complaint

Mr C is unhappy with the amount of compensation offered by Inter Partner Assistance SA (IPA) following a claim he made under his home emergency insurance policy.

background

Mr C had a home emergency policy with IPA designed to cover domestic emergencies. He contacted IPA on 19 December 2016 to fix a leaking pipe. IPA's engineer advised that Mr C should have the boiler flue examined as it was stained. A second engineer visited the property on 23 December, after Mr C again reported a leaking pipe. This engineer found that the boiler flue was leaking fumes. He put the boiler "at risk" and shut down the whole central heating system. This left Mr C without any heating or hot water. IPA told him that the flue was not covered by the policy. He was told that this meant he would need to obtain a replacement flue himself before the boiler could be fixed.

Mr C was unable to locate a replacement flue over the Christmas period leaving him without hot water and heating for several days. He said this contributed to the ill health of one of his daughters. Mr C said that he had no choice but to have the boiler replaced at a cost to him of £2,500. He said this would not have happened if IPA had correctly interpreted its own policy and paid for the flue to be repaired or replaced.

IPA accepted that it should have covered the repair or replacement of the flue. It upheld his complaint and offered compensation of £475: comprising £375 towards the cost of the boiler as a goodwill gesture and £100 for distress and inconvenience. Mr C brought his complaint to this service as he was unhappy with the level of compensation offered. He felt that IPA should be liable for the full cost of the new boiler.

I issued a provisional decision in October 2017. Here's what I said:

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

IPA has admitted that it was wrong to advise Mr C that repairs to the boiler flue were not covered under the policy. And it has offered compensation for its error. The question I have to consider is whether the compensation offered is fair and reasonable

The policy is a home emergency policy designed to cover domestic emergencies. Mr C had 'gold' cover which provided cover up to £1,500 for emergencies regarding the gas supply, plus £200 towards overnight accommodation and transport should the property become uninhabitable.

Under the policy, IPA contracted to pay up to the policy limits for call-out, labour, parts and materials to carry out an emergency repair or, if at a similar expense, a permanent repair.

The policy included instructions to the policyholder on what to do if they suffered an emergency. It said:

> *If you suffer an emergency at your property you should tell us on the emergency telephone number. Having verified your claim on the phone we will then:*
> *a) inform you how to protect yourself and the property immediately;*
> *b) organise to pay up to £1,500 including VAT, call out, labour, parts and materials to carry out an emergency repair, or if at a similar expense a permanent repair.*

> *In the event of the property becoming uninhabitable and remaining so overnight, we shall at your request arrange to pay up to £200 including VAT in total for:*
> *a) your overnight accommodation and/or*
> *b) transport to such accommodation*

The policy also included a condition that no costs for repairs, parts or services were payable under the insurance, unless they had been notified to the insurer through the 24-hour claims service telephone number provided.

Like most insurance policies, this policy included a section explaining what was not covered. These were listed under the General Exclusions section. This included exclusion number 2j which stated:

> *"We will not be liable for ….any delays caused by our suppliers or their agents obtaining spare parts that are not immediately available."*

Mr C has asked that IPA refund the full cost of the boiler. However, I don't think it is reasonable to expect IPA to cover this despite its concession that erroneous advice was given about the nature and scope of cover. It's a question of causation: someone who's negligent or in breach of contract isn't automatically liable for every consequence that flows; they're only liable for reasonably foreseeable consequences that aren't too remote or due to something else that breaks the causal chain. The test is whether, on balance, the damages claimed were likely to have arisen but for the wrongful act or omission.

In my judgment, the dominant and effective cause of Mr C and his family being left without a working boiler was the unfortunate timing of the event—namely, the Christmas shut down—rather than IPA's misinterpretation of the policy terms and conditions. And this wasn't something that IPA had any control over. The boiler had to be decommissioned for safety reasons because the flue was defective; and it couldn't be restarted until a suitable part was sourced. As Mr C himself discovered, this was neither practicable nor possible over the holiday hiatus. He was unable to obtain a flue at that time; and no evidence has been provided to show that IPA would have been more successful. So, even if it had accepted liability to fix the flue in order to deal with the emergency, it's highly unlikely that a repair could have been carried out at the material time. In other words, Mr C would still have faced a stark choice: buy a new boiler or wait until the spare part was obtainable after New Year. And IPA's liability was contractually excluded for delays in obtaining unavailable parts (see above) – so if it could not have carried out the repair for that reason (as seems likely), Mr C would have no remedy under the terms and conditions of the policy.

