

## **The complaint**

Ms M complains about her home emergency policy with British Gas Services Limited (British Gas). The complaint is about how British Gas responded to a water leak at her property.

References to British Gas in this decision include their agents who provide services under the policy.

## **What happened**

One morning in July 2022 Ms M had a problem with her toilet not flushing, but then water started leaking from toilet, initially into the garden. This followed earlier problems with the toilet in April 2022 (when the flush was replaced) and May 2022 (when a valve was unjammed, and flush replaced). Ms M had then agreed to have the toilet replaced, though this hadn't happened by the time of the further problems in July.

Ms M phoned British Gas but was told there weren't any appointments until the following week. However, water continued to leak from the toilet, starting to leak through the kitchen ceiling as well as the garden. Ms M contacted British Gas again in the evening of the same day, and an engineer came later that evening and was able to temporarily stop the leak.

However, Ms M was woken in the night by the sound of water, which was flowing into the garden and into the kitchen ceiling and stairs. She contacted British Gas again early the following morning and was told an engineer would attend as an emergency. However, an engineer didn't visit, despite her calling British Gas at regular intervals. Ms M called again the following morning and an engineer visited. He was able to fix the leak but advised Ms M not to use the toilet flush mechanism.

An engineer visited again four days later (the date the following week Ms M had been told was the first available) although Ms M said she wouldn't be in on the date and had cancelled the appointment, as a new appointment had been made for four days after the first appointment. An engineer visited on the date of the new appointment and fitted a new toilet. But there was still a leak when it was flushed. Three days later the new toilet was uninstalled, a pipe replaced, and the toilet reinstalled. This fixed the leak, but Ms M was unhappy at the damage caused by the leak and the amount of water that had leaked.

Ms M was unhappy at what happened, so she complained to British Gas about the service she'd received. In their final response British Gas said the damage that caused the leak was already present at the time their engineer attended, so Ms M would have to make a claim for the damage caused by the leak through her home insurance policy. However, British Gas offered £75 compensation for the delay in fitting the toilet.

Ms M then complained to this service. She was unhappy at what had happened and the inconvenience she'd suffered from the leak. The leak had left carpets wet and smelling (and potentially a health and safety hazard). She also didn't have a functioning toilet for more than a week. She wanted British Gas to take responsibility for the damage caused by the leak and repair and restore the damage to her property. She wanted an apology for the lack of professionalism she'd experienced and a refund of what she'd paid British Gas from July 2022 to date. She also wanted

to terminate her policy and for British Gas to pay the water bill and what she'd had to pay to her home insurer. She also thought her accent may have led to her being ignored and not listened to. (When discussing the outcome of her complaint with British Gas she said they discriminated against her on the grounds of race and gender – which they didn't accept).

Our investigator upheld Ms M's complaint, concluding British Gas hadn't acted fairly. While she didn't consider British Gas responsible for the initial leak and damage, Ms M had been left without toilet facilities for several days and the replacement toilet wasn't fitted properly. British Gas had offered £75 for the delay in fitting the replacement toilet, but our investigator thought British Gas should pay an additional £325 for the trouble and upset caused to Ms M.

While call recordings weren't available, the investigator couldn't see any indication of inappropriate treatment of Ms M. There was an instance of an appointment having to be rearranged due to communication issues, but nothing to indicate any rudeness involved. So, she didn't uphold this aspect of complaint. While the order for a replacement toilet wasn't a regulated activity that would fall within the remit of this service, the investigator thought Ms M should have expected to receive updates from British Gas on what was happening. There was an unacceptable delay from the initial visits in July to when the toilet was replaced, during which time the old toilet couldn't be used. As the only toilet in the property, this had a significant impact on Ms M.

The investigator didn't consider British Gas responsible for the damage caused by the leak at the start of July, given the need for the toilet to be replaced. But as the new toilet had to be uninstalled and refitted as it wasn't initially fitted correctly, the investigator thought this indicated failings on the part of British Gas. But the contract for a replacement toilet was with British Gas's contractors, so British Gas couldn't be held responsible for their errors.

Ms M disagreed with the investigator's conclusions and requested an ombudsman review the complaint. She didn't think the total compensation of £400 recommended by the investigator was reasonable, given what had happened and the impact it had on her.

