

The complaint

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Mrs H has complained that British Gas Insurance Limited ('British Gas') damaged her fire whilst carrying out a service under her home care insurance policy.

What happened

In July 2021, a British Gas engineer attended Mrs H's property to carry out an annual gas fire service. A securing bolt snapped whilst the engineer was servicing the fire. The bolt was one of four bolts which secured the fire's front plate, which needed to be removed to enable the engineer to service it. British Gas condemned the fire due to the broken fixing. Mrs H raised a complaint and requested British Gas to make good the damaged part. She said that a securing bolt had previously been broken during a service and was repaired by the previous homeowner. On this occasion however, Mrs H was advised that it couldn't be repaired.

British Gas investigated Mrs H's concerns and found that the fixing broke due to wear and tear and so it didn't accept liability. Due to a missed service in 2020 however, British Gas offered some help. It didn't consider that a repair was cost effective and it stated that a replacement would be preferable. British Gas didn't agree to cover the full cost for the replacement fire however, as it didn't accept liability for the damage. It stated that as an alternative, it would pay some of the costs that Mrs H incurred. For the period that it hadn't serviced the fire, British Gas offered to refund Mrs H's premium of £128.12. It also offered to contribute £50 to cover a repair quote, and increased its compensation payment to £170, which it stated was a good will gesture. In total, British Gas offered to pay Mrs H £348.12.

Mrs H accepted the refund of the £128.12 premium but asked British Gas to either increase the goodwill gesture offer to £500, replace the fire or alternatively said she'd accept £350 to remove the fire and make the area safe. British Gas didn't agree and so, Mrs H referred her complaint to our service.

Our investigator upheld Mrs H's complaint. She wasn't persuaded that wear and tear or a manufacturing or design fault applied here. Based on the available photographs, she thought that the bolt appeared to be in a good condition, with no discolouration or corrosion to indicate that it was worn out. She said that the bolt was a functional and not a cosmetic part of the appliance which had snapped twice whilst under the care of British Gas. She couldn't rule out excessive force having been used by the engineers acting on behalf of British Gas.

She concluded as follows; - 'I don't agree that the fact this fault happened twice is sufficient evidence to suggest that the part is flawed. Had it been a manufacturing issue, or a known fault linked to the product I think it is likely that there would have been more evidence to support this e.g. a product recall. I understand that BG have liaised with the manufacturer and I can't see that they have obtained any evidence to support that this is a manufacturing issue. BG haven't shown us that the fault wasn't due to their engineers acting negligently or that the fault unavoidable.'

Our investigator, having upheld the complaint, considered that the onus was on British Gas to show that the damage was unavoidable, or that it had informed Mrs H of the risks involved during the service. It was her view that British Gas should place Mrs H back in the position she was prior to the damage being caused.

British Gas hasn't agreed with our investigator's conclusions. The matter has therefore been referred to me to make a final decision in my role as Ombudsman.

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 issue for me to determine is whether British Gas has applied the terms and conditions of the home care insurance policy fairly and reasonably in treating the damage to Mrs H's fire as having been caused by wear and tear or manufacturer's fault and declining her claim.

As a starting point, I've therefore considered the following terms and conditions of the policy. Under the heading 'What's covered', it states: - *'All repairs to...the gas appliance(s) shown on your statement...including 'an annual service'. 'Accidental damage' is also covered.*

Under the heading 'General exclusions' the following is included under the heading 'Pre-existing faults': -

'Your products don't include cover for any faults or design faults that:

- were already there when your boiler, appliance or system was installed;*
- existed when you first took out the product;*
- we've told you about before and you haven't fixed, or, if the work has been completed by a third party, where work, in our opinion, has not been completed to a satisfactory standard;*
- we couldn't reasonably have been expected to know about before, for example, faulty pipes that don't have the correct protection, or which are buried under concrete floors; or*
- prevent access because a part of your system has been permanently built over.'*

Finally, the terms and conditions also state: -

'We're not responsible for any loss of or damage to, or cleaning of property, furniture or fixtures as a result of your boiler, appliance or system breaking or failing unless we caused it. For example damage caused by water leaks. We're also not responsible for any losses incurred as a result of delayed, rearranged or cancelled appointments.'

I now turn to the evidence and information provided by both British Gas and Mrs H.

