

## **complaint**

Mr and Mrs J complain about Astrenska Insurance Limited's refusal to attend to a claim under their home emergency insurance policy, as the boiler was not serviced annually.

## **background**

Mr and Mrs J hold a home emergency insurance policy, underwritten by Astrenska. In December 2012, Mr and Mrs J contacted Astrenska to register a claim, as their boiler had broken down and they were without heating and hot water. However, because Mr and Mrs J had not had their boiler serviced in the past year, Astrenska said the claim was excluded under the terms and conditions of their policy, but that it would attend upon payment of a £120 call out charge.

Mr and Mrs J subsequently appointed a private engineer, who said it would cost in the region of £700 to repair the boiler and that the best thing to do would be to replace the boiler. Mr and Mrs J then paid £1500 to have their boiler replaced.

Dissatisfied, Mr and Mrs J complained to Astrenska before bringing the matter to the attention of this service. Our adjudicator considered that Mr and Mrs J's complaint should be upheld and recommended that Astrenska should pay Mr and Mrs J £500, plus interest, towards the cost of the replacement boiler and pay £100 compensation for the distress and inconvenience caused.

Astrenska did not accept our adjudicator's findings and made the following comments;

- the policy only provides cover for repairs and no repairs were carried out;
- the terms and conditions of Mr and Mrs J's policy do not provide for Astrenska to make a contribution towards the cost of a replacement boiler;
- if Astrenska had arranged for an engineer to attend, the outcome may have been different and it is now unable to ascertain whether or not a replacement boiler was necessary.

However, Astrenska subsequently acknowledged that Mr and Mrs J would have benefitted from a site visit by one of its engineers and offered to pay a total of £200 to Mr and Mrs J. As they did not wish to accept the offer the matter has been referred to me for final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The terms and conditions of Mr and Mrs J's policy provide cover for certain listed home emergency events, such as the failure of the hot water or heating supply. However, the cover provided is not unlimited and is subject to the terms, conditions and exclusions which are set out in the policy.

Mr and Mrs J's policy states:

*"What is not covered*

*2.6 any costs arising as a result of failure to service the boiler or warm air unit ` annually or in accordance with the manufacturer's instructions".*

Astrenska now appears to accept that it would have been reasonable for it to send an engineer to inspect Mr and Mrs J's boiler when the claim was first reported, to establish whether the claim was one for which the policy provided cover. However, for the avoidance of doubt, I believe it would be helpful to set out the approach which this service generally takes to policy terms such as this.

Although the requirement to have an annual boiler service carried out is framed as a policy exclusion, we take the view that the requirement is in its effect akin to a condition precedent. I say this as the policyholder is required to take certain steps before any right to a benefit under the policy accrues.

The Financial Conduct Authority's rules regarding insurance claims handling<sup>1</sup> provide that an insurer should not unreasonably reject a claim by relying on technical breaches of condition that are not materially connected with the circumstances of the claim. As a result, we do not consider that it is fair or reasonable for an insurer to seek to reject a claim on the basis of a policy condition, unless breach of the condition has caused some prejudice to the insurer.

Therefore, in order to rely on Mr and Mrs J's failure to have their boiler serviced annually as a reason for rejecting their claim, Astrenska would need to demonstrate that this failure has led to the boiler breakdown. For this reason, I do not consider Astrenska acted fairly or reasonably in the circumstances by refusing to attend to Mr and Mrs J's claim.

Turning now to the redress which I consider is appropriate in this case, Mr and Mrs J's policy states that Astrenska will:

*"pay up to a maximum of £500 (including VAT), for Emergency Repairs (or a permanent repair if it is a similar cost)... to restore the normal operation of the boiler..."*

I accept Astrenska's submissions that Mr and Mrs J's policy does not state that a contribution will be made towards the cost of a replacement boiler. Furthermore, Mr and Mrs J's policy does not contain a 'beyond economic repair' ('ber') clause – found in many home emergency insurance policies on the market – which sets out the insurer's liability in situations where repairs to a boiler will cost more than a certain amount.

Having said that, Mr and Mrs J's policy provides for a maximum contribution of £500 to restore normal boiler operation and the terms and conditions do not say what will happen in the event that a repair is impossible or, for economic reasons, impractical. As such, I consider a policyholder would be reasonably entitled to believe that a contribution of the £500 policy limit would be payable in such circumstances.

I appreciate there is limited evidence available from Mr and Mrs J's private engineer as to what parts were required to repair the boiler and I cannot conclude with any certainty what diagnosis Astrenska would have made had it attended; it may well have been in a position to repair the boiler within the policy limit of £500, depending on the cost of the parts needed. I consider that Astrenska has prejudiced its own position in this regard, by failing to attend when the claim was reported.

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<sup>1</sup> The Financial Conduct Authority's 'Insurance; Conduct of Business sourcebook' – ICOBS 8.1.2

Having taken into account all of the circumstances of this case, I consider it would be fair and reasonable for Astrenska to pay Mr and Mrs J a £500 contribution towards the cost of their new boiler, being Astrenska's maximum liability under the policy.

I understand Mr and Mrs J and their children were without heating and hot water for approximately four days from the time the claim was reported until their boiler was replaced. I have also taken into account Mr and Mrs J's comments that Astrenska was uncooperative and unhelpful, as well as the conflicting information as to whether or not they were told that the call out charge would be refundable. Having taken into account our published guidance on the payment of compensation for distress and inconvenience, as well as awards previously made by this service in cases sharing similar features, I agree with our adjudicator that an award of £100 compensation is warranted in the circumstances.

As a final point, Mr and Mrs J mentioned on the complaint form sent to this service that they would like for Astrenska to change their policy wording. However, as the Financial Ombudsman Service is not a regulator, this is not something which we have the power to recommend – our role is to assess whether a business has applied the existing policy terms in a fair and reasonable manner. The Financial Conduct Authority (FCA) is the regulator of the financial services industry in the UK.

#### **my final decision**

My final decision is that I uphold this complaint and order Astrenska Insurance Limited to;

- pay Mr and Mrs J a contribution of £500 towards the cost of their replacement boiler;
- pay interest on this amount at 8% simple per annum from the date of payment of the invoice until the date settlement is paid; and
- pay Mr and Mrs J £100 compensation for the distress and inconvenience caused.

Colin Keegan  
**ombudsman**