

## The complaint

Mrs L's complaint is about the service provided under a home emergency insurance policy with British Gas Insurance Limited. Mrs L is represented in this complaint by her daughter, Miss L.

## What happened

Mrs L has held the policy with British Gas for some time. In January 2019 British Gas attended as a radiator was leaking. It said the pipe was made of steel and the policy does not cover repairs to steel central heating pipes. It carried out a temporary repair and quoted to replace the pipe and repair it permanently. Mrs L agreed to the work being done privately at a cost of £202. I understand the work was completed satisfactorily.

However, Miss L is unhappy that British Gas did not contact her about the work required, as she has Power of Attorney for her mother. Miss L also says the policy documentation says it covers unlimited repairs to the central heating system and so the repairs should have been covered under the policy.

British Gas said the policy terms are clear and it did not know that Miss L held a Power of Attorney until it was sent to it after this complaint was raised.

One of our investigators looked into the matter. He did not recommend that it be upheld. He said the policy terms were sufficiently clear and while the policy does say there is unlimited cover for pipe repairs this is subject to some exclusions, including in relation to steel pipes. He also said there was not enough evidence Mrs L lacked proper capacity to make the decision to get the work done in January 2019, as the evidence Miss L has provided suggests it was not until July 2020 that a doctor determined Mrs L no longer had mental capacity.

Miss L doesn't accept the investigator's assessment, so the matter has been passed to me. She has made a number of submissions in response to the investigator and in her initial complaint, which I've summarised below:

- the policy was mis-sold as it says it covers unlimited repairs to pipes and the restriction of cover was not clear.
- She has had a power of attorney since 1999 and her mother was diagnosed with Alzheimer's Disease in 2016. She had been running all her mother's affairs for some time but took over everything in 2016 after that diagnosis. Her mother's mental capacity has been impaired since 2016 and the assessment in July 2020 was just a confirmation of the worsening of the situation but is not relevant to this complaint.
- The main crux of the complaint is not her mother's mental capacity but the misleading policy information.
- This issue has made her worry about the arrangements she thought she had in place for her mother. Her mother is vulnerable and she had to rely on organisations following her instructions and being trustworthy and reliable.
- She has had to spend a lot of time on this complaint.

## Jurisdiction

Before assessing the complaint, the investigator asked Miss L for proof that she had the right to represent her mother. I confirm I am satisfied that she does have the right to do so but for the sake of completeness, I will set out why.

We cannot look at all complaints that are brought to us. The rules about which complaints we can look at are set out in the Financial Conduct Authority ("FCA") Handbook. This includes that:

*"A complaint may be brought on behalf of an eligible complainant ... by a person authorised by the eligible complainant or authorised by law. It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself an eligible complainant."* DISP 2.7.2

Mrs L is an eligible complainant as she is the customer of British Gas, which is a regulated insurance provider. In order to accept the complaint from Miss L brought on behalf of Mrs L, we need to either confirmation from Mrs L that she authorises this, or evidence that Miss L is authorised in law to do so.

Miss L has provided evidence that she has a registered Power of Attorney for her mother and I am therefore satisfied that Miss L is authorised in law to bring the complaint on behalf of Mrs L.

## What I've decided – and why

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

The policy held by Mrs L covers repairs to the central heating system. Under the general exclusions of the policy, it states:

*"We won't repair or replace steel or iron pipes, except:*

- *Your water supply pipe from the boundary of your property to your home,*
- *Your gas supply pipe, from your meter to your boiler or appliance(s)*
- *And, your soil stack/vent pipe where these pipes are specifically covered by your agreement."*

I have no reason to doubt the radiator pipe in question was steel, as no dispute has been raised about this. Given this, it seems to me the repair is excluded from cover, as the above term is sufficiently clear.