Mrs H's central complaint is that her gas appliance was in good working order prior to the British Gas service in 2021 and has since the service subsequently been condemned. She said that £170 clearly didn't cover the cost of a replacement. In addition, she said that there was now a need to remove the broken appliance and either make the area safe in order to install an electric replacement, or indeed to replace a flue for a new gas fire, which would also incur significant costs for her.

Mrs H was unhappy that British Gas was still referring to the damage as being down to 'wear and tear'. She said that it was clear that the British Gas engineer broke the fire bolt and that the bolt was only 'used' when being serviced. In the circumstances, she said that the part hadn't been touched for two years. Mrs H said that following the incident, the engineer said

he was going on annual leave and indicated that his manager would telephone her. Mrs H had to contact British Gas and make a complaint however, and another engineer was then sent out to inspect the fire.

Mrs H stated that she obtained a quote in relation to the damage done by the engineer and British Gas offered to pay Mrs H for this. She thought that the compensation offered wasn't enough however to either replace the gas fire or to make the area safe, as the report indicated that the flue had to be changed. She understood that this would cost £1,500 if the gas fire was to be replaced.

Mrs H provided a photograph of the bolt prior to the time she owned the property. She said it was subsequently fixed by an engineer, instructed by the previous owner. The independent engineer she contacted to provide a quote to repair the fire stated it was uneconomical to repair. His report referred to the broken stud which *'has been over tightened and snapped off'*. He was prepared to discuss his recommendations with British Gas, however it's not clear whether this contact took place.

Mrs H said that when she'd purchased the property, she was made aware of the previous issue with the fire. She alleged that the previous owner informed her that the problem occurred when British Gas over-tightened the bolt on that occasion also.

When complaining to this service, Mrs H made the point that it was approaching a colder part of the year and that there was no gas fire to heat the house which accommodated vulnerable persons. She also stated that despite accepting the refund for services not received and re-imbursement for the quote she'd obtained, she'd received nothing two months later.

I now turn to the evidence and information provided by British Gas. It stated that the fixing was broken due to wear and tear and refused to accept liability for the damage. It accepted responsibility for a missed service in 2020 however, and it was for this element that it agreed to refund policy payments of £128.12 and the invoice quote for the quote for £50 as well as a 'good will' payment of £170.

It said that Mrs H declined this amount and requested a refund for the following year's full renewal sum of £205.20 plus a £500 goodwill gesture on top of the £50 for the invoice. It responded that the renewal was not just for gas appliance cover as it included central heating and home electrical cover.

British Gas subsequently argued that the terms of the policy allowed a service to be completed once for the year 2019-2020 and once for the year 2020-2021, so it said its final response letter had been incorrect in stating that the annual service was missed. It said that it would be requesting a payment of £65 back in view of what it considered to be a payment made in error.

British Gas confirmed that to repair the bolt, it would involve equipment it didn't carry. It checked with the manufacturer which didn't allow it to drill the fixing and replace it, as it needed to be removed and re-welded. British Gas also confirmed that it would be classed as a modification and the manufacturer would need to complete any modifications and said this wasn't possible. British Gas considered the fire to be unrepairable in the circumstances and considered that what it had offered as a goodwill payment was more than generous.

As to the bolt, British Gas said that it should be able to withstand the process of removal and refitting. It said that its records showed that during two separate visits in 2018, similar faults were noted with the securing bolts, specifically on the bottom left. This was prior to Mrs H owning the property. The British Gas notes indicated that one bolt was broken as at January

2018. It recorded '*bottom left nut loose*' in October 2018. The notes also indicated that the engineer spoke to the manufacturer of the fire at that time and recorded the appliance as immediately dangerous. The repair wasn't carried out or costs settled by British Gas in 2018. It acknowledged that the subsequent issues identified in 2021 related to the stud on the top right of the fire.

It said that it had been possible for the previous owner of the property to arrange repairs in October 2018. When the same issue occurred during Mrs H's period of cover, the manufacturer confirmed that a repair was not possible on this occasion and British Gas said that this was outside its control. British Gas was satisfied that Mrs H was aware of the risks as she's been aware of the 2018 incident and that British Gas didn't have the facility to repair the damage if it happened again.

