

## The complaint

Mr N complains British Gas Insurance Limited breached his home emergency insurance contract with them when advising him to replace his boiler.

## What happened

I issued a provisional decision, setting out what's happened, and what I thought about that. I've copied the relevant elements below, and they form part of my final decision.

*On 4 December 2020 Mr N's carbon monoxide alarm triggered – and after investigations he was told his boiler wasn't safe to use so it was shut off. This was completed by another company.*

*Mr N's home emergency insurance covers his boiler, so he asked British Gas to come out and look at it. British Gas' engineer came out to view the boiler, and ultimately said there was a hole in the boiler and there was corrosion. Mr N received a quote from British Gas for a new boiler of £2,906.50 – and with it being the middle of winter, Mr N accepted this quote in good faith – and had the new boiler installed.*

*Mr N says he later became aware there was no hole or corrosion as had been suggested – and a broken part could have been replaced for around £8 which would have meant the boiler was in working order again. Mr N said this service is covered free of charge with his policy, and he felt British Gas had breached his contract with them. So, he complained – adding his annual service had been carried out 45 days before and found no issues, and he felt British Gas' engineer had broken this part of his boiler.*

*British Gas set out their position in a letter dated 24 February 2021. They said:*

- *Mr N's boiler was 17 years old and was on a reduced service list as some parts were no longer available, and they'd previously advised replacing the boiler due to corrosion on the casing.*
- *The reason British Gas attended was after the boiler had been shut off due to the carbon monoxide warning. Their engineer found this was due to incense being burned in the property not the boiler.*
- *But while investigating the source of the carbon monoxide, they removed the casing which had been around the boiler and found a test valve on top of the boiler was broken. This led the engineer to immediately condemn the boiler, as it was dangerous due to having a hole in the casing. They added this valve hadn't been accessed by British Gas engineer's before, as safety tests and annual services didn't need to access this.*
- *As there is no evidence they broke this valve, they didn't uphold Mr N's complaint.*

*Unhappy with this, Mr N asked us to look into things – providing a substantial information when doing so.*

*One of our Investigators looked into things, she found there was enough evidence to reasonably say Mr N's boiler did need to be replaced, so didn't uphold his complaint. As Mr N didn't agree with that, the complaint was passed to me to decide.*

*Before doing so, our service asked Mr N to get an independent report about the state of his boiler – he did, and this said there wasn't a hole in the casing, nor was anything corroded.*

*We put this to British Gas – as at this point it didn't seem to me they'd properly proven they had a reason for condemning Mr N's boiler. We invited them to make an offer which should address Mr N's comments he should be refunded the full cost of his boiler, be given £400 compensation – and we also suggested they refund the cost of the report Mr N got. The cost of this was £85.*

*In response, British Gas said they found Mr N's engineer's comments very concerning. And, in brief, they didn't think they'd done anything wrong in condemning the boiler.*

### ***What I've provisionally 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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr N's complaint in considerably less detail than he has. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.*

*The crux of Mr N's complaint is that British Gas breached their contract with him by not replacing the broken part of his boiler when they should have. As a result of this breach, Mr N says he's suffered financially.*

*I can't decide if legally British Gas have breached the terms of the contract, but I can look at whether they've acted fairly in condemning Mr N's boiler.*

*I think it's important to explain as a starting point I'm not an engineer so I don't have the expertise to decide whether the boiler should or shouldn't have been condemned – instead, I'm reliant on the evidence provided by both parties.*

*In their response to Mr N's complaint, British Gas have said there was a hole in the casing which appears to be a fundamental part of the reason they condemned Mr N's boiler. We've asked British Gas to point out where this hole is, but they haven't done so.*

*British Gas also gave another reason for condemning the boiler saying there was corrosion on the casing, and explaining they'd suggested the boiler be replaced previously due to this. But, British Gas' notes don't support this statement – the first mention of any corrosion was after the emergency incident.*