### **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.

My role here to decide whether British Gas has acted fairly towards Ms M.

The key issue in Ms M's complaint is she feels she's received poor service from British Gas when responding to the problems with her toilet. Problems arose with the toilet in April 2022 and May 2022, and then again in July 2022 (as set out in the timeline above). The problems - particularly those in July 2022 – have led to damage to her property from the leaks as well as her not having a working toilet before a new toilet was fitted (though it had to be uninstalled and reinstalled). Ms M says this had a significant impact on her and her family. For their part, British Gas say the damage that caused the leak was already present at the time their engineer attended, so Ms M would need to make a claim for the damage caused by the leak through her home insurance policy. However, they have offered £75 for the delay in fitting the new toilet. When responding to Ms M's complaint to this service, they've also referred to specific sections of the policy excluding cover for damage that would normally be covered by other insurance policies, in particular home insurance policies.

Before considering both views, I should first note Ms M agreed a quote provided by British Gas's contractor to install a new toilet, given the problems with the existing toilet. Installing a new toilet isn't a regulated activity that falls within the remit of this service, as it isn't part of the insurance contract under the home emergency policy. That being the case, this decision focuses on the services provided by British Gas under the home emergency policy, how they responded to the leaks from the toilet over the period (April 2022 to July 2022).

In terms of the damage from the leaks, specifically in July 2022 when the leak affected the kitchen ceiling and stairs, British Gas point to the following exclusions under the *General exclusions* heading in the policy:

***"Any damage that's covered by other kinds of insurance***

*Your product doesn't include repairing or replacing any damage caused by extreme weather, flooding, escape of water, structural issues, fire or explosions – or any other kind of damage that's normally covered by household insurance – unless your product specifically includes it."*

***"Any other loss or damage***

*We're not responsible for any loss 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 not responsible for any reduction in value or damage which results from anything insured by your agreement, such as loss of earnings or travel expenses...We're also not responsible for any losses incurred as a result of delayed, rearranged, or cancelled appointments..."*

What this means is that British Gas wouldn't be responsible for the damage caused by the leaks at Ms M's property unless they caused the leak (or could reasonably be held to have caused the leak). As the second exclusion makes clear, that includes damage (losses) incurred because of delayed, rearranged, or cancelled appointments.

From what I've seen, I can't conclude British Gas caused the problems that led the toilet to leak, particularly given comments about the age and design of the toilet (and Ms M agreeing a quote for a new toilet). And while Ms M has specifically referred to the day after the leak started to affect the kitchen ceiling and stairs, when she said an emergency visit didn't happen as promised, this would fall under the exclusion wording covering delayed, rearranged, or cancelled appointments.

I've then considered the sequence of events and British Gas's actions. The record of visits indicates British Gas attended in April 2022 (when the flush was replaced) and May 2022 (when a valve was unjammed, and flush replaced). The record of visits indicates visits were made within a day or four days to fix the problems.

As noted above, at the time of the second engineer visit in May, Ms M agreed to have the toilet replaced, though this hadn't happened by the time of the further problems in July.

Turning to the problems in July, the timeline above indicates Ms M phoned British Gas but was told there weren't any appointments until the following week. Ms M contacted British Gas again in the evening of the same day, and an engineer came later that evening and was able to temporarily stop the leak. But Ms M was woken in the night by the sound of water flowing. She contacted British Gas early in the morning and says she was told an engineer would attend as an emergency. However, an engineer didn't visit that day, despite her calling British Gas at regular intervals. Ms M called again the following morning and an engineer visited. They were able to fix the leak but advised Ms M not to use the toilet flush

mechanism. Given this sequence, I've concluded Ms M suffered a loss of expectation through being told a visit was to take place – but didn't until the following day. And she was left without a properly functioning toilet. I'll consider what British Gas needs to do to put things right when thinking about the overall impact of what happened on Ms M.

The next event in the timeline was the visit by an engineer four days later – an appointment Ms M said she cancelled as she wasn't going to be at home. Notes provided by British Gas indicate a new appointment (for four days after the original appointment) was made two days before the date of the original appointment. But it seems an engineer still attended on the date of the original appointment (when Ms M was at work). But the engineer wasn't able to communicate with a family member who lived at the property because of language issues, so wasn't able to carry out any work. Thinking about what this suggests, it indicates the original visit wasn't cancelled at the time the second appointment was scheduled. While communication problems can occur and events like these happen, I think they will have added to the impact on Ms M. I'll consider this further when addressing Ms M's point about being discriminated against on the grounds of race and gender.

