

## **complaint**

Mr M and Miss R are unhappy with Aviva Insurance Limited's handling of a claim under their home emergency insurance policy. The policy is held in Miss R's name but Mr M has represented her in the complaint.

## **background**

I issued a provisional decision on this matter on 23 May 2017, art of which is copied below:

*"Mr R and Miss M called Aviva on 22 January 2016 because there was a leak from their boiler. Aviva attended the same day but couldn't repair it, as it needed a part. It returned on 26 January 2016 with the parts and attempted to repair the boiler. However, Mr M and Miss R say that the contractor spent around five hours 'bashing & smashing' the boiler with a spanner because a small screw was stuck. They say when the engineer eventually left, the boiler was no longer working and had more leaks than it had started with and with no confirmation of when it would be repaired.*

*Mr M complained to Aviva and said they didn't want the same contractors back. The next day a contractor called to try and make an appointment but after questioning he admitted he was from the same contractor and so Mr M and Miss R refused that appointment. Aviva didn't arrange another engineer and so Mr M and Miss R say they had no choice but to arrange their own engineer to temporarily fix the boiler so they could have some hot water.*

*Their engineer told them that due to the damage, the boiler really needed replacing but he could slow the leaks enough to allow them to have some hot water. This they did (at a cost of £200) but they had to collect the water leaking from the boiler until it was eventually fixed by Aviva.*

*Aviva sent another engineer out on 4 February 2016. According to Mr M and Miss R he thought the boiler was beyond economical repair and that this was due to the damage caused by the previous engineer. However, Aviva repaired the boiler. Parts were needed and ordered and they were told this might take a few weeks. Aviva says it tried to get in touch to arrange a time to fit the new parts, which Mr M and Miss R dispute. They say they only had one missed call from Aviva which they tried to return.*

*Aviva then wrote on 23 March 2016 stating that they had been unable to contact them to arrange for the engineer to fix the parts and had therefore closed down the claim. This letter enclosed a £300 cheque as compensation. Mr M and Miss R contacted Aviva again to confirm the claim was not to be closed. I understand the boiler was eventually repaired on 28 April 2016.*

*Mr M and Miss R are extremely unhappy about the way the claim was handled. They've made a number of submissions, including the following:*

- *The first engineers walked mud into their carpets, which they had to clean.*
- *One of them also had to borrow a bowl, towel, WD40 and a head torch. He stole the head torch (worth £30) and it hasn't been returned.*
- *When Mr M spoke to his manager after he damaged the boiler, he was extremely rude and unhelpful.*

- *Instead of arranging another contractor to come and repair the boiler, Aviva phoned Ms R to ask her to persuade Mr M to let the original contractors to come out again. They were again rude.*
- *Aviva didn't listen; they had multiple points of contact throughout the process and had to repeat the information and details every time it was passed on. There was clearly no communication between different employees.*
- *It took from 22 January 2016 and 28 April 2016 – i.e. 97 days/13 weeks and 6 days to repair the boiler.*
- *Mr M had to take five days off work to be available for the visits.*
- *Aviva also took a long time to answer their complaint and even when it did, failed to address all the issues.*
- *The compensation offered doesn't reflect the time they were without heating and hot water, due to its own engineer's actions, in the middle of winter and when Miss M was pregnant.*
- *Although the boiler is working again, there is still no formal agreement regarding what will happen if it starts leaking again due to the damage caused, especially considering it was described as damaged beyond economic repair.*
- *Aviva should have replaced the boiler. As this has not happened it should compensate them for the cost of fitting a new boiler and for the necessary stress, loss of earnings and the costs to pay for the emergency plumbing visit, a new head torch and for the stairs to be cleaned.*

*Aviva apparently paid Mr M and Miss R another £200 (so £500 in total) after the complaint was raised. It accepted that it had caused further damage to the boiler but says Mr M and Miss R were kept informed throughout and they never phoned to chase anything. It has also made a number of submissions, including the following:*

- *An engineer was on his way to mend the boiler on 30 January when Mr M and Miss R refused to let him attend.*
- *It therefore tried to get the manufacturer to come out but it couldn't, so they got another contractor to go out on 4 February 2016. He confirmed that the previous engineer had caused damage and that several parts were needed but it was repairable.*
- *He attended on 26 February to complete the repair but he said there still issues. The engineer attended on 21 April and they got confirmation that the boiler was working properly on 28 April 2016.*
- *The boiler is 14 years old and near the end of its life expectancy anyway. (Although I note elsewhere on the file it's recorded as being nine years old.)*

*Aviva therefore says that the compensation already paid is adequate and it doesn't need to pay for a new boiler*

*One of our adjudicators looked into the matter. She thought that Aviva should reimburse the amount Mr M and Miss R paid to get the boiler temporarily repaired (ie £200), £30 for the head torch and pay £70 towards the cleaning of the carpet.*

