

The complaint

Mr B has complained about how British Gas Insurance Limited (British Gas) dealt with issues with his boiler under his home emergency policy.

What happened

Mr B had a HomeCare policy with British Gas for a rental property that he owned. Mr B's tenants told him that the boiler wasn't working, so they had no heating or hot water. Mr B contacted British Gas to get an engineer to fix it.

Over the following weeks, British Gas sent several engineers to try and repair the boiler. The engineers changed various boiler parts and then decided that the issue was with the flue, which wasn't covered by the policy. Mr B asked British Gas to replace the boiler for free under the policy. British Gas said Mr B wasn't entitled to a new boiler under the terms of the policy, as it hadn't been found to be beyond economic repair.

Mr B arranged for an independent engineer to deal with the issues. The engineer said the issue was with the boiler itself, not with the flue. Mr B paid for the boiler to be replaced, as his tenants had now been without heating and hot water for a few weeks.

Mr B complained to British Gas and asked to be refunded the cost of the new boiler. When British Gas replied, it said that its investigations showed it had made multiple attempts to repair the boiler. An engineer had decided that the only possibility left was that there was an issue with the flue, which wasn't covered by the policy. As the boiler was working intermittently, Mr B wasn't entitled to a new boiler under the terms of the policy. It offered Mr B £20 compensation for the delay in responding to his complaint.

So, Mr B complained to this service. Our investigator upheld the complaint. He said he thought Mr B's case met the terms and conditions for replacing the boiler under the policy. He said British Gas should therefore reimburse Mr B the amount it cost for the boiler to be replaced privately.

As British Gas did not agree, the complaint has been referred to me.

I issued two provisional decision on this complaint. In the first provisional decision, I said I didn't intend to uphold the complaint, but that I hadn't received the requested evidence from Mr B. I issued my second provisional decision on 29 April 2021. In that provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

When I issued my first provisional decision on this case, I said that I might reconsider my decision if I was provided with further evidence. Mr B provided a range of evidence, which British Gas has also had the opportunity to comment on. I've now considered the further evidence and comments from both parties. Having done so, I currently intend to uphold this complaint. I will explain why.

Mr B provided a statement from the independent engineer that said "the heat exchanger was leaking and the boiler was beyond economical repair". The engineer also confirmed there

was no fault with the flue and that this had been replaced as part of its standard procedures with a new boiler.

I've also considered what British Gas has said. It has strongly argued that because it replaced multiple parts in the boiler it had concluded the fault could only be with the flue. I can see that British Gas did replace various parts, which included the heat exchanger. So, I think British Gas took a range of steps to try and identify the source of the issue and I can understand that it decided the likely cause was the flue.

However, I don't think it would be reasonable for me to ignore the evidence from the independent engineer who found a fault within the boiler itself and also inspected the flue and didn't find a problem with it. British Gas identified what it thought was a likely cause based on a process of elimination, but Mr B's engineer found an actual cause and ruled out the cause suggested by British Gas. On that basis, I currently think the cause of the issue was more likely than not the heat exchanger, rather than the flue.

The independent engineer said the damaged heat exchanger meant the boiler was beyond economic repair. British Gas has questioned why, when this issue was identified, Mr B didn't contact British Gas to repair the boiler for free. British Gas has also said Mr B, through a property manager, "informed" an engineer not to attend and that a recent written statement from the property manager portrayed a different conversation than the one that had taken place with British Gas.

I asked Mr B about this. Mr B also explained that his tenants had been without heating for two weeks and British Gas had repeatedly failed to fix the problem. He therefore felt forced to get a second opinion. That engineer found the leaking heat exchanger and confirmed there was no problem with the flue. The engineer was able to replace the boiler immediately and Mr B felt he had no choice but to do so because of the impact on his tenants. Mr B said he told British Gas he would be replacing the boiler and intended to reclaim the cost and also raised a complaint.

Mr B also said the property manager insisted the statement was correct and that she had firmly rejected that it portrayed a different conversation than had taken place. Mr B said the property manager rejected the suggestion she had cancelled the appointment, despite having lost confidence in British Gas, as they were "desperate" to resolve the situation.

I've also looked at what happened when Mr B told British Gas he wanted it to replace the boiler. British Gas said it would need to send an engineer to assess the boiler to see if it met the terms to be replaced, so a visit was arranged. I've looked at British Gas' account of the discussion between its engineer and the property manager. This said:

"...our engineer called ahead before he was due to attend the property, at which point he spoke with the Property Manager... he explained the only problem left, that could be causing an issue would be the flue, which was continually being damaged by traffic due to its positioning outside. He went on to explain that the flue was not accessible due to its being boxed in the property and it was over 1 meter in length, repairs to the flue were not covered within the HomeCare Policy.

...

The call concluded with the agreement that the engineers visit was not required and that [the property manager] would speak with [Mr B]."

So, I've thought about this carefully. Having done so, I think Mr B has provided a credible explanation for why he replaced the boiler in the way that he did. As part of that I've thought about British Gas' concerns about the conversation with the property manager. Clearly, I don't know exactly what took place in those discussions, but I think that Mr B's explanation

of what happened has been consistent and that the property manager's evidence fitted with that.

