

complaint

Ms W has complained about the way DAS Legal Expenses Insurance Company Limited (DAS) dealt with a claim she made on her home emergency policy.

Ms W's complaint was brought to us by her and her husband, Mr L, but for ease I will refer to their comments as Ms W's.

background

I issued a provisional decision on this complaint earlier this month. This is an extract from that decision:

"On 14 December 2018 Ms W made a claim on her policy with DAS because her electric boiler had broken down. DAS's engineer attended the following day and said the PCB (printed circuit board) would need changing but wasn't able to get the boiler to start working again. DAS said this would cost £562.44 and that as Ms W's policy limit was £500 she was asked to pay £62.44.

DAS told Ms W on 27 December 2018 that the parts wouldn't be arriving till the new year and offered her £60 for her to get heaters and told her her policy had a £250 limit for alternative accommodation.

The new PCB was fitted on 8 January 2019 but Ms W told DAS on 14 January 2019 that the boiler had failed again. DAS attended the following day and said there was an issue with the heating element. It said as it was an old boiler it would be difficult to find replacement parts. The engineer wasn't able to get the boiler to start working again and said the boiler was beyond economic repair (BER).

Ms W asked a third party company to repair the boiler which they did at a cost of £1,487.54. She complained to DAS and said its diagnosis of the faulty PCB was wrong so that work was unnecessary. She said its engineers weren't qualified to repair her boiler and she was also unhappy with the delays and said her and her husband had the flu so having no heating didn't help. She said their electricity bill also increased as they had to use electric heaters. She wanted DAS to pay her back the £1,487.54.

DAS didn't uphold the complaint but paid Ms W £50 in compensation. It said it had made a mistake and the policy limit was £1,000 not £500 so paid Ms W the £62.44 back. It said this was in addition to the £300 it had already paid to Ms W in February 2019 for the heaters and alternative accommodation. It said replacing the PCB was necessary because had it not done this it wouldn't have been able to diagnose the problem with the heating elements- this didn't show before the PCB was replaced. But it stood by its decision that the boiler was BER.

Ms W didn't agree and complained to us. Our investigator thought the complaint should be upheld and that DAS should pay Ms W £1,000 (the policy limit) towards the cost of the boiler repairs plus interest. DAS didn't agree but said it would pay £437.66 which is the balance between the £1,000 limit and the £562.44 it had already paid for the PCB. Ms W didn't accept this offer and the complaint was passed to me for a decision.

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. Having done so, I've decided to uphold it.

Ms W's policy states that DAS will pay up to £1,000 (including VAT) for the call out charge, labour costs, parts and materials to help with an insured incident. The policy also covers up to £250 for alternative accommodation in case the home remains uninhabitable.

DAS has already paid Ms W £300 for the heaters and the alternative accommodation as per her policy so I won't comment on this further. I note that Ms W hasn't cashed DAS's additional £50 payment.

DAS accepted this was a valid claim so what I need to consider is whether the PCB was correctly replaced which would determine whether DAS should pay the full £1,000 to Ms W or only the £437.66.

DAS said the boiler was BER. But it hasn't said why that was, other than that it was old and that finding parts would be difficult. Ms W found a third party company that was able to carry out the repairs. That company told us that the boiler should last about 50 years (Ms W's is 30) and that it has the necessary parts to keep servicing these boilers. Ms W has also provided a quote for a new boiler which shows she would've had to pay over £4,000 for a new gas boiler. She said the company that provided the quote told her a gas boiler was her only alternative. The company that repaired the boiler also confirmed to us that a like for like replacement wasn't possible and the closest possible replacement would be a gas boiler or perhaps a more renewable energy. Based on this I don't think Ms W's boiler was BER and that it was far cheaper to repair rather than to replace. But the fact that DAS agreed to pay £437.66 after the complaint came to us I think shows it has also now accepted this.

Ms W said changing the PCB was unnecessary and it didn't repair the fault which was with the heating elements. DAS said had the PCB not been replaced it wouldn't have been able to correctly diagnose that there was an issue with the elements- as this wasn't evident before the PCB was replaced. Other than what DAS has said (which came from its engineers) I've seen no other expert evidence on this issue. Based on this I think, on balance, changing the PCB was necessary. And for that reason I think DAS can deduct its cost from the overall £1,000 limit.

