

complaint

Mrs W is unhappy that Lloyds Bank General Insurance Limited (Lloyds) hasn't accepted a claim under her home insurance policy.

background

I issued a provisional decision on 9 November 2018 detailing my intention to uphold Mrs W's complaint. I was minded to require Lloyds to pay £885 and add simple interest at 8% per year from when Mrs W paid each of the invoices to when it pays her. I also intend to make it pay £150 for the distress and inconvenience.

Mrs W and Lloyds have both replied to that decision and I'm now in a position to issue my final decision.

I set out the background as follows:

In September 2016 Mrs W took out a home insurance policy with Lloyds.

In October 2016 Mrs W's boiler broke down, so she called a plumbing/heating firm to come and take a look. Mrs W told the plumber that the boiler had broken down twice earlier in the year (March and April) and it had been repaired. Mrs W wasn't sure what repairs the previous plumbers had done as she was unable to locate the receipts and couldn't recall the name of the firm. But on this occasion the plumber said the printed circuit board (PCB) had failed and replaced the part for her.

In December 2016 the boiler failed again so Mrs W asked the plumbing/heating firm to come back. It said the PCB had failed again. The plumber tested to see if there were any other faulty components on the boiler that could be causing an electrical discharge to see if that could be a reason why the PCB was failing. But nothing else appeared to be wrong so the PCB was replaced again.

Unfortunately in January 2017 the boiler failed again. Mrs W not wanting to pay for the same part to be replaced again and as no other cause could be found as to why this part kept failing she said she wanted the boiler replaced.

When replacing the boiler, the plumber removed the boxing from around the pipes below the boiler. As the heating system was being flushed in preparation for the new boiler the plumber noticed that an intermittent fine spray of water was coming from the central heating return pipe. The plumber believes this would be happening when the system was working under pressure and at full temperature.

Mrs W then recalled that she had the pipes boxed in about March. The plumber believes the damage to the pipe was caused whilst it was being boxed in – either by an accidental hammer blow or stray panel pin. Mrs W called Lloyds to make a claim.

Mrs W says Lloyds told her that as the damage occurred before her policy started with it, she would need to make a claim with her previous insurer. Her previous insurer said Lloyds should cover it and referred her back. Mrs W thinks Lloyds should be covering the claim so in December 2017 Mrs W registered a claim against Lloyds in the small claims court. The judge has stayed proceedings until this service looks into the matter.

Lloyds say in its policy the terms and conditions say 'that loss or damage has to occur during the insurance period due to an insured cause that occurs during the insurance period'. It also says under its general exclusion it won't cover any damage existing before the policy started.

Lloyds say Mrs W was aware that there was a problem with the boiler when she held cover with her previous insurer as she had arranged for a plumber to visit the property twice to carry out repairs – most likely to the PCB's. It believes this is proven by the fact that Mrs W had to keep topping up the system (suggesting a water leak) and getting the PCB's replaced.

Our investigator thought that as Mrs W had called in two plumbing/heating firms and neither of them identified a possible leak, Mrs W wouldn't know there was a leak. The PCB was replaced not knowing what was causing it to fail. The investigator said she didn't think it was fair that the damage to the pipe and the first two repairs be covered by Lloyds but she did think Lloyds should pay for the two latter repairs. The investigator also thought it was unfair to ask Lloyds to cover the boiler cost as once the leak was identified the boiler could've been fixed not replaced. Our investigator also thought Lloyds should pay Mrs W £150 compensation for the distress and inconvenience.

Lloyds said if it agreed to pay for the latter repairs it would apply two excesses as it would be for two claims. Our investigator disagreed and thought this should be considered as one escape of water, from one source, with one excess. Lloyds think if that is the case then that single leak began in March 2016 when the boxing was installed around the pipes. The damage therefore occurred before its policy started and should be considered by the previous insurer.

As Lloyds didn't agree with our investigator the complaint has been passed to me to make a final decision.

My provisional findings were as follows:

Lloyds has said Mrs W knew she had a problem with the boiler before she held cover with it. I agree, Mrs W did know she had a problem with the boiler but she thought it had been fixed in April 2016. At the time she took out the Lloyds policy in September 2016 she had no reason to think otherwise. It wasn't until the heating was switched back on after September that the problem started again. I don't think it's reasonable to expect Mrs W to have known that there was a leak that was causing the damage to the boiler. Mrs W had used two plumbing firms - people who specialise in this field - and neither of them detected a leak until the boiler was being replaced.

Lloyds have said that if the leak had been reported to them in October, they would have been able to detect and repair the leak. That would have avoided the need for a further repair and replacement of the boiler. I've considered the plumber's report from March 2017 it said; 'your decision to replace the boiler was the correct one. We would've been reluctant to carry out further repairs as we weren't able to ascertain previously the cause of the PCB failures...we were at a loss at the time to understand why a relatively young, high quality boiler should present so many problems. As I mentioned earlier, I very much doubt the leak would've been detected if you hadn't chosen to have a replacement boiler installed, as there would've otherwise been no reason to ever remove the boxing'.

I've not seen any evidence to support that another plumbing contractor would've acted differently from the previous ones used by Mrs W or that if she had asked for further investigation that the leak would've been detected any sooner. The leak was only identified when Mrs W decided to change her boiler - so, it was her decision that led to the discovery of the escape of water. So, I'm satisfied that Mrs W took action when the previous repairs hadn't rectified the problem and notified her insurer once she was aware it was an insured cause. I therefore think Lloyds should be liable for any damage caused whilst they were insuring Mrs W's property.

