't that parts had been delayed, Aviva had said it wouldn't do the repair and I've explained why I think that was fair.

my final decision

I partly uphold this complaint.

Aviva Insurance Limited must pay Mr and Mrs S £125 compensation in total for their distress and inconvenience, as it's now agreed to do. Payment must be made within 28 days of us telling it Mr and Mrs S accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 27 March 2019.

Nicola Sisk
ombudsman