

complaint

Mr and Mrs S's complaint is about the handling of a claim under a boiler insurance policy underwritten by Aviva Insurance Limited.

Aviva uses agents to deal with claims on its behalf. Any references to Aviva in this decision should be read as including anything said and done on its behalf by those claims-handling agents.

background

Mr and Mrs S held a landlord's central heating insurance policy with Aviva for a property they let out. The property was being renovated in August 2018, for the incoming tenant with the tenancy commencement date of 27 September 2018.

On 23 July 2018 Mr and Mrs S reported that the boiler in the property was losing pressure. An annual service was already scheduled for 2 August 2018 and so as the boiler was working, Aviva said the engineer would look into the loss of pressure at that appointment.

The engineer said there was a fault and he needed to order parts. Mr and Mrs S were told an engineer would contact them in order to arrange an appointment to fit the parts but they had to chase the appointment on 9 August 2018. Between 11 August 2018 and 20 August 2018, there were several more appointments with different contractors attending on behalf of Aviva. One didn't turn up, another couldn't find anything wrong with the boiler. At the last of these appointments, they were told parts would be ordered and fitted soon.

However, on 30 August 2018, Aviva told Mr and Mrs S it'd have to appoint a different contractor, as the boiler was an unvented cylinder boiler and the previous contractors were not able to work on that type of boiler. Aviva confirmed it would appoint another contractor to attend on 8 September 2018. It also agreed to pay for Mrs S to travel home to be there for the appointment (£237.25). The new contractor said the problem was the regulator and that they would contact the manufacturer of the boiler and order the parts to be fitted on 12 September 2018. However, on 10 September 2018, Aviva told Mr and Mrs S that the boiler was beyond economic repair.

The policy provides that in the event the boiler is deemed to be beyond repair and is "*over 7 years of age we will source, replace and install a new boiler, but you will be required to pay for the installation costs*".

As Mr and Mrs S's boiler was less than seven years old, Aviva arranged an appointment to quote for a replacement boiler a few days later.

The installer initially said that the central heating system in Mr and Mrs S's house was a single pipe system and it wasn't able to install a new boiler on such a system (it would need to be a two-pipe system). Mr and Mrs S carried out some research and found that the boiler could be compatible with a one pipe system, but a disclaimer would need to be signed, in case the boiler didn't work properly. It was subsequently confirmed that it would install the boiler on the existing system and work could start on 26 September 2018 and it would take four days.

Mr and Mrs S told Aviva they had a tenant due to move into the property on 27 September 2018 and so the work needed to be done sooner than this.

I understand that Aviva's installer then said it could fit the new boiler in one day on 26 September 2018 but there was a delay in getting the scaffolding that would be required and they then said they could no longer fit the work in.

As they had to have the work completed before their tenant moved in, Mr and Mrs S arranged for their own contractors to install the boiler. They say the scaffolding was put up on 24 September 2018, the boiler installed the next day and the scaffolding removed on 26 September 2018. The total cost was £3,070.80 (made up of boiler and installation £2,470.80 and scaffolding £600.00) which was considerably more than the quote provided by Aviva's contractor (£1,213.40). They had to sign a disclaimer as to any difference in temperature the heating at the property would suffer due to the installation of the boiler onto a single pipe system.

Mr and Mrs S are very unhappy with the way their claim was handled and say they have incurred considerable additional expenses as a direct result. I have summarised some of their points below:

- They had to pay more to have the boiler installed so quickly and Aviva's handling of the claim meant they didn't have the chance to shop around for a cheaper quote.
- Between 21 and 26 September 2018, they suffered considerable inconvenience trying to source and secure a boiler provider and scaffolding company to carry out the work in time for the tenant. This could have been prevented had HomeServe appointed competent engineers to identify the problem when the issue with the boiler was first reported to HomeServe on 23 July 2018.
- If the boiler had been deemed beyond economical repair while their renovation work was being carried out, they could have arranged for the necessary pipework to be completed during this work.
- This caused additional stress, which is unacceptable particularly because Mr S suffered a heart attack on 2 August 2018.
- It is unacceptable that in accordance with its terms and conditions Aviva offered a free boiler, however, it was aware that it would not be able to do the work in time for the tenant to move in, which it had caused, allowing it to renege on its offer.
- Aviva has offered £573 towards the purchase of a new boiler when it was aware that the boiler its partner had recommended retailed at just over £1,250.
- Aviva says it does not cover cash alternatives but the policy doesn't say anything about this.

Mr and Mrs S have asked for a total of £4,170.80 from Aviva, made up of the cost of the new boiler; compensation of £700; international telephone calls and attendances £270; three days' loss of earnings at £150 per day from Friday 7 September to Sunday 9 September 2018; and arranging representatives to be at the property for the engineers' visits from 2 August to 14 September 2018, £300.00

Aviva accepts the claim wasn't handled as well as it should have been. Aviva initially offered a cash in lieu settlement of £573 being the cost of the boiler it said would be the suitable replacement and £427 compensation for the missed appointment and the additional appointments at the beginning of the claim, and the inconvenience that was caused overall. This was in addition to the £237.25 it had already paid Mrs S.

After the complaint was brought to this service, Aviva increased its offer. It said

it would have authorised a different boiler from the one originally quoted for above, due to the size of the property. Aviva says this would have costs £880.48 plus VAT (*i.e.* £1,056.58 in total). So its total offer, including compensation is £1,483.58.

One of our investigators looked into the matter. She acknowledged that Mr and Mrs S were under pressure to have the new boiler installed before their tenant moved in and it was difficult for them, as they do not live in the United Kingdom and Mr S was unwell. However, overall she was satisfied that the offer by Aviva was reasonable.