*Aviva said it hadn't seen proof of the engineer's costs but would pay them on production of an invoice. It also said that Mr M and Miss R hadn't raised the issue of the head torch previously and had told it they didn't want to pursue the matter of the dirty carpet. But in any event, it agreed to pay the additional £100 compensation proposed by the adjudicator.*

*Mr M and Miss R confirmed that they couldn't find the engineer's invoice. They don't accept that the compensation recommended by the adjudicator is enough. The case has therefore been passed to me.*

### **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.*

*Aviva seems to accept that the damage caused was by its own contractor. A letter of 22 June 2016 says: "It is also clear from the notes on our system that the damage to the boiler was caused by the engineer who initially attended the property, as this was confirmed by the contractor who attended following the initial visit".*

*So the initial leak should have been repaired properly on the first visit, or if the screws were corroded (which seems to have been the reason why the first engineer had trouble removing the casing) it may have needed a second visit. Instead, despite two attendances by Aviva, Mr M and Miss R were left for around 13 days without heating and hot water and had to get their own engineer to do an emergency temporary repair on 4 February 2016.*

*They had taken this policy with Aviva to avoid the need to find their own plumbers when in an emergency situation such as this. And I've seen no evidence about why Aviva wasn't able to achieve the same temporary solution on 22 January 2016. Therefore this period, up to 4 February 2016, is in my view entirely due to Aviva's error.*

*I also don't have any reason to doubt Mr M and Miss R's account that they didn't receive any calls (bar one missed call) to try and arrange to repair the boiler between end of January and 23 March 2016, when Aviva tried to close the claim. Their boiler wasn't working properly and only a temporary repair had been done. They say they were having to collect water that was still leaking from the boiler during this time. Therefore it doesn't seem likely to me that they would have ignored any appointment requests made by Aviva.*

*And I note that Aviva hasn't said that any detailed messages were left for them or any letters written about this until 23 March 2016, only that they tried to call and couldn't get through. And after they received the letter of 23 March 2016, Mr M and Miss R did phone Aviva. I don't think it's reasonable to say that because Mr M and Miss R weren't constantly chasing, that they were kept adequately up to date. It's clear nothing happened between the end of January and 23 March 2016, when they made contact.*

*There was then a further delay before the boiler was actually fixed because Mr M and Miss R wanted clarification of what would happen if the repair wasn't successful. That wasn't clarified but the repair happened on 28 April 2016 anyway. I can quite understand why Mr M and Miss R didn't want the original contractors back out again and why they wanted to clarify what repairs would be done and what would happen if it couldn't be repaired.*

*Given this and that the damage was Aviva's fault, it also seems to me that Aviva is responsible for the distress and inconvenience caused by the delay in properly resolving the problem with the boiler. It could all have been avoided, had Aviva's engineer repaired the original leak properly in January 2016.*

*I can understand why Mr M and Miss R are worried about the future operation of their boiler, given what Aviva did to it. However, it was repaired and has been working. I note that Mr M*

*told the adjudicator that there was an error message in January 2017 but I haven't been told if this is related to the damage caused by Aviva. All the damaged parts have apparently been replaced and it has worked. There's no evidence that there is any outstanding damage, or that it has caused an effect on the life expectancy of the boiler. I don't therefore consider that I can reasonably require Aviva to pay for a new boiler.*

*Mr M and Miss R also reported the dirt on their carpets shortly after the first visit. They have been consistent about this and the loss of the head torch. I've no reason to doubt their account of either matter.*

*Mr M and Miss R can't provide a copy of the invoice for their own engineer carrying out a temporary repair to allow them to turn their heating and hot water on. Normally I'd agree that Aviva would be entitled to proof of this expenditure before it would be required to reimburse it. But it seems to me it's appropriate to make a global award in this case, to take account of this expenditure, as if Mr M and Miss R hadn't taken the action they did on 4 February 2016, then they would have been without heating and hot water for even longer than they were.*

*Overall therefore, I consider that the total additional sum of £300 is appropriate to compensate Mr M and Miss R for the distress and inconvenience caused to them by Aviva's handling of this matter, to include: being with heating and hot water in the middle of winter until they had a temporary repair done; the trouble of having to organise that and pay for it; the inconvenience of more attendances to try and fix the boiler; the loss of the head torch and inconvenience of having to clean the carpets. For clarity this is in addition to any amount already paid or offered by Aviva, so it is to pay a total of £800 compensation.*

### **my provisional decision**

*I intend to uphold this complaint against Aviva Insurance Limited and require it to pay Miss R an additional £300 compensation for the distress and inconvenience caused by its handling of this matter. (This is in addition to the payments previously made.)"*