Ms W said her electricity bill increased because she had to use inefficient fan heaters. I won't ask DAS to pay her for her increased bill as this isn't something that's covered under her policy. And I also note that DAS has already offered her £50 compensation which I think would compensate her for her increased bill. Also I think she would've been without heating for a period of time regardless of what DAS did so she would've incurred some of those costs in any event.

However, I agree with Ms W in that I think DAS should've recognised that this wasn't a type of boiler its engineers could fully repair. I think it would've been reasonable for DAS to have referred Ms W to a specialist repairer (like the one she was able to find herself) rather than declare the boiler BER when that wasn't the case. I think this caused Ms W unnecessary distress and inconvenience and I think for that DAS should pay her £150 compensation.

my provisional decision

For the reasons above, I'm considering upholding Ms W's complaint against DAS Legal Expenses Insurance Company Limited and asking it to:

- *Pay Ms W £150 in compensation for the distress and inconvenience it caused her.*
- *Pay Ms W £437.66 towards her boiler repair."*

developments

DAS has responded to my provisional decision and said it was happy to accept it.

Ms W also responded but didn't agree with my provisional decision. She made several points which I've summarised below:

- She said DAS had no business trying to repair a boiler it didn't understand or wasn't qualified to repair. The cost it incurred in trying to repair the boiler should be its responsibility.
- DAS was wrong to say the boiler was BER. It would've been easy for it to find a suitably qualified engineer to inspect and repair it- like her and her husband ended up doing. This would have avoided them being without heating for weeks while they were both suffering with the flu. She has since been diagnosed with a very serious illness and being without heating wouldn't have helped her fighting either the flu or her other illness.
- If DAS were to pay £1,000 she would only be £487.54 out of pocket. Instead my provisional decision means she will be £899.88 out of pocket. This is grossly unfair.
- If the PCB was faulty, replacing it should've allowed the boiler to work but it didn't.
- There was a delay between having the new PCB installed and her and her husband calling DAS out again to fix the boiler. This was because her husband undertook some checks himself first before calling DAS out. DAS is interpreting this as a second boiler failure but there was only ever one failure which DAS never fixed.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I've decided not to change any of the findings I made in my provisional decision.

Before I explain my reasons for doing so, I'd like to say how sorry I was to hear about Ms W's health problems and that I wish her a good and speedy recovery.

In my provisional decision I said DAS should've recognised this was a boiler its engineers couldn't repair and should have referred Ms W to a specialist repairer. So, I agree with Ms W's point above.

I note Ms W's comment that there was only one failure which DAS never managed to fix. However, as I said in my provisional decision, there is no expert evidence to say that changing the PCB was unnecessary. The only expert evidence I've seen is from DAS's engineers who said that changing the PCB was necessary and that it was only after the PCB was changed that a proper diagnosis could be made. Our investigator asked the third party company whether changing the PCB was necessary or not but they weren't able to confirm

either way. So, though I note Ms W's comments, based on the expert evidence available, I think it is fair for DAS to deduct the cost of replacing the PCB from the overall settlement.

I accept Ms W's comments that being without heating over that time must have been very difficult for her and her husband. But as I said in my provisional decision, I think DAS did what it was required to do under her policy when it provided her with heaters and when it paid for alternative accommodation. And as I already said she would've been without heating for a period regardless of DAS's actions.

I appreciate Ms W will be significantly out of pocket as a result of this decision, but I am mindful of the fact that her policy wouldn't have covered the full cost of repairs in any event - as it has a £1,000 policy limit. Also, as I said above, I think it's fair and reasonable for DAS to deduct the cost of replacing the PCB from the £1,000 limit because, according to the only expert evidence available, this expense was necessary in order to repair the boiler.

my final decision

For the reasons above, I'm upholding Ms W's complaint against DAS Legal Expenses Insurance Company Limited and asking it to:

- Pay Ms W £150 in compensation for the distress and inconvenience it caused her. It must pay this within 28 days of the date on which we tell it Ms W accepts my final decision. If it pays later than this it must also pay interest on this amount from the date of my final decision to the date of payment at 8% a year simple.*
- Pay Ms W £437.66 towards her boiler repair plus 8% simple interest per year from the date she paid for her boiler to be repaired by the third party company to the date it pays her*. Ms W should provide evidence (such as a receipt) regarding the payment made if DAS requires this.

The above is in addition to what DAS Legal Expenses Insurance Company Limited has already paid Ms W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 20 February 2020.

Anastasia Serdari
ombudsman

**If DAS Legal Expenses Insurance Company Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms W how much it's taken off. It should also give Ms W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*