complaint

Mr and Mrs S complain that Society of Lloyd's (SOL) declined to pay their claim for alternative accommodation.

background

Mr and Mrs S had home insurance with SOL and made a claim following a fire at their home. SOL accepted the claim and appointed loss adjusters to manage the repairs. During the works, SOL paid for Mr and Mrs S to live elsewhere whilst their house was *'unfit to live in'.* Before the repairs started, SOL appointed an engineer to inspect and re-commission the boiler. The same engineer was also appointed to undertake the required gas and safety checks at the conclusion of the repair work. He said that a wire was missing (which interlocked the flue fan with the boiler). He said it had been there when he last checked the boiler and that SOL's contractors must have removed the part.

Mr and Mrs S refused to move back into the house. They said that the problem with the boiler/fan made the house unfit to live in. SOL disagreed and refused to pay their claim for alternative accommodation from 7th May 2011(the date it said the works were completed) to 10th July 2011.

Mr and Mrs S complained to SOL. SOL did not accept responsibility for the fact that the part had gone missing. It said that it was never established how or why the part was missing. It also said the boiler had been restored after the fire and argued that if its contractors had removed the part during the repair works, it was likely that the boiler would have stopped working.

Mr and Mrs S complained to this service. They argue that they had been unable to move back into their house because the boiler had not been certified safe. They want SOL to pay their outstanding accommodation costs.

Our adjudicator has not recommended that the complaint should be upheld. He did not accept that the issue with the boiler/fan rendered the house '*unfit to live in'* and he did not think there was sufficient evidence to show that the missing part had featured on the original specification. He said that there was no evidence that the boiler had stopped working following completion of the renovation works.

Mr and Mrs S's representative challenged our adjudicator's opinion on their behalf. He said that there was no heating or hot water and that it had been unsafe for Mr and Mrs S to re-enter the house. He said that the engineer had serviced the boiler for the previous five years and would not have passed the system had the part not been in place. He said that the fact that the part was missing would not have stopped the boiler from working, but it did make it unsafe.

SOL has argued that the boiler was 'exceptionally old' and had pre-dated the relevant safely requirements. It has argued that the part didn't exist before the fire and that previous inspections by the engineer had been negligent. It pointed out that it had requested a copy of the manufacturer's plans to establish whether the part ever existed but the engineer had failed to produce this and had been inconsistent and evasive in his responses. It also produced evidence that the low-level ventilation was adequate, contrary to what the engineer had said.

Our adjudicator considered the additional evidence but maintained his opinion. He said that he had not seen any evidence that the missing part had ever existed. Mr and Mrs S continue to dispute the outcome of their complaint and have asked for it to be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

was the house unfit to live in?

For SOL to be responsible for paying Mr and Mrs S's costs for living elsewhere, the property would have to be 'unfit to live in'. I do not necessarily agree that the fact that there was no heating or hot water would mean that the house was unfit to live in, particularly because of the time of year. However, I am satisfied that there were questions concerning the safety of the boiler and that the house was therefore unsafe. If SOL wanted to show that the property was safe to live in then it should have obtained a gas safety certificate from a different engineer. In these circumstances, I find that the house was 'unfit to live in'.

was SOL responsible for the problem with the boiler?

SOL's obligation under the insurance contract was to repair the damage caused by the fire. If the part from the boiler had been missing since before the fire or if the part had never existed on the boiler, SOL would not be liable to pay for somewhere else for Mr and Mrs S to live while the issue was being resolved. However, if the boiler had been damaged in the fire or SOL's contractors had damaged or removed the part, it would be liable to repair the boiler and pay for Mr and Mrs S's accommodation costs until the house was fit to live in.

The crux of this dispute is whether SOL's contractors had removed the part or whether it had never existed. The engineer concluded that the part must have been removed as part of the refurbishment work. Regarding the missing part, he said '*while we believe there is no drawings from the original installation, we can assure you that the interlock was in place. Given that the fire has caused damage to the flue fan motor and bearings and the wiring in general including other items, it is reasonable to assume that the damaged wiring was removed without recognising the interlock'.*

SOL has argued that if its contractor had removed the part from the boiler then it would have stopped working. Mr and Mrs S argue that the boiler was unsafe without the part and not that it had stopped working. I have considered this point and I have not seen any evidence that it necessarily would have stopped working and therefore I do not accept that the fact that the boiler didn't stop working is evidence that SOL's contractors didn't remove the part.

The engineer who has produced evidence in support of Mr and Mrs S' complaint has previously serviced the boiler. Because of this, SOL has suggested that he is attempting to cover up previous negligent work (ie that he had previously serviced the boiler and re-commissioned it after the fire without highlighting that it failed current regulations). It has also suggested that the engineer behaved obstructively and was unclear about the manufacturers' details and where the wire was situated on the boiler/fan. SOL believes that this prejudiced any enquiries it could have made with the manufacturer.

SOL was entitled to request evidence about the position of the wire and confirmation that it had previously existed. As it did not have the information it needed to find this out for itself, I find that it was fair and reasonable for it to have requested this from the engineer.

SOL has said that after the fire, the engineer had been under pressure from Mr and Mrs S to get the boiler working to prevent the possibility of a burst pipe and has suggested this as a reason why it might have previously have been signed off as safe (when in fact it wasn't safe). I am not prepared to comment on whether the engineer might have acted negligently in the past other than to say that I have not seen any evidence of this having been the case. However, SOL has said that there is no way that its contractors in their work in the general area of the boiler could have accidentally removed the wiring from the fan. It has also said that the boiler was old and pre-dated the safety requirement, which would have required the inclusion of the part. I find these arguments persuasive and, whilst I have not seen any evidence that the engineer was negligent, equally, I have not seen any evidence that SOL's contractors removed the wire, intentionally or otherwise.

The engineer said very clearly that, in his opinion, the part should have been there and was not. I accept that the engineer's opinion is evidence which supports Mr and Mrs S' complaint however I do not think that it goes far enough. The engineer is adamant that the wire had been there and was removed, but in order to show, on balance, that it was more likely than not that SOL's contractors had removed the wire, Mr and Mrs S would need to show evidence that the wire had been there when he inspected the boiler after the fire. This could include for example, documentary evidence relating to earlier inspections, or more formal evidence concerning the positioning of the wire (ie diagrams or manufacturers plans). If Mr and Mrs S had submitted more evidence to strengthen their argument, then it would be for SOL to produce evidence from a suitably expert, but as it is, I do not think it needs to.

In summary, taking into account all of the evidence I have seen, I am not satisfied that Mr and Mrs S have produced sufficient evidence to show that, on balance, it was likely that the wire existed and that it was removed by SOL's contractors. I therefore find it was fair and reasonable for SOL to have declined to pay Mr and Mrs S's claim for alternative accommodation from 7th May 2011to 10th July 2011

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 9 November 2015.

Carolyn Bonnell
ombudsman