I think the damage can be differentiated between the two insurers. I wouldn't expect Lloyds to consider the damage to the leaking pipe or the repairs carried out to the boiler in March and April 2016. These events occurred before the Lloyds policy began and wouldn't be covered by Mrs W's policy. But I think it's fair for Lloyds to cover the cost of putting right the damage that was caused from October 2016 to January 2017. Mrs W has asked me to consider the cost of the two PCB repairs and the replacement cost of the boiler. And I've thought about this carefully, but once the leak was detected a reason was found as to why the PCB was failing and I don't think this then meant the whole boiler needed to be replaced, the PCB could've just been replaced. So I won't be asking Lloyds to cover this cost but I do think it should consider the claim as three PCB failures and pay the cost for those parts - £885 (£295 per PCB). I also think it should add 8% simple interest on this amount from the date Mrs W paid each invoice (14 October 2016, 10 December 2016 and 13 January 2017) to when it pays her.

Lloyds has said it will consider the two PCB replacements as separate escape of water claims and apply an excess to each claim. I can understand Lloyds's position but I have to consider if this is fair and reasonable in the circumstances of this complaint. In doing so I've thought about what Lloyds most likely would've done if Mrs W had triggered her policy at the outset. As I've said above I think it's unlikely that the leak would've been detected any sooner even if Lloyds had been informed at the breakdown in October. I therefore think it's more likely than not that Lloyds would have dealt with this problem as a single but ongoing issue and it would've considered that the leak was intermittent but was coming from the one source of escape of water. So I don't think it is fair for each replacement to be considered as separate claims and Lloyds should apply only one policy excess.

I also think Lloyds should pay Mrs W compensation for the distress and inconvenience she was caused. Mrs W has been passed back and forth between her previous insurer and Lloyds from January to April 2017.

Although I think Mrs W could've referred this complaint to our service earlier without involving the small claims court, there's no doubt that all of the above could've been avoided had Lloyds covered her claim in the first place - and I think Mrs W's claim could've been covered in March 2017, when Lloyds considered the engineer's report. To recognise the distress and inconvenience I think Lloyds should pay £150.

replies to my provisional decision

Mrs W agreed with the provisional decision and had no further comments. In summary Lloyds reiterated its points as follows:

- It thinks in the provisional decision I agreed the cause of the damage occurred pre-inception.

- A separate excess should be chargeable for each PCB repair if we are ignoring the fact that the proximate cause was prior to the policy start date.
- Had Mrs W registered a claim in October and then again in December and January, a new claim would've been registered each time as the original problem had believed to have been rectified with an excess payable – they would not have been 'tagged on' to the original claim.

my findings

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

I don't agree with the points Lloyds have made and I'll explain why.

Mrs W's plumber believed the pipe was damaged in March 2016. That was before the Lloyds policy started. But the plumber also said the leak was intermittent, and only happened when the system was working under pressure and at full temperature. The system wouldn't have been in that state all the time – especially during the summer when it would likely have been used less than in the winter. So I don't think the leak was continuous.

If the leak had started in March and continued until after the Lloyds policy began, I might agree the leak was caused before the policy started. But I don't think that's what happened.

I think this was a series of one-off leaks, with each one caused when the system was under particular strain. Two of those leaks happened before the policy began (the leaks in March and April 2016). That's why I said Lloyds didn't have to cover the damage caused by them. The other three leaks happened after the policy began, so I went on to consider whether the Lloyds policy might cover the damage caused by them.

The Lloyds policy says it covers 'damage caused by an insured cause that occurs during the insurance period'. The insured cause that's relevant here is escape of water. And the insurance period began in September 2016. So in the context of this claim, the policy says it covers damage caused by an escape of water that occurs after September 2016.

In October 2016 there was an escape of water and it damaged the PCB. The proximate cause of that damage was the water leak in October when the system was under strain – not the pipe damage in March. So the policy covers that damage.

In my provisional decision I explained what I thought would've happened if Mrs W had made a claim to Lloyds after the PCB was damaged in October. In summary, I thought it was more likely than not, that Lloyds would've taken the same action as Mrs W's plumber and repaired the PCB, unaware of the pipe leak. That means there would've been another leak – and more damage – in December 2016. And the same again in January 2017.

Lloyds hasn't disagreed with that. But it says the December and January leaks would each have been treated as separate claims – with separate excesses. I don't think that would've been the fair thing to do.

The PCB damage in December and January would've exposed that the problem Mrs W reported in October hadn't been fully resolved by Lloyds. It wouldn't be fair for Lloyds to log further claims and charge further excesses where it hadn't fully resolved a previous claim.

I think it would've been fair for further work in December and January to be treated as extensions of the October claim – not because there was a continuous leak, but because there was an outstanding problem for Lloyds to deal with. So it wouldn't be fair for further claims to be logged or further excesses to be charged.

So I'm satisfied that my provisional decision represents an outcome that's fair and reasonable. So my outcome remains unchanged and my final decision is that I uphold the complaint.

my final decision

I uphold the complaint and require Lloyds Bank General Insurance Limited to pay £885 and add simple interest at 8% per year* from when Mrs W paid each of the invoices to when it pays her. And pay £150 for the distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 29 December 2018.

Angela Casey
Ombudsman

* If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs W how much it's taken off. It should also give Mrs W a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.