Mr and Mrs S do not accept the investigator's assessment, so the matter has been passed to me.

Mr and Mrs S have made a number of submissions in response to the investigator's assessment, which I've summarised below:

- The policy says that if parts aren't readily available or will take more than 28 days to find, then it will not be able to complete a repair. They were told the boiler parts would be ordered and that the problem would be fixed.
- Their policy is specifically for landlords and Aviva has known they've lived abroad since 2011.
- Aviva's contractor could not start the work on 26 September 2018, as it was unable to source the scaffolding from its contractors, so they sourced the scaffolding. However, Aviva then said that 'we had lost the slot' for the work to be scheduled for 26 September 2018 due to the short delay in sourcing the scaffolding.
- If the tenant had not been able to move in on the contracted date, even if they had provided hotel accommodation as Aviva had suggested to them, they could have been sued for breach of contract. Aviva would not confirm that it'd indemnify them for any losses resulting from this.
- The investigator said that it would have taken more than one appointment to diagnose the problem with the boiler but the contractor that attended on 8 September 2018 was able to diagnose the boiler as beyond economical repair on 10 September 2018.
- Their contract was with the claims-handlers and all the failings in the case were in their activities and not Aviva.
- Aviva's failure to make good on the promise to do the work on 26 September 2018 resulted in additional and unnecessary delays and losses which they would not have incurred otherwise.
- The adjudicator has accepted Aviva's assertions and figures without question.

As the adjudicator has not been able to resolve the complaint, it has been passed to me.

my findings

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

respondent business

As mentioned above, Aviva uses agents to deal with claims on its behalf. Mr and Mrs S feel strongly that their contract was with these agents and that they are responsible for the mis-handling of their claim.

Our rules provide that we can consider complaints about regulated firms carrying out regulated activities. The regulated activities we can look into are set out in the Financial Conduct Authority Handbook and include the effecting and carrying out of a contract of insurance as principal. Claims-handling as an agent (which is the agents function here) is not a regulated activity. The claims-handling agent is carrying out those activities on behalf of Aviva the underwriter and it therefore bears responsibility for its actions. Everything the claims-handlers have said and done has been on behalf of Aviva, as its agent. Aviva is therefore responsible.

policy cover

The policy provides that Aviva was obliged to pay the cost of the replacement boiler, having deemed Mr and Mrs S's boiler as being beyond economic repair. However, they would have to pay the installation costs.

The quote from Aviva's installer was £1,213.40 for the installation work only and did not include the cost of the actual boiler. I see no reason to doubt this. Aviva says the boiler it would have provided cost £888.48 plus VAT (*i.e.* £1,056.58 in total). I have not seen any evidence that this would not have been a suitable replacement for Mr and Mrs S's boiler.

So the cost of the boiler and installation from Aviva's installer would have been £2,269.98 in total. The amount Mr and Mrs S paid for the boiler and installation (but not the scaffolding) was £2,470.80. This is not significantly different and therefore I do not consider that Mr and Mrs S have established they incurred significantly greater costs as a result of having to get the work done quickly (even if I were satisfied that this urgency was entirely Aviva's fault, which I do not. I will explain why later in this decision.).

Mr and Mrs S were never entitled to the cost of installing the boiler – only the cost of the boiler itself - and so I do not consider Aviva needs to pay towards the installation costs they incurred. I am satisfied that the offer of £1,056.58 for the replacement boiler is reasonable. However, Aviva should add interest at our usual rate to this amount.

claims-handling

Mr and Mrs S are adamant that the boiler should have been deemed beyond economic repair during the first visit. They say the different contractor that attended in September 2018 was able to come to this conclusion quickly enough. I do accept that there were some avoidable delays, with one appointment missed, different contractors needed and Mr and Mrs S having to chase for updates. However, I do not consider it has been established that none of these additional visits would have been required. I say this because there's no expert evidence that the fault was one that should have immediately rendered the boiler beyond repair; I note during at least one visit it seems no faults were found.

I also do not think I can make an award against Aviva for its installer not being able to do the work on the particular day required by Mr and Mrs S. While I can see they were under time pressure, there is no provision in the policy for the installation to be carried out within any particular time period. Time was of the essence for Mr and Mrs S but we would only expect Aviva to have offered to do the installation within a reasonable time. I also note there was some debate about whether the boiler could be replaced on the existing system. This seems to me to have been a legitimate concern and so I can't make an award against Aviva for any delay this caused. Overall there these discussion apparently took less than a week. I do not consider this was unreasonable.

Given all this, I do not consider that Aviva should pay the additional installation costs incurred, over and above the quote from Aviva's installer (around £200 as set out in the above section).

compensation

Mr and Mrs S have asked for compensation for the trouble caused to them as well as loss of earnings, from the time spent coming back home for an appointment; arranging other people to attend other appointments; and the cost of international phone calls.

I can see this was an extremely stressful period of time: Mr S was very ill and they were having to get the boiler sorted out from abroad before their tenant moved in. However, not all the distress and inconvenience caused is solely due to Aviva, as set out above.

I have taken all this into account and consider that overall the sum of £427 already offered and the payment towards Mrs S travel costs is fair and reasonable in all the circumstances and in line with other awards.

my final decision

I uphold this complaint in part and require I consider that Aviva Insurance Ltd to pay Mr and Mrs S the following:

- £1,056.58 as cash in lieu settlement for the replacement boiler, together with interest at 8% simple per annum from the date they paid for the replacement of their boiler to the date of reimbursement; and
- £427 compensation for the distress and inconvenience caused by the handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 14 March 2020.

Harriet McCarthy
ombudsman