An engineer then attended four days later (the date of the second appointment) to fit the new toilet (only for another engineer to have to visit three days later to uninstall the new toilet, replace a pipe, and reinstall the toilet). It was only at this point were the issues fully resolved.

Taken together, Ms M was without a properly functioning toilet for over a week. I don't think that's acceptable and would have caused distress and inconvenience to Ms M and her family at the property. I'll consider this when thinking about what British Gas needs to do to put things right.

While Ms M feels British Gas should compensate her for loss of earnings, it's not something our service does, even with British Gas's point about the policy terms and conditions including a general exclusion for compensation for lost earnings. Nor do I feel it's appropriate to ask British Gas to refund what she's paid them from July 2022 to date, as that would be for cover provided under the policy over that period.

I recognise Ms M also asked to terminate her policy. But that's a decision for her to take as the policyholder – it isn't something this service can require. The policy terms and conditions set out the rights of either party (Ms M and British Gas) to cancel the policy and in which circumstances. Nor do I think it appropriate for British Gas to pay the water bill and what she'd had to pay to her home insurer, as both would fall under the exclusion set out above for any other loss or damage.

But as I've concluded earlier, Ms M did suffer distress and inconvenience from not having an emergency visit the day after the leak started affecting her property, and by being left without a properly functioning toilet for over a week. I've carefully considered the impact this would have had on Ms M (including the indirect impact on her from the impact on family members living at the property). Taking all these points into consideration, I think £325 in compensation for distress and inconvenience would be fair and reasonable in the circumstances of this case. That would be in addition to the £75 British Gas have offered for the delay in fitting the new toilet.

I've also considered what Ms M has told us about how British Gas treated her, that her accent may have led to her being ignored and not listened to. And discussing the outcome of her complaint to British Gas with them, she said they discriminated against her on the grounds of race and gender.

I asked Ms M to tell us more about her experience and why she feels she was discriminated against and treated differently than would other customers. She made several points, including that she didn't feel the position she was in because of the leak had been treated as

a priority or emergency by British Gas (or their contractors). And that they left her without a functioning toilet for about two weeks. She thought British Gas should take responsibility for the damage caused to her home from what happened.

I also asked British Gas to respond to the points made by Ms M. Having reviewed the points raised, they didn't accept what Ms M said about how she'd been treated and rejected the view they'd discriminated against her on the grounds of race and gender.

I'd want to assure Ms M I've considered all the points she's made (and the response of British Gas) together with all the other information and evidence provided as part of this complaint. I appreciate what Ms M feels, but I should note this service can't make a finding on whether an act(s) or omission(s) is(are) discriminatory under the provisions of the Equality Act 2010, only a court can do so. But the Act is relevant to Ms M's complaint, so I've taken it into account when considering whether British Gas acted fairly and reasonably.

I've also considered whether Ms M was treated any differently than would a policyholder of a different race or gender in the same circumstances. Looking at what happened, I've not seen anything to indicate British Gas treated Ms M differently. I've concluded British Gas didn't act fairly in the way they responded to the leak from her toilet, as I've set out in my findings and conclusions above – but I haven't seen anything that clearly indicates this was affected by her race or gender.

As I've said, it's clear Ms M suffered distress and inconvenience from not having an emergency visit the day after the leak started affecting her property, and by being left without a properly functioning toilet for over a week. I've considered the impact this would have had on Ms M (including the indirect impact on her from the impact on family members living at the property). It's clear the impact was significant, which is why I've concluded a substantial additional amount of compensation (to that offered by British Gas) for distress and inconvenience would be fair and reasonable in the circumstances of this case.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Ms M's complaint. I require British Gas Services Limited to:

- Pay Ms M £325 for distress and inconvenience (in addition to the £75 they've offered for the delay in fitting the new toilet).

British Gas Services Limited must pay the compensation within 28 days of the date on which we tell them Ms M accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 August 2023.

Paul King  
**Ombudsman**