complaint

Miss P complains about the handling of a claim under a property owners' insurance policy by Liverpool Victoria Insurance Company Limited ("LV").

Miss P is the leaseholder of a flat, and has brought her complaint here in this capacity.

background

Following a fire in a nearby flat, Miss P's flat suffered damage. A claim was made to LV which was accepted. LV agreed to pay Miss P a cash settlement so she could have the repairs completed. A cash settlement has been paid, but there's a dispute between the parties about a number of items in the flat, but mainly the boiler and flue.

The boiler and flue need to be replaced. Miss P's been told the new boiler and flue can't be installed in the same place as the current boiler and flue, as installation wouldn't comply with the manufacturer's instructions (and therefore safety regulations). I understand the cost of repositioning the boiler and flue would be somewhere in the region of £20,000.

LV doesn't think it should pay for the boiler and flue to be repositioned. It says that if the items can't simply be replaced in their current position in the flat, then the original installation must have contravened the manufacturer's instructions – and therefore hadn't ever complied with safety regulations. LV says that if it were to now pay for the boiler and flue to be repositioned, then Miss P would be better off as a result.

LV offered to arrange for an inspection to be carried out on the boiler and flue, to see whether or not the original installation had been compliant with safety regulations. Unhappy with LV's refusal to cover the cost of repositioning the new boiler and flue, Miss P brought a complaint to this service.

Our adjudicator initially found LV's offer to arrange for an inspection to be reasonable. He thought that if the original installation was found to be compliant with safety regulations, then LV should cover the cost of making the new boiler and flue compliant with safety regulations. He also thought LV should cover the loss of rent that Miss P had incurred as a result of the delay in replacing the boiler and flue. The parties were in agreement with this proposal, and agreed that the manufacturer would be the most appropriate party to carry out an inspection.

It later transpired that an inspection by the manufacturer couldn't establish whether or not the original installation was compliant with safety regulations. Based on the available evidence, the adjudicator thought LV should settle the claim relating to the boiler and flue, as if the initial installation was compliant with the manufacturer's instructions.

He also thought LV should backdate loss of rent (plus associated costs) to May 2014. Finally, he recommended LV pay Miss P £250 for the inconvenience she'd experienced as a result of delays in dealing with the matter.

LV didn't agree with the adjudicator's recommendations, so the matter has been passed to me.

my findings

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

boiler and flue

The boiler and flue were installed by a builder and plumber. The builder has explained that he and the plumber weren't able install them in line with the manufacturer's instruction manual, because of difficulties with the site. They needed to provide a continuous rise to the flue to allow condensation to flow back to the boiler, but weren't able to do so because of an obstruction.

He explains that they made contact with the manufacturer's technical department about the matter, and the manufacturer advised them to install "*an intermediate condense line linked into the sewer".* He says this was done before the boiler was inspected by a registered Corgi contractor.

The manufacturer of the boiler has since changed ownership. The new manufacturer can't confirm whether or not the installer of the boiler and flue did obtain consent for the configuration used, as the installation pre-dated its ownership and it doesn't have records going back that far. The new manufacturer explained to our adjudicator that whilst it can't give a definite opinion on whether or not the flue installation was compliant with safety regulations at the time, it thought it likely that the previous company gave the installer the advice he said he received. This was because its predecessor apparently specialised in overcoming flue and boiler problems.

As I understand it, in order to comply with safety regulations, the installation of the boiler and flue would need to comply with the manufacturer's instructions. In this case, the installation of the original flue doesn't comply with the manufacturer's instruction *manual*. The issue is whether or not the builder who installed the flue received further instructions from the manufacturer about an appropriate alternative, in order to overcome the obstruction in the property. If he did, then it's reasonable to say the installation was carried out in line with the manufacturer's instructions.

It's unfortunate there isn't any evidence to confirm what the manufacturer told the builder, but that's not surprising given the boiler and flue were installed over ten years ago. But I see no reason to doubt the builder's explanation, and this seems to be supported by the current manufacturer's knowledge of its predecessor. It's also the case that the boiler and flue were inspected on an annual basis by a gas safety inspector and passed each inspection.

On balance, I think it's fair to say that the original installation was most likely carried out in line with the manufacturer's instructions, and therefore *did* comply with safety regulations. Therefore to place Miss P in the same position as she was in previously, LV would need to arrange for the boiler and flue to be replaced so that they remain compliant with safety regulations.

Miss P says she would prefer that LV pay a cash settlement for the boiler and flue repairs. But under the policy, LV can choose to replace the damaged items itself, or make a cash settlement.

