

complaint

Mr M complains that because of faulty repair work by Royal & Sun Alliance Insurance Plc (“RSA”) under his home emergency insurance policy, his central heating boiler failed prematurely and had to be replaced.

background

I issued a provisional decision on this complaint on 4 April 2019, a copy of which is attached to, and forms part of this decision.

RSA accepted my provisional decision subject to receiving a copy of the invoice Mr M paid for his replacement boiler.

Mr M responded to say that he accepted my proposal in respect of the compensation towards the boiler replacement costs. In respect of the compensation proposed for upset and damage to the personal well being of Mr M and his wife he said:

- RSA’s engineers had been negligent. As a result, he thought the escape of poisonous fumes was likely to have been imminent, and could have proved fatal;
- the deteriorating state of the boiler over the years should have been picked up and rectified on service visits;
- when the faulty flue was finally found, the engineer took it away. It took Mr M some time to get it returned. He suspected this was an attempt to hide the cause of the problem;
- RSA was slow to respond when he complained; and
- the £236 already paid was solely to cover the costs of alternative heating sources.

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 understand Mr M’s concern that the deterioration in the boiler caused by the faulty workmanship could well have proved fatal, and the upset this caused Mr and Mrs M when it came to light. Fortunately the fault was found before this could happen.

It isn’t our role to fine or punish a business – that is for the Financial Conduct Authority as its regulator to consider. Nor can we compensate consumers for what might have happened.

I’ve considered carefully Mr M’s further comments, but remain of the view that the compensation of £250 I proposed for the distress and inconvenience suffered, in addition to the £236 RSA paid towards alternative heating costs, is appropriate in all the circumstances.

my final decision

My decision is that I uphold this complaint in part, and order Royal & Sun Alliance Insurance Plc:

1. subject to Mr M supplying RSA with a copy of the invoice confirming what he paid to have his replacement boiler supplied and fitted, to reimburse Mr M 40% of what it

cost him to buy the replacement boiler and have it fitted. RSA can deduct from this contribution the £400 it has already paid him towards this; and

2. to pay Mr M £250, in addition to the £236 it has already paid him, as compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 June 2019.

Lennox Towers
ombudsman

COPY OF MY PROVISIONAL DECISION OF 4 April 2019

complaint

Mr M complains that because of faulty repair work by RSA under his home emergency insurance policy, his central heating boiler failed prematurely and had to be replaced.

background

Mr M took out a home emergency policy with RSA in January 2012. Amongst other things, it covered repairs to his central heating boiler, which had been installed in 2005.

Following a call out by Mr M in 2013, RSA arranged for the manufacturer to fit a replacement heat exchanger. However it appears this wasn't done properly – the flue manifold wasn't correctly

reconnected. RSA's engineers noticed this on subsequent visits as early as 2015, but didn't take any further action.

The result was that escaping flue gases seem to have caused corrosion in the boiler, so that by 2018 another replacement heat exchanger was required. However parts for this boiler were no longer available so RSA said it was beyond economic repair (BER), and Mr M would have to fit a new boiler.

Mr M did so at a cost of over £2,000. He said RSA should compensate him because it was the poor workmanship in replacing the heat exchanger that made this necessary. He also asked for compensation because he and his wife, who were both elderly, were left without heating for more than a month during a period of exceptionally cold weather.

RSA paid Mr M compensation of £400 towards replacing his boiler. It did so on the basis that this was the maximum it would have paid for a boiler that became BER under its policy terms, as the boiler was over 7 but less than 10 years old when he first took out the policy.

RSA paid him a further £236 as compensation in respect of the time he was without heating, his temporary heating costs, and as a part refund of his policy premium. Mr M didn't think RSA had compensated him adequately for the loss of his boiler and the impact on him and his wife, and complained to us.

our investigator's view

Our investigator recommended that this complaint should be upheld. She thought RSA's engineers should have noticed in 2015 that the heat exchanger hadn't been fitted properly in 2013, and that this had damaged the boiler. RSA acknowledged that because of unavailability of parts the boiler was already BER in 2015.

The investigator said that as the boiler was BER in 2015, Mr M had the benefit of a replacement guarantee under his policy as it was then less than 10 years old. So he would have been entitled to claim a replacement then. She thought it was fair that RSA should now reimburse Mr M the full cost of replacing his boiler, rather than just the £400 it had contributed towards this.

She said RSA should pay Mr M a further £500 as compensation for the distress and inconvenience caused to him and his wife. Due to its errors Mr M had suffered from repeated boiler failures and call outs over the years. And Mr M and his wife, both elderly, had been hit quite badly when they were left without heating over a long period of time in exceptionally cold weather.

