

complaint

Mr C complains that Society of Lloyd's is responsible for poor service under a home emergency insurance policy.

background

The Financial Ombudsman Service treats complaints about insurance claims as complaints against the insurer responsible for dealing with claims. To prevent third parties being identified, our published decisions don't use their names or brand names.

Mr C had a policy in the name of an insurance intermediary. A syndicate at Lloyd's was responsible for dealing with claims. Where I refer to Lloyd's or the insurer, I include the intermediary, call-handlers, engineers and others for whose actions I hold the insurer responsible.

The policy terms (bearing a date in October 2016) include separate sections 1, 2 and 3 covering respectively damage to the central heating system (excluding the boiler), damage to the central heating boiler and boiler replacement.

Mr C lives in a large barn conversion. He returned home and on 5 December 2017 reported that his circulating pump had malfunctioned and damaged the boiler. So he asked the insurer for help. The insurer said it would replace the boiler but not the pump.

Mr C complained that the insurer should reimburse his costs of paying privately for a new boiler and pump. The new boiler, new pump and new valves together cost Mr C £2,719.69.

our adjudicator's opinion

Our adjudicator didn't recommend that this complaint should be upheld. She thought that the insurer wouldn't be required to reimburse the costs Mr C incurred for the replacement boiler, as the insurer didn't authorise the replacement. As he would've been entitled to a replacement under the policy, the insurer would only be obliged to pay Mr C the cost it would have incurred had it arranged the replacement. The insurer had evidenced it would've incurred a cost of £2,042.39 had it replaced the boiler, including the pump. It therefore, wouldn't be required to contribute any more than this. In addition to this, the insurer had paid Mr C £100.00 towards the cost of his heating and reimbursed an invoice to the value of £9.69. In the circumstances, the adjudicator considered this to be fair and reasonable and she considered the insurer had fulfilled its obligations to Mr C.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to Lloyd's on 9 August 2019. I summarise my findings:

On 15 December 2017 Mr C bought a pump valve for £9.69 – but I think that was plus VAT making a total of £11.62.

The final response letter also offered £9.69 for the pump valve. But it should've offered to reimburse the VAT- inclusive amount of £11.62.

I was minded to find it fair and reasonable that the insurer reimbursed Mr C the £2,042.39 it would've paid for the new boiler and new pump. The insurer offered that reimbursement in its final response letter on 29 June 2018. But there had already been delay and it didn't make the payment until 9 July 2018. So I was minded to find it fair and reasonable to direct the insurer to pay interest at our usual rate on that amount from 21 December 2017 to 9 July 2018.

The final response letter also confirmed an earlier offer to pay £10.00 per day for the running costs of ten days of temporary heating between 5 and 15 December – a total of £100.00. Mr C hadn't provided any evidence of any greater costs. So I was minded to find that fair and reasonable. But there had already been delay and the insurer didn't make the payment until 16 July 2018. So I was minded to find it fair and reasonable to direct the insurer to pay interest at our usual rate on that amount from 15 December 2017 to 16 July 2018.

The final response letter also offered to consider the cost of purchase of temporary heaters. Mr C provided receipts and the insurer paid £16.96 on 23 July 2018. So I was minded to find it fair and reasonable to direct the insurer to pay interest at our usual rate on £16.96 from 15 December 2017 to 23 July 2018.

The insurer was responsible for a few days of delay in the period 5 to 15 December 2017. This caused Mr C some extra distress and inconvenience at an already difficult time for him. Later it caused him further distress and inconvenience by delay and shortcomings in its communications about his complaint. So I was minded to find it fair and reasonable to direct the insurer to pay him £200.00 for distress and inconvenience.