Since LV has already made a cash settlement for the other repairs, I would usually expect it to deal with the remaining repairs on the same basis. But I note LV thinks it may not be necessary to reposition the boiler and flue, despite the evidence provided by Miss P. It may therefore want to arrange the replacement itself. I don't think this makes a difference to the matter, so long as Miss P ends up with a boiler and flue that comply with safety regulations.

loss of rent

LV has paid Miss P loss of rent up to 15 May 2014, plus storage costs and council tax. But Miss P still hasn't been able to rent out her flat as she doesn't have a functional boiler. I also understand that the repairs to the flat haven't been completed, as Miss P has been advised that repositioning the boiler and flue would involve the removal of ceilings. There would be little point in Miss P carrying out all the repairs, only to have to re-do the majority of them after the boiler and flue are repositioned.

I've found that the original installation of the boiler and flue most likely did comply with safety regulations, and that LV is liable to arrange for these items to be replaced so that they remain compliant with regulations. It follows that the loss Miss P has incurred in not renting out her flat because of LV's failure to deal with its liability in respect of the boiler and flue, should be borne by LV. I therefore require LV to cover the loss of rent since May 2014.

I've thought about whether Miss P could have minimised her losses by paying for the boiler and flue to be moved and replaced herself. But I don't think it would be reasonable to have expected her to do so, given the costs involved in repositioning these items.

The policy explains that in the event of a claim for loss of rent, this will be payable based on the *rent receivable* – this is the amount paid by tenants immediately before the damage. The adjudicator thought that if Miss P could show she would have received a higher amount, then this should be paid. I think this would only be appropriate if Miss P regularly increased the rent she charged at the property, for example, on an annual basis.

So LV should pay Miss P for loss of rent in line with the policy terms. But if Miss P can show to LV that she would have increased the rent she charged since May 2014, then it should increase the payments, based on the amount by which she usually increased rent.

As LV previously included the cost of storage and council tax in its loss of rent payments, I think it would be reasonable for it to add this to the loss of rent payments from May 2014.

Although LV paid Miss P for loss of rent up to 15 May 2014, I understand she was underpaid by £2,741.34. LV accepts this and confirms it will pay this to Miss P.

inconvenience

Miss P has been represented in this complaint by her partner, and he thinks LV should pay compensation to recognise the amount of work he's put into the matter.

On rare occasions, if I think a consumer has needed professional assistance in bringing a complaint here (and incurs professional fees in doing so) then I'll tell a business to reimburse the consumer those professional fees. But I can't require a business to pay compensation to someone who isn't party to the dispute for any inconvenience they may have been caused. So I don't require LV to pay compensation in this respect.

But I do think Miss P has been inconvenienced by the delays in having her flat repaired, and I agree with the adjudicator that £250 compensation would be appropriate.

other issues

Miss P is unhappy with LV's claims decision in respect of a window, kitchen granite worktop and cooker hood, and washer/dryer.

LV paid Miss P £1,150 towards the window. This is less that the replacement cost of the window, but I understand the existing window could be repaired for this figure. So I think this was reasonable.

The granite worktop and cooker hood only required cleaning, but would need to be removed and refitted when the rest of the kitchen is replaced. Miss P is concerned that these items won't be able to be reused. But given that they aren't damaged, I don't require LV to pay for the cost of replacing them.

As the washer/dryer is freestanding, LV says this would be considered contents, and wouldn't fall under the buildings insurance claim. I've noted Miss P's explanation as to why she considers this item to be a permanent part of the kitchen, but given it is freestanding (and therefore can be removed without removing the kitchen) I agree with LV that it would be considered contents and wouldn't fall under this claim.

A number of other flats were damaged as a result of the fire. Miss P has raised concerns about LV's handling of the claim for those other flats, and wants a surveyor to inspect the repairs arranged by LV's contractor.

Miss P is a leaseholder and as I've mentioned, she's brought her complaint here in that capacity. But Miss P also owns the company that owns the freehold for the other flats that were damaged. So her company is the policyholder. If Miss P wishes to complain in her capacity as policyholder, she would need to raise her concerns with LV in the first instance. If she remains unhappy, her company may be able to bring a new complaint here (so long as it's a micro-enterprise).

my decision

For the reasons set out above, my final decision is that I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to do the following:

- arrange for the boiler and flue to be replaced so they are compliant with safety regulations. If LV makes a cash settlement for this, interest[†] should be added.
- pay the claim for loss of rent from May 2014 (plus storage costs and council tax), plus interest[†].
- pay the £2,741.34 for underpaid loss of rent, plus interest[†].
- pay Miss P £250 compensation.

†Interest should be paid at the rate of 8% simple per annum from the date of loss (for the rent payments, the date of loss would be the month each rental payment was due) to the date of settlement. HM Revenue & Customs requires LV to take off tax from this interest. LV must give Miss P a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to let me know whether she accepts or rejects my decision before 29 February 2016.

Chantelle Hurn-Ryan
ombudsman