RSA responded to say, in summary, that if it had noticed the damage in 2015, Mr M wouldn't have been entitled to a replacement boiler. It pointed out that Section 3 of its policy terms at that time, under the heading "*What we do not cover*", said

"3.4 The boiler will not be replaced if spare parts are not available for the make/model of boiler specified in the Schedule during the term of cover."

It did offer to increase its compensation offer in respect of the boiler from £400 to £500.

The investigator thought that looking at the policy document as a whole, the restriction on the replacement boiler guarantee RSA had mentioned wasn't highlighted sufficiently to bring it to a customer's attention. So it wasn't fair and reasonable for RSA to be able to rely on it. RSA disagreed - it thought the restriction was clearly set out in the document.

Mr M responded to say, in summary, that the reason his boiler failed prematurely was the negligence of RSA's agents and engineers, first in not properly refitting the heat exchanger in 2013, and then, although they noticed things weren't right, in not dealing with the consequences of this.

The result was that highly corrosive products of combustion escaped inside the boiler casing and damaged the boiler, causing it to fail.

my provisional findings

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

In considering this complaint, I need to decide:

1. whether the restriction in the policy wording that RSA relies on was set out sufficiently prominently to bring it to the attention of customers; and
2. what, if any, compensation RSA should pay to Mr M for the loss of his boiler and the distress and inconvenience he and his wife suffered.

1. The Policy Wording

The policy booklet runs to 21 pages and is in two parts, first the general description of what the policy does and does not cover, and then the policy wording itself.

The general part contains a list of things that aren't covered. It points out two specific restrictions on the boiler replacement guarantee - if the boiler is over 7 years old at the policy start date, or if it's over 10 years old at the date of claim. It also says:

"A full list of what is not covered can be found in our Policy Wording which can be found at the back of this booklet and which you should read in conjunction with your Policy Schedule."

In the policy wording itself, there is a prominent panel in a different colour from the other policy wording. Included under the heading "**MAIN POLICY EXCLUSIONS**" is the following wording:

"Section 3

- ...
- *Boilers over 7 years old when taking Your very first Policy.*
- *Boiler replacement if spare parts are not available for the make or model of boiler which is specified in the Policy Schedule.*
- *Replacement of a boiler which is over 10 years old."*

Section 3 of the policy terms, under the heading "*What we do not cover*", says:

"3.4 The boiler will not be replaced if spare parts are not available for the make/model of boiler specified in the Schedule during the term of cover."

In my view, the document, taken as a whole, sufficiently clearly sets out the circumstances the policy doesn't cover. So I disagree with the investigator's view on this point. I think if there had been a normal failure of part of the boiler in 2015, when the appropriate spare parts were no longer available, RSA could have relied on section 3.4 to say the boiler replacement guarantee didn't apply.

However, as Mr M has pointed out, this wasn't a normal failure of a boiler part. The boiler failed in 2018 because RSA's agents didn't fit the replacement heat exchanger correctly in 2013, and its engineers failed from 2015 onwards to notice and deal with the effects of this.

The result was that Mr M had trouble and faults, and consequential call outs, for his boiler between 2013 and 2018 which I think wouldn't otherwise have occurred. And his boiler failed completely in 2018 when otherwise he might have expected several more years use.

In these circumstances I think it's right that Mr M should be compensated by RSA, and it isn't reasonable for RSA to rely on its policy terms to exclude proper compensation.

2. What compensation should RSA pay?

Mr M did have the use of the boiler until 2018, by which time it was 13 years old. At that age, he might have expected a few more years of use, but it could have failed at any time. So I don't think it would be reasonable for me to say that RSA should reimburse the full cost of its replacement.

There isn't a precise formula for what's fair in such circumstances. However it seems to me that it would be fair and reasonable for RSA to contribute 40% of what it cost Mr M to buy the replacement boiler and have it fitted. RSA can deduct from this contribution the £400 it has already paid him towards this.

The failure of RSA's agents and engineers also caused Mr M distress and inconvenience for which it's right that RSA should compensate him. He had to suffer the trouble, faults, and consequential call outs I've already mentioned. He wasn't able to change his boiler at a time of his own choosing. And this meant he and his wife were without heating for several weeks during a period of very cold weather.

RSA has already paid Mr M £236 as compensation and towards his temporary heating costs. I think it's fair that it should pay him a further £250 in addition to this as compensation for the distress and inconvenience he suffered.

my provisional decision

For the reasons I've explained, but subject to any further comments and evidence I receive from either Mr M or from RSA by 18 April 2019, I intend to uphold this complaint in part. I intend to order Royal & Sun Alliance Insurance Plc to:

1. reimburse Mr M 40% of what it cost him to buy the replacement boiler and have it fitted. RSA can deduct from this contribution the £400 it has already paid him towards this; and
2. pay Mr M £250, in addition to the £236 it has already paid him, as compensation for the distress and inconvenience it has caused him.

Lennox Towers
ombudsman