

The complaint

Mr S – on behalf of his mother, Mrs G – complains that British Gas Insurance Limited acted unfairly by automatically renewing Mrs G's home emergency policy without her agreement, increasing the premium at each renewal.

What happened

Mrs G had a HomeCare home emergency policy with British Gas. She is represented by her son as a result of her medical condition.

In early 2020, Mr S reviewed his mother's finances. He found that British Gas had automatically renewed Mrs G's HomeCare policy each year since 2016 and her premium had increased at each renewal.

Mr S says, in summary, that British Gas renewed his mother's policy without her explicit agreement, and this disadvantaged her due to her illness. He says that if the policy hadn't automatically renewed, Mr S would have been able to either negotiate a better deal with British Gas or change provider. As a result, he believes his mother has overpaid more than £1,000 in premiums. He would like British Gas to refund this.

British Gas told Mr S that its policies were individually priced based on various risk elements such as boiler make, model and age, size and type of heating system, and customer location. It said the cover automatically renewed each year unless the policyholder cancelled it, and it wrote to Mrs G at least 25 days before each renewal to tell her this.

Mr S didn't think this response was acceptable, so he brought his complaint to this service.

Our investigator recommended that Mr S's complaint shouldn't be upheld. He thought British Gas' explanation of how it priced the HomeCare policy was reasonable. He found no evidence that it had calculated Mrs G's premiums incorrectly. He didn't think the automatic renewal of the policy was unfair or that British Gas had any reason to think Mrs G was unable to understand the policy documents.

Mr S disagreed with our investigator, so the case was passed to me to consider.

My provisional decision

I issued a provisional decision on this on 14 June 2021. I said:

"First, Mr S has made strong arguments about British Gas' policy of automatic renewal, specifically in relation to how this affects vulnerable or disabled customers, the Mental Capacity Act 2005, and the Equality Act 2010. He wants British Gas to change this policy "to ensure that vulnerable disabled customers are not placed at a disadvantage compared to able-bodied customers." He suggested several ways to address this.

I understand why Mr S feels so strongly about this but I'm afraid this service doesn't have the power to investigate this or order the sort of policy intervention he wants. That would be for the financial regulator, the Financial Conduct Authority (FCA). I respectfully suggest he

contacts the FCA about this. The role of this service is to look at individual complaints. In this case, I need to consider whether British Gas disadvantaged his mother when it renewed her policy.

Having done so, I think it did. I'll explain why.

The 'General Conditions' section of Mrs G's policy booklet (page 26) covers renewal: "We'll write to you at least 25 days before your agreement is due for renewal. If you pay by Direct Debit, or are an Energy Extra customer, we'll keep renewing your agreement automatically, until you ask us to stop." So I'm satisfied that the policy term allows British Gas to renew the policy automatically.

But the more important question for me is: was it fair or reasonable for British Gas to rely on this term? I agree with Mr S when he says that what the policy terms allow British Gas to do isn't really the issue here – it's whether his mother was treated fairly given her illness.

It's important to say that I accept British Gas was unaware of Mrs G's illness. I'm conscious that her condition places her in an extremely vulnerable position. However, I haven't seen any evidence to show that British Gas could reasonably have known this or that she was unable to manage her policy. Mr S has also acknowledged that British Gas was "not aware at the time of her diagnosis of her disability".

However, when a customer hasn't spoken to their insurer after receiving their renewal quotes for more than four years, we think it's fair to say they were 'inert'. At that point we think an insurer ought to have been aware the customer wasn't engaging.

We asked British Gas to send us Mrs G's premium history. I've reviewed this and there are a few things to note:

- British Gas was unable to provide us with the premium history before 2014.*
- Its records show the policy was inception in or around 2009. This is consistent with information provided by Mr S.*
- That means I don't know the historic increases to the premium from 2009 to 2014.*
- Similarly, British Gas doesn't have a record of when Mrs G began paying by direct debit, but it told us her policy was automatically renewed from at least 2014.*
- The premium increased by 38.5% between 2014 and 2019.*
- The most significant increase (13.9%) was in 2018. British Gas told us this was due to a change in its rating structure to "better reflect risk" as well as the removal of a couple of discounts.*
- The original 2019 premium at automatic renewal was £711.06. Mr S was able to reduce this to £545.42 following his call to British Gas in April 2020.*

Mrs G took out her policy in 2009. Assuming the policy renewed automatically each year, this means the inertia point might have been as early as 2013. British Gas didn't provide a full record of its communications with Mrs G. The records it did provide only show call-outs and work carried out. However, unless I'm reading these records wrong, they suggest there was no contact with Mrs G at all between November 2014 and July 2019.

