

complaint

Mr H complains about what Aviva Insurance Limited did when he asked it to fix his boiler.

background

Mr H has a home emergency policy with Aviva, for a property he rents out. He told us that he'd recently spent £2,500 on replacing a boiler in the property, because he'd been told it was leaking. But he said that he'd then found out that this didn't solve the damp problem.

Mr H said a plumber had found a leak from the top floor, and he thought that this was what had caused the damp area around the boiler, not a leak from the boiler itself. Mr H said he'd only paid for the new boiler because of the advice Aviva gave him. He thought this advice was wrong. So he wanted Aviva to pay him back the money he'd spent, unnecessarily.

Aviva said that Mr H had rung it after an engineer from an unrelated company had carried out a gas safety check, and had declared Mr H's boiler unsafe. It said that the report from that engineer said "*at risk – all off - boiler leaking – isolated gas – unable to isolate water – drained heating*". Aviva said that it appreciated that Mr H had found another leak since then, but it thought that there had just been two leaks.

Our investigator didn't uphold this complaint. She said that the photo she'd seen did suggest the boiler was badly corroded. She didn't think that Aviva was wrong to rely on the report from the first gas engineer. So she didn't think that Aviva had to do any more.

Mr H said that he didn't think that the photo had been taken by Aviva's engineer. He thought it was one that he'd sent Aviva, showing limescale on the copper balance pipe, which had been like that for years. He said that a previous engineer didn't want to remove the limescale, in case it caused another leak. And he thought that the most recent inspection had just assumed this was what was leaking.

Mr H repeated that Aviva hadn't checked itself to see if the boiler was leaking, it had just relied on what the previous engineer had said. Mr H said he wanted an ombudsman to consider his case, so this complaint was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it in part. This is what I said then:

- Mr H thinks that Aviva made a mistake, and should've investigated the problem with his boiler fully, rather than rely on information provided by the previous engineer who looked at it. But I thought it was reasonable for Aviva to rely on the report provided by the previous engineer. He saw the boiler working, and the central heating system full of water, and his report says "*boiler leaking*". I didn't think it was wrong if Aviva thought that this must mean the boiler was leaking. I thought it was reasonable for Aviva to start thinking about what it should do, on that basis.
- I then had to think about what Aviva should've done next. Its policy sets out that it doesn't have to make repairs to a boiler, if the boiler is beyond economic repair, or if the parts are obsolete. There seemed to have been some confusion over which of those

policy terms applied. The engineer said the cylinder was leaking, and that was obsolete. But it also said that this sort of unvented cylinder wasn't covered under the policy.

- I wasn't sure whether it would've been fair for Aviva to refuse to repair Mr H's boiler, on the basis that this cylinder, which wasn't covered, couldn't be replaced because that part was no longer available. I hadn't got any evidence on whether it would've been safe to run the boiler with a leaking cylinder.
- But we knew that Aviva's engineer also said at the time that the boiler was beyond economic repair. And I hadn't seen anything in this case to make me doubt Aviva's conclusion on that.
- That meant that, under Mr H's policy, Aviva didn't have to repair Mr H's boiler. After some confusion, Aviva sent us the relevant policy. That says what happens when a boiler is beyond economic repair.
- The policy says –
 - o *BER – If upon making a claim your boiler is deemed to be BER, we will replace it if it is less than 7 years old ... If your boiler is 7 years old or over when it is declared BER we will make a contribution of £200 towards the cost of a new boiler. When your boiler is declared BER, your policy will be cancelled in accordance with the procedure outlined in section A, under the heading "How can my policy be cancelled?"*
- Under Mr H's policy, he then became entitled to a contribution of £200 towards a new boiler. I understood that Aviva had paid that.
- When Aviva made that payment, it was also supposed to cancel Mr H's policy. The relevant section of Mr H's policy states that it will also make a refund for unused parts of the policy. From what I'd seen, it didn't look like Aviva did that. Mr H's policy was in its last month when he contacted Aviva about the leak. I thought that any refund due would've been for a very modest amount. But I didn't think that undermined the fact that Aviva should've addressed this part of the policy, and it didn't appear to have done so.
- On what I'd seen, I thought that Aviva should pay Mr H £50. That was to cover the outstanding policy premium, which it should, under its policy, have returned to him after deciding that it would make a £200 contribution to the new boiler. And it was also to include compensation to Mr H for the fact that this premium refund wasn't paid to him promptly when Aviva decided that it wouldn't make repairs to his boiler.
- I knew that Mr H would be very disappointed with this outcome, but I didn't think I could fairly ask Aviva to do more than that. I didn't propose to uphold the rest of his complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mr H wrote to object. Aviva sent us new evidence.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr H said that I hadn't acknowledged that the boiler was working fine and no issues had been reported before a gas engineer came to carry out an annual gas safety check.

Mr H said he'd spoken to this engineer before he left, and asked how bad the leak was. The engineer had said he didn't know, he couldn't see it, but he wasn't allowed to deal with leaks, and water was evident on the boiler room floor around and under the boiler.

Mr H then said he'd then spoken to the boiler fitter who said the boiler was obsolete and no spares would be available, but that he might not need spares. The fitter said he might not need any parts. Mr H said he asked how bad the leak was but the fitter said he was unable to recharge the system and check as the previous engineer had put an at risk notice on the boiler that he couldn't remove. (I think Mr H is referring here to Aviva's engineer.)

Mr H said that because the gas engineer noticed a damp floor, but wasn't trained to investigate the source, he made the decision to isolate and drain the system and hang a safety notice. This notice actually stopped the boiler fitter doing anything and so no investigation took place. When Mr H changed the boiler, that didn't eliminate the damp floor. Mr H still thought that one of the people involved should've actually observed the leak instead of making assumptions.

This complaint is about what Aviva did, when Mr H reported a problem with his boiler. It's not about what the first gas engineer did, when he declared Mr H's boiler at risk. That annual safety check wasn't done as part of Mr H's policy with Aviva, and it isn't responsible for that.

Aviva is responsible for the work done when Mr H reported this problem to it. But Aviva says that the boiler was visibly damaged. It thinks that the reason the area was still damp after the boiler was repaired, was that there was another leak elsewhere.

I said in my provisional decision that I didn't think it was wrong, when Aviva's engineer came out to look at Mr H's boiler, for him to rely on a report provided by the previous engineer which said that the boiler was leaking. I still think that. And Aviva has work history from previous visits, in 2015 and 2016, which say the boiler was leaking then. I think that also suggests it was reasonable for Aviva to start from the basis that the same thing was likely to be wrong this time. I still don't think that this part of Mr H's complaint should be upheld.

I did think though, when I wrote my provisional decision, that Aviva hadn't paid Mr H some money that it owed him under his policy. It's now sent us new evidence, and says it did make the payment that was due. It tells us that it cancelled his policy immediately, as it's supposed to, and it has paid him £79.72. We asked Mr H, and he says he hasn't received that.

I think that might actually be a bit more than Aviva owed Mr H, under his policy. So if Aviva has paid this money, then it wouldn't need to pay Mr H any more. But, as he says he hasn't had that money, I'll now make the award I proposed. I will add, however, that Aviva can count towards that award, any refund of premium it's already paid. So if Aviva can show that this refund was received by Mr H, then it doesn't need to do any more. If not, it will have to make the payment I initially proposed.

my final decision

My final decision is that Aviva Insurance Limited must pay Mr H £50. Aviva Insurance Limited can count towards that amount any refund of premium it has already paid to Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 September 2019.

Esther Absalom-Gough
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