Subject to any further information from Mr C or from Lloyd's, my provisional decision was that I was minded to uphold this complaint in part. I intended to direct Society of Lloyd's to:

1. pay Mr C £1.93 for VAT on the pump valve; and
2. pay Mr C simple interest at a yearly rate of 8% on each of the following amounts for each of the following periods:
 - 2.1 on £9.69 from 15 December 2017 to 16 July 2018; and
 - 2.2 on £1.93 from 15 December 2017 to the date of payment; and
 - 2.3 on £2,042.39 from 21 December 2017 to 9 July 2018; and
 - 2.4 on £100.00 from 15 December 2017 to 16 July 2018; and
 - 2.5 on £16.96 from 15 December 2017 to 23 July 2018;

3. If the insurer considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr C 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; and
4. pay Mr C £200.00 for distress and inconvenience.

Mr C disagrees in part with the provisional decision. He says, in summary, that:

- In effect the insurer reneged on the contract by not responding to his imposed deadline of 14 December 2017 to agree a way forward.
- The insurer was originally intent on replacing his failed boiler with a less costly boiler. This added three days delay. The insurer's agreement to replace the boiler like-for-like was not communicated to him until 15 December.
- The insurer was proposing to supply a pump quoted at a VAT- inclusive cost of £317.88. The pump he obtained, at retail price, was £310.00 inclusive of VAT.
- By refusing to repair his system, the insurer had broken the contract. So he is seeking reimbursement and compensation out with the policy constraints, thus restoring him to the status quo that existed before the insured incident.
- An analysis of the email and document trail on or around 20 to 28 June 2018 reveals admissions that the policy wording was deficient on the matter of the commercial status of a 180mm type circulating pump.
- Lloyd's were sufficiently unsure of their case as to agree that the pump cost should be refunded as a gesture of good will.
- The Unfair Terms in Consumer Contracts Regulations 1999 provide that a term which is not written in plain and intelligible language shall be interpreted in favour of the consumer because he did not draft it.
- A later version of the policy wording almost completely removed the term "domestic".
- An email on 29 June 2018 at 1413 to various recipients at Lloyd's implies that the insurer didn't inform Mr C that his system wouldn't qualify under the policy.
- There is no evidence that the insurer was prepared to allow the system restoration including the pump replacement.
- The insurer continued to refuse to replace the faulty pump and hence restore the system.
- This whole matter has taken up at least 60 hours of Mr C's time.
- He seeks reimbursement for the full costs that he incurred for the boiler and compensation for his time.

Lloyd's agrees with the provisional decision, which it equates to £298.13.

my findings

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

From what Mr C has said, someone installed his boiler in January 2009. From the insurer's file, I think Mr C first took out the policy in January 2012. The policy terms may have changed over the years. I think the relevant terms are those dated October 2016.

Section 1 (central heating system) excludes "*all parts internal and external to the boiler*". I interpret that to mean all parts of the boiler whether internal or external (because they are covered by Section 2).

Section 2 includes the following:

“We will pay for Damage to Your gas fired domestic central heating boiler as stated in the Policy Schedule, including its integral controls, thermostats, frost thermostats, circulating pump...”

The insurer has made much of the word “domestic”. But it appears in a coverage clause not in an exclusion clause. And I don’t think the word “domestic” is enough to exclude parts of a home boiler (such as pumps) that are “light commercial”. So I don’t need to refer to consumer legislation.

Sections 1 and 2 were together subject to a limit of £2,000.00.

Section 3 (boiler replacement) was also subject to financial limits. In the case of a boiler that was – when the policy was first taken out - up to seven years old, the limit was £2,500.00. In the context of an agreement between a consumer and an insurance company I find that the financial limits include VAT.

The insurer arranged a visit on about 6 December. After that, the insurer referred to Mr C’s faulty pump as “external”. It also said it wasn’t “domestic”.

By about 12 December, the insurer considered that the boiler was beyond economic repair. From an invoice, I see that on 14 December 2017, Mr C bought a pump for £310.00. From another invoice I see that on 15 December 2017 Mr C bought a pump valve for £9.69 – but I think that was plus VAT making a total of £11.62.

The insurer’s file includes costings dated 15 December 2017 as follows:

“...boiler: £1123.8 +Vat...flue £73.64 +Vat...180 pump and Valves £264.90 +Vat Total materials cost £1462.39 +Vat Labour Boiler - £500 + Labour Pump – 2 additional hours Total Labour cost £580 +Vat Overall Total cost £2042.39”

I accept that the costings included not only a like-for-like boiler but also the circulating pump. But I don’t think the insurer gave Mr C the detail of those costings.