### **responses to my provisional decision**

Mr M and Miss R have responded and while they accept the award of compensation I proposed to make, they still feel strongly that Aviva should replace the boiler. They've made a number of points to support this:

- The second engineer sent by Aviva clearly stated the boiler was beyond economical repair and that he would be writing this in his report. That report hasn't been provided, despite several requests.
- Despite the engineer's recommendation, Aviva insisted the boiler be fixed. Surely the report is evidence that there is long lasting damage to the boiler, or he would not have said it's beyond economical repair.
- The boiler has been working but they have had continuous problems with it: it shows continual fault codes; intermittent leaks; unpredictable water temperatures; and missing parts (such as a water temperature and flow sensor, as pointed out by the last engineer).
- During the most recent visit from Aviva, the engineer changed the diverter valve but did not fully know why the boiler was leaking, did not recognise the fault codes and said unless it was leaking badly when he actually visited that there was not much he could do.

- The diverter valve was one of the parts that should have been changed as part of the original major repair. They were concerned to find out this hadn't been replaced previously.
- There's no evidence to show that all the damaged parts have actually been replaced and that the damage caused by the engineer has not caused a negative effect on the life expectancy of the boiler.
- If necessary they'd welcome a third party (neutral) inspection on the boiler.
- Not only do they still have issues with the boiler, but they also have the added stress of having to consider the cost of replacing the boiler themselves.
- The boiler is 8-9 years old (not 14). It had a 5-year manufacturer's warranty and has been serviced annually since its installation. It was working without problem before Aviva damaged it.
- They were relying on Aviva to fix any problems with their boiler but it caused more problems and has left them feeling worried that the boiler isn't safe and that it will continue to present us with problems as it has done for many months after their visit.
- If it can't be guaranteed that the boiler is not damaged in such a way as might shorten its life expectancy or cause problems with its performance then it must be replaced. Alternatively, should the final compensation amount be increased to £1,600 (an additional £1,300) we will be able to authorise their own engineer to replace the boiler.

Miss R would therefore like to accept the additional £300 as compensation, but reject the current final decision.

As Mr M and Miss R said they hadn't received a copy of the engineer's report referred to above, I arranged for a copy to be sent to them.

The only report on Aviva's file was a letter written by the director of the contracting engineering firm that inspected the boiler. It listed the parts required to "seal this boiler and attempt to get it to run. Once we have the ability to at least fire it up we may then be able to give a further diagnosis of what else is wrong with it". Mr M and Miss R dispute that this is the only report he wrote. They say he expressly told them that he thought the boiler was beyond economic repair and he'd write that in his report, and Mr M says he saw the report at the time.

Aviva has also responded to my provisional decision. It confirmed it accepts it and has nothing further to add.

### **my findings**

I've considered all the available evidence and arguments again, including the recent points made by Mr M and Miss R, to decide what's fair and reasonable in the circumstances of this complaint.

I'm pleased to note that both parties agree the amount of compensation I proposed to award in relation to the delays and trouble caused by this matter.

The remaining point in dispute is about the future of the boiler.

Mr M and Miss R are adamant that the boiler was declared as being beyond economic repair. However, there's no report to confirm this. The engineer that came out on 4 February 2016 listed a number of parts that needed to be replaced and the time he estimated would

be required to fit them. Aviva calculated the cost of the parts and labour and said it was economic to repair. However, it's also important to note that beyond economic repair is not the same as irreparable. It simply means that given the age and condition of an item, it might not be worth spending money on repairing it.

Repairs were carried out and it was working. Mr M and Miss R have said now that they've had repeatedly problems with the boiler since. They say the diverter valve should have been replaced as part of the earlier repairs. I've not seen notes of this latest repair but can't say that this proves the repair in April 2016 wasn't done properly.

Mr M and Miss R have said, unless I can be satisfied that the boiler hasn't been adversely affected, it should be replaced. However, it is for a claimant to prove their claim. This means in this case that it is for Mr M and Miss R to establish on the balance of probabilities (ie that it's more likely than not) that there are still problems that are solely due to the damage caused by the first engineer. I'm not able to arrange an independent inspection and can only rely on the evidence provided by each party. I've not seen enough evidence to convince me that there is still damage to the boiler that is solely due to the first engineer. While the initial call out was for what they say was a minor leak, there was obviously an issue with the boiler. Aviva got another contracting firm to inspect it and carry out the repairs, after the first engineer damaged it. There's no convincing evidence it is unsafe or that any of the more recent problems are linked to that damage. I don't therefore intend to change my provisional findings.

#### **my final decision**

I uphold this complaint against Aviva Insurance Limited and require it to pay Miss R an additional £300 compensation for the distress and inconvenience caused by its handling of this matter. (This is in addition to the payments previously made.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 7 August 2017.

Harriet McCarthy  
**ombudsman**