I think it's reasonable to say the reason Mrs G didn't engage with British Gas was because of her illness. I think it's also reasonable to say her illness meant she couldn't shop around when invited to do so by British Gas' 25-day renewal letter. So I don't think British Gas acted fairly by continuing to increase Mrs G's premium after she'd stopped engaging.

I've thought carefully about exactly when Mrs G stopped engaging with her policy renewal.

Her illness was diagnosed in August 2016, a few weeks before British Gas sent her the 25-day renewal letter for 2016. Mr S suggested this date should be the starting point for any redress. Given the circumstances of this case and lack of a clearly identifiable point where Mrs G stopped engaging with British Gas, I think that's fair.

The question now is how to put things right. Mr S asked that British Gas refund approximately £1,100 in excess premiums. He calculated this based on the revised premium agreed with British Gas in April 2020 of £26.61 per month. He compared that monthly premium to Mrs G's premiums between August 2016 and April 2020. However, I'm afraid this isn't a fair comparison.

Mrs G's 2019 premium was reduced from £711.06 to £545.42 following Mr S's April 2020 call. But because Mrs G had been paying £59.25 per month since October 2019, she'd already paid roughly £415 for the year. This meant the outstanding premium for the remaining five months of the policy term was only about £130 (or £26.21 per month). Had she paid this reduced 2019 premium from the outset, her monthly payments would have been £45.45 (£545.42 / 12).

But even that wouldn't be a completely fair comparison. Mr S added a £60 excess to the policy where previously there was a zero excess. That's a significant change as it reduced British Gas' liability in the event of a claim and was an important factor in British Gas reducing the 2019 premium.

I think British Gas should refund the difference between Mrs G's 2015 premium (£542.10) and what she actually paid in 2016, 2017 and 2018. I don't think it needs to refund any part of the 2019 premium for the reasons above. (In any case, the difference between the 2015 and 2019 premiums is minimal.) So, at this stage I think British Gas should refund:

- £9.80 for 2016;
- £46.30 for 2017; and
- £128.10 for 2018.

It should add interest to these amounts at 8% per year."

Responses to my provisional decision

Neither party agreed with my provisional decision.

British Gas doesn't agree it acted unfairly by automatically renewing Mrs G's policy without her agreement. It said:

- The FCA recently published new rules on general insurance pricing. It didn't ban auto-renewal.
- If it had asked Mrs G to renew at the end of the policy year, "*there would have been a real risk that she would not have realised that she needed to take positive action and her policy would have lapsed*". This would have left her uninsured if her boiler had broken down.
- There's no evidence Mrs G's renewal pricing was unfair or unreasonable.
- It strongly disagreed with my finding that Mrs G had become an inert customer because "*A customer who is regularly claiming under the policy cannot possibly be considered inert.*" It said Mrs G was "*regularly engaging with us*" by arranging her annual boiler service.
- It provided a service history showing Mrs G's boiler was serviced every year from 2013 to 2019. It said Mrs G would have had to book an appointment and be present

for the boiler inspection to take place. It rejected my finding that there was no contact with Mrs G between November 2014 and July 2019.

Conversely, Mr S doesn't believe my proposed award goes far enough. He made another detailed submission, summarised below. He says:

- Although Mrs G's illness was diagnosed in August 2016, she'd been suffering its symptoms for several years before diagnosis.
- British Gas acted unfairly by renewing the policy after Mrs G stopped engaging.
- My provisional findings suggested Mrs G had stopped engaging with British Gas in November 2014. Mr S says that should be the point of inertia. This means redress should potentially be calculated from that date.
- Alternatively, redress could be calculated from the mid-point between November 2014 and his mother's diagnosis in August 2016; that is, from October 2015.
- The negotiated reduction in April 2020 shouldn't be seen as Mr S being happy with either British Gas or the cost of cover.

Mr S argues that redress should be based on one of the following scenarios:

- cancelling the policy (backdated to October 2015);
- cancelling the policy and Mr S buying a new policy on his mother's behalf at a 'new customer' promotional rate of £24 per month (backdated to October 2015);
- reducing the premium to £26.61 per month, based on the revised 2019 premium (backdated to October 2015);
- cancelling the policy (backdated to November 2018).
- cancelling the policy (backdated to November 2018), plus my proposed partial refund of premiums for 2016, 2017, and 2018.

Based on his four scenarios, Mr S believes his mother should be refunded between £973.21 and £2,767.31.

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.

I'm grateful to both parties for their considered and detailed responses.