And a call recording on 15 December shows that the insurer maintained its position that – whilst it would replace the boiler – it wouldn’t replace the pump. I think the policy covered the pump under Section 2. And the situation was an emergency. So I’m not satisfied that the insurer treated Mr C fairly by declining to replace the pump. I think the insurer should’ve recognised that the policy covered the pump as part of the boiler.

Also on 15 December 2017 the boiler manufacturer – independently of the insurer – repaired Mr C’s boiler.

From the call recording, Mr C was satisfied that the system was working. So I find that Mr C or the boiler manufacturer installed the pump on or before 15 December. Mr C declined the insurer’s offer to replace the boiler.

But in the boiler failed again and Mr C says the boiler manufacturer waived its charges.

Mr C paid privately for the installation - on about 21 December – of a new boiler. I’ve seen the invoice for £2,400.00. It doesn’t mention a new pump. So that reinforces my view that the pump had already been replaced.

Having replaced the pump, Mr C didn’t go back to the insurer for a new boiler. If he had done so, I’m satisfied that the insurer would’ve installed a like-for-like new boiler. I’m satisfied that would’ve cost the insurer £2,042.39 - less the cost of the pump and its installation.

Therefore I find it fair and reasonable that the insurer - in its final response letter on 29 June 2018 - offered to reimburse Mr C £2,042.39.

But there had already been delay and it didn’t make the payment until 9 July 2018. So I find it fair and reasonable to direct the insurer to pay interest at our usual rate on that amount from 21 December 2017 to 9 July 2018.

The final response letter also confirmed an earlier offer to pay £10.00 per day for the running costs of ten days of temporary heating between 5 and 15 December – a total of £100.00. Mr C hasn’t provided any evidence of any greater costs. So I find that fair and reasonable.

But there had already been delay and the insurer didn’t make the payment until 16 July 2018.

So I find it fair and reasonable to direct the insurer to pay interest at our usual rate on that amount from 15 December 2017 to 16 July 2018.

The final response letter also offered £9.69 for the pump valve. But I think it should've offered to reimburse the VAT- inclusive amount of £11.62. So I find it fair and reasonable to direct the insurer to pay the difference of £1.93.

And the insurer didn't pay the £9.69 until 16 July 2018. So I will direct it to pay interest at our usual rate on £9.69 from 15 December 2017 to 16 July 2018 and on £1.93 from 15 December 2017 to the date of payment.

The final response letter also offered to consider the cost of purchase of temporary heaters. I think Mr C provided receipts and the insurer paid £16.96 on 23 July 2018. So I find it fair and reasonable to direct the insurer to pay interest at our usual rate on £16.96 from 15 December 2017 to 23 July 2018.

Finally, I think that the insurer is responsible for a few days of delay in the period 5 to 15 December 2017. This caused Mr C some extra distress and inconvenience at an already difficult time for him. Later it caused him further distress and inconvenience by delay and shortcomings in its communications about his complaint. So I find it fair and reasonable to direct the insurer to pay him £200.00 for distress and inconvenience.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Society of Lloyd's to:

- 1 pay Mr C £1.93 for VAT on the pump valve; and
- 2 pay Mr C simple interest at a yearly rate of 8% on each of the following amounts for each of the following periods:
 - 2.1 on £9.69 from 15 December 2017 to 16 July 2018; and
 - 2.2 on £1.93 from 15 December 2017 to the date of payment; and
 - 2.3 on £2,042.39 from 21 December 2017 to 9 July 2018; and
 - 2.4 on £100.00 from 15 December 2017 to 16 July 2018; and
 - 2.5 on £16.96 from 15 December 2017 to 23 July 2018; and
- 3 If the insurer considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr C 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; and
- 4 pay Mr C £200.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 October 2019.

Christopher Gilbert
ombudsman