*The independent report Mr N got, says "I found no damages or corrosion on the heat exchanger and the casing in which the boiler has been assembled. However I noted the flue sensing nipple, mounted on the external casing of the boiler has been broken."*

*British Gas say their reservations about this are:*

- The engineer was able to inspect a boiler stored in a dry cupboard for over a year
- The engineer wasn't called to a potential carbon monoxide investigation
- He was able to test the appliance under working conditions
- The investigation and pictures do show corrosion and based on this being a potential carbon monoxide incident the decisions made at the time with Mr N resulted in an urgent replacement appliance
- The engineer's investigation doesn't factor in real life scenarios when encountering potential "Immediately Dangerous" situations
- The hole was test nipple related and these are clearly visible

*In thinking about British Gas' argument, it seems their key point is Mr N's engineer was able to conduct a more considered test – because he wasn't replying to a potential urgent situation. But, equally, by the time British Gas' engineers were on site, the boiler as I understand it had been shut off. So, in effect, the "urgent" nature which British Gas are referring to had already passed, because the boiler had been shut off so it wasn't using any gas. And regardless of the urgent nature, I wouldn't expect British Gas' engineers to condemn the boiler without appropriate consideration of the consequences of that – mainly the cost of a replacement boiler.*

*Mr N has talked quite a bit about the test flue nipple and said that could be replaced. I think it's helpful to say British Gas have agreed with this – they accept it can be replaced and say they've never argued this. I'm not sure that was as clear to Mr N as it could have been, but I think it helps me in deciding the outcome.*

*Ultimately then, British Gas say the hole was due to the test flue nipple, which could have been replaced, and corrosion on the casing. I've noted British Gas say this can be seen in the photos, but I've got an independent report from someone registered with the appropriate authority to say there is no corrosion. Combined this with what appears to be inconsistent information from British Gas about previous corrosion they say they noted, but which isn't mentioned on their notes before attending for this issue, means I'm planning to uphold this complaint. Based on all the evidence I've got, it seems British Gas' engineers decided to condemn the boiler, without fully assessing the situation. I think given the potential cost of doing that, this course of action wasn't fair.*

*In thinking about a fair outcome, I can't agree with Mr N's comments he should be provided the full cost of the new boiler he paid. I say that because his existing boiler was 17 years old. Some boilers can last a long time, or it could be that Mr N's boiler was near the end of its useful life. Even taking into account the service Mr N had just beforehand, which said the boiler was performing fine, doesn't mean something couldn't have gone wrong with a part shortly afterwards. And, Mr N now has a brand-new boiler, which will likely last far longer than the previous boiler he had. So, for this element of his complaint I'm going to award 50% of the total cost of the boiler, installation and any other associated costs.*

*In thinking about the compensation, I don't agree with the £400 Mr N has asked for. He's said this is for heating and takeaways he and his family needed, while British Gas were carrying out their investigations – when actually he could have just got the part needed to fix his boiler which cost around £8. But it could potentially have taken some time to get the part he needed, and then some further time before someone was available to fit it – assuming they'd have agreed to do so. I do though think some compensation is due, given Mr N has effectively paid out for a new boiler that I can't say with certainty he needed – and I think at times British Gas' communication could have been better. It seems all along they've accepted the flue test nipple could have been replaced, but Mr N was under the impression they were saying it couldn't be – and I can see why he was a little confused by this. So, overall, I'm going to award £200 for this.*

*And, finally, I'm going to require British Gas to pay for the independent report he got – which came in at £85. The reason for this is because I can't say British Gas should have condemned his boiler – so had they not acted unfairly this is a cost he wouldn't have incurred.*

### **Responses to my provisional decision**

British Gas didn't agree with my provisional decision, in summary they said:

- They didn't think any reimbursement is warranted for the new boiler or the third-party report. They said this was an assessment of a non-functioning appliance that'd been stored without any water, gas or electricity running through it.
- Their records showed two experienced engineers reported the same damage to the boiler – and they don't think the casing for the boiler was ever available as a standalone part.
- They felt two key points had been missed – the first being that although the boiler was made isolated / gas safe, the boiler was full of water and the corrosion on the heat exchanger was highlighted and likely wet while the appliance was on the wall.
- The second point was the boiler had been classed as a code five (new boiler recommended) prior to this visit.