British Gas made some general points in response to Mr S's wider comments about auto-renewal. For the reasons set out in my provisional decision, I don't intend to comment on those. I'll simply say that we've had an established approach to these complaints for some time now, and the FCA's market study and findings helped to inform this approach.

Instead, I think British Gas' most relevant argument is that Mrs G arranged her boiler service each year, which means she shouldn't be considered an inert customer. It's worth setting out this point in full:

"[The process of arranging an annual service] would have involved us contacting her to remind her that an annual service visit was due, her responding to book an appointment at a convenient time, and her (or her representative) being present at the property at the time of the inspection. Therefore, we consider that Mrs G has been actively engaging with us on a regular basis concerning the booking of and fulfilment of her annual service visits."

I'll make four points about this.

First, I noted in my provisional decision that British Gas hadn't provided a full record of its communications with Mrs G. The service history it originally sent us showed no work carried out between November 2014 and July 2019. I now accept that it carried out a boiler service each year between 2013 and 2019. It would have been helpful if it had provided the full service history at the outset.

Second, British Gas still hasn't provided evidence of any communication from Mrs G. The contact notes it sent us show only outbound letters. It asks me to rely on its assumption that Mrs G contacted it each year to arrange her annual boiler inspection.

Third, British Gas is effectively arguing that Mrs G was capable of discussing her policy renewal in 2016, 2017, 2018, and 2019, despite having been diagnosed with an illness that meant such conversations would have been difficult and/or confusing to her. That isn't reasonable.

Finally, our consideration of this type of complaint focuses on what the customer did at renewal. Even if I accept that Mrs G contacted British Gas to arrange her annual boiler inspection, this doesn't automatically mean it acted fairly by increasing her premium when it renewed her policy.

Mrs G's policy auto-renewed every year from at least 2013 without Mrs G ever having contacted British Gas to discuss it. This despite successive annual premium increases of 6.6%, 13.9%, and 6.1% in 2017, 2018, and 2019. Put another way, Mrs G's policy increased by almost £200 between 2014 and 2019¹. So I don't agree with British Gas that Mrs G shouldn't be considered an inert customer simply because her boiler was serviced each year.

For these reasons, I'm not persuaded by British Gas' response and see no reason to change my provisional decision to uphold the complaint.

Having said that, I don't think Mr S's proposals are fair either.

It wouldn't be fair or reasonable to retrospectively cancel the policy and refund Mrs G's premiums, as Mr S suggests. Mrs G clearly had a benefit from her policy – the annual service. It could reasonably be argued that these services maintained the boiler in good working order, reducing the risk of breakdown and/or the need for Mrs G to make a claim.

Nor is it reasonable to assume Mrs G (or Mr S on her behalf) would have been able to cancel the policy in October 2015 and immediately buy a new policy using a 'new customer' premium of £24 per month. While Mr S provided a screenshot showing this current promotion, there's no evidence British Gas was offering this in October 2015. In fact, I think it's very unlikely Mrs G would have been able to get this. Mr S was only able to get a reduction to £45.45 per month on her behalf in April 2020, and this primarily because he increased the excess from zero to £60.

Finally, I explained in my provisional decision why assessing any redress against a revised premium of £26.61 per month was incorrect.

I can't be sure what Mrs G might have paid for her insurance if she – or her representative – had shopped around or engaged about the price, so I can't put her back in the position she

¹ Both increases calculated against the original 2019 premium, before Mr S negotiated the reduction in April 2020.

would have been in. Instead, I've considered what fair compensation might look like to put right any unfairness.

I think it's reasonable to say the reason Mrs G didn't engage with British Gas was because of her illness. I accept that Mrs G would have been suffering from her illness before it was formally diagnosed. However, I can't know if her illness was so advanced that it meant she wasn't able to engage with British Gas ahead of renewal in, say, September 2015.

In the circumstances, I think her diagnosis in August 2016 is a reasonable cut-off point where it's clear she was no longer able to engage with her insurer. British Gas should refund the difference between the 2015 premium and what Mrs G paid in 2016, 2017, and 2018, plus interest.

My final decision

My final decision is that I uphold the complaint for the reasons set out in my provisional decision. I require British Gas Insurance Limited to:

- refund the difference between Mrs G's 2015 premium and her premiums for 2016, 2017, and 2018; and
- add interest to these amounts at 8% simple per year from the date each premium was paid to the date of settlement*.

*If British Gas considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs on Mrs G's behalf, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S – on Mrs G's behalf – to accept or reject my decision before 13 September 2021.

Simon Begley
Ombudsman