As well as a full policy document, British Gas issued a 'product information document' to Mrs L, which set out a summary of the main terms of the policy. The product information document says:

*"This document provides a summary of the key information relating to this Homecare Four insurance policy. Complete pre-contractual and contractual information on the product is provided in the terms and conditions..."*

*What is insured?*

- *Unlimited repairs to your gas central heating system...*
- *Replacement of parts that we can't repair (subject to terms and conditions)."*

The document also lists the main exclusions to cover under the “*What is not insured?*” section.

Mrs L says this is misleading, as it suggests that there are no restrictions on the repairs that will be carried out under the policy, and therefore the work needed should have been covered.

I don’t think the product information document can reasonably be read as meaning there would not be any restriction on cover. While British Gas could perhaps have added the specific exclusion of steel pipes in the summary information, I do not think that this is so misleading that it would be fair to require British Gas to disregard the policy exclusion. I have also not seen any evidence that Mrs L relied on any understanding due to this document that steel pipes would be covered, when she bought the policy. Therefore her position has not been prejudiced by the exclusion of steel pipes not being mentioned in the product information document.

Miss L also says that even if the claim was rightly not covered under the policy, her mother should not have been allowed to authorise the work. She says she has had a Power of Attorney in place since 1999 and British Gas has been aware of this since 2015. Miss L says her mother’s mental capacity was impaired, she already had a power of attorney in place and was handling her affairs, so she should have been contacted to discuss the work required in January 2019.

The investigator said there was no evidence Mrs L didn’t have sufficient mental capacity in January 2019, as it was only the assessment in 2020 which said Mrs L now lacks mental capacity to deal with her complex financial affairs. Miss L says this was just a development of her mother’s condition and her mother’s mental capacity has been impaired for some years, which is why she should not have been asked to authorise this work.

Miss L has provided a copy of the letter she sent British Gas on 25 February 2015 which enclosed a copy of the power of attorney. The letter she explains Mrs L “*is still of sound mind but is finding day to day administration too difficult and her memory is now very poor*”. I do not agree that this would have meant British Gas should not have accepted instructions from Mrs L. The letter states Mrs L was still mentally capable.

And there is no convincing evidence that any lack of mental capacity should have been apparent to British Gas at any point between that date and the date of the repairs. Mrs L was assessed by her GP who said that as of June 2020 “*It was clear that your ability to weigh up the risks and benefits of certain actions regarding [your affairs] ... was not as good as it would have been in the past. Your ability to communicate your wishes is very good. Overall, I felt your capacity to manage the complexities of all your financial affairs is impaired*”.

As Miss L says this was a development of her mother’s condition but this doesn’t establish that British Gas did anything wrong in discussing the repairs with Mrs L or getting her authorisation for the works in January 2019. Mrs L might have had impaired capacity but there’s no evidence this was to such an extent that it should have been apparent to British Gas and that it should not have acted in the way it did.

In addition, I note that Miss L told the investigator that if British Gas had discussed the matter with her she probably would have agreed to the work in any event. Given that she lives some distance from her mother, and the relative low cost of the work, it seems likely to me Miss L would have authorised British Gas to go ahead with the work. Therefore it would not have made any difference to the overall position, even if British Gas had discussed this

with Miss L. Given this, even if I thought British Gas should have discussed it with Miss L (which I don't for the reasons set out above) I would not require British Gas to reimburse the cost of the work.

Miss L has also asked for a punitive compensatory award against British Gas. I have no power to make a punitive award. I can only make an award for financial loss caused to a consumer and/or compensation for any distress or inconvenience caused, by something the business has done wrong. In this instance the cost of the work was rightly charged and I do not consider British Gas has acted unfairly or unreasonably, so there is no appropriate award for me to make.

I note Miss L says she has been put to trouble in bringing this complaint but, as she is not the customer of British Gas in this instance, I cannot make an award for any inconvenience she may have suffered (even if I thought some were warranted, which I don't).

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L, on behalf of Mrs L, to accept or reject my decision before 4 March 2021.

Harriet McCarthy  
**Ombudsman**