The account provided by British Gas also doesn't persuade me that the property manager told the engineer not to visit. I'm mindful that the purpose of the visit was to assess whether the boiler should be replaced and it was British Gas who had said this visit needed to happen. The engineer then seemed to give his view over the phone, which focused on the work that had already been carried out. There was then an "agreement" that he didn't need to visit. Based on the evidence I've seen, the property manager seems to have agreed to the visit not happening based on the views of British Gas' engineer, who, in my view, seemed to suggest he thought there was no point in the visit taking place. This then meant that the visit British Gas said needed to take place to assess the boiler for replacement didn't happen.

So, British Gas' points don't persuade me that Mr B acted unreasonably in deciding to fit a new boiler using the independent engineer. There was an ongoing issue with the boiler that needed to be resolved. An independent engineer found the cause of the issue, said the boiler was beyond economic repair and was able to replace it immediately. In the circumstances, I think it was reasonable for Mr B to decide that he therefore needed to replace the boiler and that he would need to get the independent engineer to do this, as it hadn't been possible to get the issues resolved through British Gas.

So, I've thought about whether British Gas should refund Mr B the cost of replacing the boiler. The policy said British Gas would replace the boiler if it couldn't repair it and it was less than seven years old. I've already said that I think it was reasonable for Mr B to decide the boiler needed to be replaced. However, British Gas has said there was now no way of knowing how old the boiler was as it was now unable to carry out its normal checks to confirm its age.

Mr B said the boiler was less than seven years old. He provided statements from people who managed the refurbishment of the property. These confirmed a new boiler was installed as part of those works and that it was less than seven years old. British Gas has raised concerns that these statements weren't on company headed paper. Mr B has explained that, given the boiler was installed several years ago, the people who provided the statements no longer work in project management. However, Mr B has also now provided the terms of reference for the project. These said:

"A new central heating and hot water supply system will be installed. The current system will be employed where appropriate, such as pipe work, radiators, but the Combi System and holding tanks will be new."

Based on the date of the terms of reference and the date that the project managers said the boiler was installed, I think it's more likely than not that the boiler was less than seven years old. So, given all of the above, I currently intend to say British Gas should refund Mr B the cost of replacing the boiler. This is because I think it's more likely than not that the issue was with the boiler itself, the independent engineer said the boiler was beyond economic repair and the boiler was less than seven years old.

I asked both parties to send me any more information or evidence they wanted me to look at by 29 May 2021. Both parties responded before that date.

Mr B accepted the decision.

British Gas said:

- It didn't see how the heat exchanger could be leaking, as it had been fitted less than two weeks earlier.
- The engineer was a highly experienced and trusted engineer and had no history of misdiagnosis.
- The evidence of when the boiler was installed was ambiguous and could have been written by anyone. British Gas said it would need more concrete evidence of the age of the boiler before being asked to reimburse the cost.
- In terms of the written statement from the property manager, it queried why its trusted engineer would lie about being told not to attend. There was no benefit in him not attending. It said the engineer could provide a written statement if that was helpful. British Gas also queried how a new boiler could be fitted so promptly, which suggested Mr B or the property manager had already arranged for a third party to install the boiler.
- Mr B or the property manager had a duty to allow British Gas to inspect the boiler and validate whether it qualified for a replacement before allowing a third party to do this. Mr B had the old boiler destroyed without even taking photos of the serial number. It couldn't validate a claim without sufficient proof of age. A home owner should keep records.

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.

Having done so, I've decided to maintain my decision to uphold this complaint. As part of that, I considered all of British Gas' points, even if I don't comment on them here.

I accept that British Gas continues to have strongly held views about the outcome of this case. I should also be clear that my decision is not about the honesty of the engineer or his ability. Where I have disputed and contradictory evidence, I have to make a decision based on the balance of probabilities. So, I need to decide what I think is more likely to have happened taking into account the evidence available to me and the wider circumstances.

In terms of the issue with the boiler, I was aware that the heat exchanger had only recently been fitted. I don't know why an issue was found with it a short time after. However, a qualified heating engineer found the issue with the heat exchanger when he inspected it. He also said there was no issue with the flue, which he also inspected. When thinking about the likely cause of the issue with the boiler, I don't think it would be reasonable for me to ignore that evidence.

For the age of the boiler, I was already aware of British Gas' concerns about its age and how it would normally validate a claim. I agree that, ideally, there would be definitive proof of the age of the boiler. However, where such evidence doesn't exist, I need to decide what I think is most likely to have happened. On that basis, and looking at the full circumstances of this case, I remain of the view that it was more likely than not that the boiler was less than seven years old.

Putting things right

As a result, British Gas should refund Mr B the cost of installing the boiler. British Gas should also pay 8% simple interest on that amount because Mr B lost use of the money from the date on which he paid the invoice.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that the complaint is upheld. I require British Gas Insurance Limited to:

- Refund Mr B the cost of installing the boiler, subject to him providing suitable evidence of how much this cost.
- Pay 8% simple interest on that amount from the date on which Mr B paid the money to the date on which British Gas Insurance Limited refunds it.
- If British Gas Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 June 2021.

Louise O'Sullivan
Ombudsman