It said that there was no evidence of any negligence on the part of the engineer who attended in 2021. It stressed that this was a different engineer to the ones who had attended in 2018 and that therefore three separate engineers had raised issues regarding bolts. British Gas acknowledged that whilst it had initially referred to this as wear and tear, it later considered that 'component failure' was more representative of the situation. It thought that the reoccurrence of this issue was an indication of an inherent manufacturing or design fault, for which it said British Gas couldn't be held responsible. It said; - *'The general definition of wear and tear when it comes to insurance claims is used when referring to the damage that happens to an object in ordinary use during a period. Whilst to an extent this definition does apply in this instance, it was felt that component failure was a more appropriate description of what has happened here...'*

British Gas added that manufacturers will only make parts available for around 5-6 years after the date of manufacture and that the exact date of manufacture of this particular appliance was unknown. It said that its records did show that the appliance was installed in approximately 2001 and said it was reasonable to conclude that it was over 20 years old. On balance, it remained satisfied that the evidence available supported the view that there was an inherent fault with the fire itself and that the engineers who serviced the appliance hadn't been negligent.

As to delay in making agreed payments, it said that they hadn't been made as Mrs H hadn't accepted this outcome previously and this was the reason why no payment had been made. It confirmed that the payments had now been issued as requested, including a full refund of the premiums paid in respect of gas appliance cover. It said it had also paid the £50 to cover the quote fee as well as its '*generous goodwill gesture*.' It thought that this resolution was fair and reasonable in the circumstances.

I've carefully considered the evidence produced by both Mrs H and British Gas. I note that the terms and conditions don't specifically refer to wear and tear or design and manufacturing faults. They do however exclude cover for pre-existing faults.

Having considered all available information, I consider that there is insufficient evidence to support the argument that there was an inherent fault with the securing bolt. On the balance of probabilities, the damage was connected to the way in which the front panel had been removed and re-secured during the service. It's also my view that the engineer should have been alert to the need to take particular care, due to the record held by British Gas as to a previous issue with a separate bolt. The report of the engineer instructed by Mrs H's specifically referred to the bolt having been over tightened so that it snapped off.

I don't consider that it makes any difference to this central finding as to whether Mrs H was aware that there had been a previous problem with a different bolt. There was no indication that there was a design fault with a separate bolt and no fault was noted during the 2019

service. British Gas had also continued to accept premiums for cover despite the issues reported in 2018 which shows that it considered the appliance was capable of being successfully serviced.

I note that the British Gas records from the date of the incident show that the top right securing bolt had 'snapped' and that the engineer was unable to repair it. This indicates sudden damage and gives no indication that the bolt was corroded or found to be broken on inspection. As to wear and tear therefore, I'm satisfied that the damage shown in the photographic evidence doesn't fulfil the usual definition for wear and tear. Wear and tear would imply deterioration over a period of time, where in reality the damage is sudden, as the bolt snapped off during removal or replacement of the front plate of the fire.

I'm satisfied that a different bolt had caused difficulties in 2018. The fact that the same issue occurred with a different bolt in 2021 indicates that British Gas was aware that care needed to be taken in removing the front plate to avoid damage to the bolts. The damage occurred during the British Gas service and I'm satisfied that it's more likely than not that the method, angle or force of removal which was the primary cause of the damage and the snapping of the bolt.

British Gas later asserted that there was an inherent fault, however the photographs don't show an apparently weakened bolt mechanism. I agree with our investigator that *'the bolt appears to be in a good condition there is no discolouration or corrosion which would indicate that the bolt is worn out'* and there is no apparent explanation for a 20 year old bolt to fail, other than by force being applied awkwardly or without sufficient care. The fact that a separate bolt failed three years previously didn't mean that bolts which had been in place for possibly 20 years were inherently weak.

In the circumstances, I conclude that British Gas hasn't treated Mrs H fairly and reasonably under the terms of its policy. I don't consider that the damage to the securing bolt was due to wear and tear. Also, on balance, I don't consider that there was an inherent design or manufacturing fault either. I consider that it's more likely than not that the bolt snapped off during the British Gas service due to the way in which its engineer took off the front panel of the gas fire. As I consider that British Gas hasn't treated Mrs H's claim in a fair and reasonable manner, I'm satisfied that it should place Mrs H back into the position which she would have been in had the damage not been caused during its service.

My final decision

For the reasons given above, I uphold Mrs H's complaint and I require British Gas Insurance Limited to either settle Mrs H's claim by offering her a like for like replacement gas fire or a cash settlement equivalent to a like for like replacement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 May 2022.

Claire Jones
Ombudsman