And unlike my investigators, I do not consider the payment towards overnight accommodation to be relevant as Mr C and his family stayed at home during the five-day period when the boiler was shut down. It seems improbable that he would have done this if the house was actually "uninhabitable" as opposed to chilly and inconvenient. I accept it was an awful situation to be in – but I'm not persuaded this was due to the defaults for which IPA has admitted liability. So I don't think that IPA needed to make any payment towards the cost of the boiler. Having said that, I think its offer to contribute £375 was fair and reasonable – a gesture to reflect the fact that its poor advice about the policy has caused Mr C unnecessary distress or inconvenience.

Given that I don't accept that IPA is required to contribute towards the cost of the boiler, I do consider the £100 it offered for distress and inconvenience to be insufficient. Mr C and his family were left with no heating or hot water and to source a flue themselves. This is difficult enough but more so over the Christmas period. And its first engineer arguably ought to have diagnosed the problem with the flue instead of merely noting some staining. IPA has already paid £475 to Mr C (£375 towards the boiler and £100 for distress and inconvenience). I believe this is a fair amount of compensation for the distress and inconvenience caused by its error. This accords with the level of compensation we would award where the inconvenience was substantial.

IPA accepted my provisional decision but Mr C responded with further comments, which I summarise as follows:

- If IPA and its engineer had not acted negligently during the initial visit there would have been more than sufficient time to source and replace the part. The Christmas shut down would not have been relevant.
- It is highly probable the measured leak was not deserving of a boiler shut down in the first instance.
- The house was uninhabitable particularly for his two young children.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But I have not been persuaded to change my decision – for the reasons that follow.

In his response Mr C says that if the first engineer had carried out a proper test on the boiler and flue, the problem would have been identified and more likely have been fixed before the Christmas period. I am not persuaded this is the case. There is no evidence that convinces me that the engineer did not act professionally. He reported that he replaced leaking pipework, fixed the leak and advised Mr C to have the flue checked because of staining.

Mr C also claims that the boiler did not need to be shut down. He says that he has a Carbon Monoxide alarm that would have detected any unsafe leak. He said that he asked the engineer to confirm his device was properly calibrated, but Mr C says the engineer was unable to do so. In the absence of clear evidence to the contrary (rather than mere speculation), I'm inclined to accept that a qualified Gas-Safe engineer had properly calibrated equipment that was at least as accurate as a consumer-grade alarm that hadn't responded (which Mr C relies on). And I'm persuaded that an expert engineer would have made the decision to put the boiler "at risk" and close it down if, in his experience and with his level of knowledge, that was the proper course of action to take.

I acknowledge Mr C's comments about the habitability of the property. However, my intention was not to downplay the situation. I did, and still do, acknowledge how difficult it must have been for Mr C and his family to live in the house without heating. But on his own evidence, Mr C and his family managed to stay there overnight by using electric heaters – and were able to spend daytime with nearby relatives. So I remain of the view that the property was not uninhabitable to the extent that alternative-accommodation cover was triggered.

In the circumstances, the weight of the evidence indicates there was no financial loss to Mr C as a result of wrongful advice, acts or omissions by IPA or its appointed engineers. He has already received compensation for non-financial harm, such as distress or inconvenience, caused by the poor handling of the claim.

I am sorry that Mr C is unhappy with our process – notably the impact on timeliness in granting extensions of time to IPA; and the fact that my decision departed from investigator views. However, we have to be procedurally fair to all parties, and that sometimes means allowing more time for someone to respond to points. Mr C would've been granted similar extensions if he'd needed and asked for them. And any dispute process which involves a fresh review by an independent person runs the risk of a change in outcome. It would be improper for an ombudsman merely to 'rubber stamp' an investigator's initial view rather than look at all the evidence and arguments impartially. I issued a provisional decision precisely to allow both parties a fair opportunity to comment. Our process is clearly explained from the outset (and on our website) to those who choose to use our informal service rather than go straight to court.

my final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 December 2017.

Gordon Ramsay
ombudsman