They summarised by saying they provided Mr N with the evidence they found on the day of their visit, and it was his decision to go ahead. They also provided four photos but didn't explain them when doing so.

Mr N accepted the compensation, and refund of the £85 engineer fee, but also didn't agree with the outcome I'd reached. In summary, he said:

- I've clearly identified that the replacement of the boiler occurred because of a flawed diagnosis by British Gas. Given the smooth working of their boiler beforehand, along with the inspection report carried out before saying the boiler was working fine, it's reasonable to assume the boiler would have continued to operate.
- They've moved out of their property which was something they were planning before this issue happened, the boiler hasn't added any value to the property – so they can't enjoy the benefits of a new boiler.
- He understood my inclination to leave open the question of legality, but as British Gas regularly advertise saying they'll live up to the contract at no cost to their clients, they should refund them 100% of the costs.

Mr N said he also forgot to previously mention a £300 no win no fee claim he'd made, and he asked me to consider this also.

### **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.

#### *British Gas' response*

I think it's important I reiterate my role isn't to decide whether the boiler should or shouldn't have been condemned – instead I have to look at the evidence provided by both sides to determine whether British Gas have acted fairly.

Currently I've got a specific report from someone who has gone out to look at Mr N's boiler. I do appreciate this is some considerable time after the event, and there isn't any gas, electricity or water in the boiler, but I'd still expect the corrosion to be present. The report says there isn't corrosion on the heat exchanger or the casing, which British Gas says there was and that was the reason for condemning the boiler.

I've noted British Gas' point they'd marked the boiler as one needing to be replaced before this event. But, what they actually said was there was corrosion on the boiler which meant it was unsafe. Corrosion itself was never specifically mentioned in the notes in the lead up to the event – so I can't be satisfied this is something British Gas saw before, because it's not mentioned anywhere.

Ultimately, I've got to be satisfied British Gas' engineers made a fair and appropriate recommendation. I've noted their point that it was Mr N's decision to go ahead with the new boiler, but he'd have quite reasonably relied on what he was told by British Gas' engineers. The report I have clearly calls into question the information British Gas' engineers told Mr N – so I'll continue to uphold this complaint.

#### *Mr N's response*

Coming to Mr N's points, I do need to explain again I can't decide if British Gas have acted legally or not. I can take into account the law, but my overall remit is to decide matters on a fair and reasonable basis. If Mr N wanted a legal opinion, he'd need to speak to a solicitor.

As Mr N has accepted the compensation, and the refund for the engineer's fee, I don't need to comment further on those.

Dealing with Mr N's points in order I do understand why he thinks the full amount should be refunded. But, as I set out above, his boiler was around 17 years old at that time. I don't think it'd be fair to require British Gas to pay for the entire boiler being replaced, when the new boiler will almost certainly have a far longer lifespan than his old one had.

I do appreciate Mr N is now moving, and therefore won't benefit from the new boiler. But that isn't something I can reasonably say is British Gas' responsibility.

Overall then, I still think a 50% refund of all costs for the new boiler is a fair outcome for this element of the complaint.

Mr N has also mentioned he paid £300 in relation to this claim. From what he's said, he paid this in an effort to get his claim upheld. Generally, we wouldn't refund the cost of professional services used in relation to a complaint given we're a free service – and I don't

think it would have been necessary in Mr N's case. So, I won't be requiring British Gas to pay this to him either.

### **Putting things right**

To summarise then, I require British Gas to:

- Refund 50% of the cost of the new boiler – including all associated costs
- Pay Mr N £200 compensation
- Refund Mr N the £85 fee he paid for the independent report

### **My final decision**

For the reasons I've explained above, I partially uphold the complaint and require British Gas Insurance Limited to carry out the actions in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 July 2022.

Jon Pearce  
**Ombudsman**