

## **The complaint**

Mr B complains about the service he received from Domestic & General Insurance Plc (DG) under a protection policy for his boiler.

References to DG include their agents who administer policies and carry out services under policies.

## **What happened**

Mr B had a protection policy with DG that covered breakdown and repairs to the boiler in his rental property. The policy had covered the boiler from its installation from new, for a period over ten years, during which time DG carried out several repairs to the boiler. In October 2022 a DG engineer (V) attended the property to carry out some repairs to the boiler but was unable to do so as he said the boiler had an incorrect flue fitted. Mr B was subsequently advised remedial action was required as the boiler was considered unsafe (the policy didn't cover flues).

Mr B challenged V's view, telling DG the flue was the correct one fitted when the boiler was installed. He also sent them the current Gas Safety Certificate (required by law) indicating the boiler and flue were safe.

DG treated Mr B's challenge as a complaint. In their first final response (October 2022) they didn't uphold the complaint. They said V concluded the incorrect flue was fitted and the boiler was unsafe. They wouldn't repair the boiler until the remedial work to fit the correct flue had been carried out. A further final response (November 2022) said Mr B would need to provide a report (from V or other repair agent) confirming the boiler was a write off.

However, there was subsequent communication between DG and Mr B, which he took to indicate they would be willing to consider a settlement for the boiler as a write off. Under the policy, a maximum of £750 would be payable towards the cost of a replacement boiler. Mr B said he accepted the offer but said DG didn't make payment (and continued to take premiums under the policy). So, he made a further complaint to DG.

DG upheld the complaint in part. They said they hadn't written off the boiler and wouldn't consider it a write off (as beyond economical repair), given the advice they'd provided Mr B about the remedial work required on the flue. So, they wouldn't be making a settlement.

But they accepted they hadn't communicated clearly to Mr B about the potential settlement figure for the boiler as a write off. They said they should have confirmed that should they accept the claim (from the supporting evidence) for the boiler being a write off, they would award a settlement. However, should they conclude the claim wasn't covered, the settlement wouldn't be made. DG had contacted the boiler manufacturer, who confirmed the incorrect flue had been fitted. But the boiler wasn't a write off (and cover wouldn't continue under the policy until the remedial work on the flue was completed).

But DG upheld the complaint in respect of how they'd handled the first complaint and the misleading communications they'd sent to Mr B. DG apologised and awarded £50 in compensation.

Unhappy at DG's actions, Mr B complained to this service. He said there hadn't previously been an issue raised about the flue being incorrect. But having accepted DG's offer of £750 towards a replacement boiler, he thought DG should honour the offer. He also wanted reimbursement of the premiums DG had continued to collect after making the offer and compensation for distress and inconvenience he said the incident had caused him.

Our investigator partially upheld the complaint, thinking DG should pay Mr B £100 compensation for a loss of expectation from DG indicating they would make a settlement for the boiler being a write off. But the investigator didn't think DG should reimburse the policy premiums or contribute towards the cost of replacing the boiler. The policy terms indicated the boiler had to be installed, maintained and used in accordance with the manufacturer's instructions. As the manufacturer indicated the flue was incorrect, it wasn't unreasonable for DG to say Mr B had to replace the flue (even though he'd provided a gas safety certificate from a third party). And DG wouldn't necessarily have picked up the issue of the incorrect flue unless they'd previously carried out repairs on an issue related to the flue. As the boiler hadn't been declared beyond economical repair (a write off) the investigator didn't think DG should contribute towards its replacement.

Mr B disagreed with the investigator's conclusions and requested an ombudsman review the complaint. He said the boiler had been covered by DG since its installation more than ten years ago and DG had carried out repairs without raising an issue with the flue. There had been no changes to the boiler or flue during that time and it had been installed and used in accordance with the manufacturer's instructions. He didn't think using the issue with the flue not to carry out the repair was fair. And the gas safety certificate indicated no problems with the flue. DG had made a firm offer of £750 settlement and as he'd accepted the offer this should form a binding contract (which DG had failed to honour). And they had continued to take payments under the policy without offering any service or justification.

DG also disagreed with the investigator's view. They said what they had advised about the event of the boiler being written off had been done in good faith, as it was Mr B who'd advised the boiler had been written off. But V hadn't written off the boiler. DG also said they'd already awarded Mr B a payment of goodwill (the £50 they'd awarded) as recognition of their poor communication.

### **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 is to decide whether DG have acted fairly towards Mr B.

The main issue in Mr B's complaint is that DG haven't paid him the £750 settlement offer he says was made after their engineer's report the boiler had an incorrect flue fitted. Mr B has provided emails between him and DG (between October and December 2022) which he says confirm DG made the settlement offer of £750 (which he accepted). Mr B wants DG to honour the offer made (and pay compensation).

DG accept they didn't communicate clearly to Mr B about the potential settlement for the boiler as a write off. They say they should have confirmed - should they accept the claim (from the supporting evidence) - they would award a settlement. However, should they conclude the claim wasn't covered, the settlement wouldn't be made. DG contacted the

boiler manufacturer, who confirmed the incorrect flue had been fitted. But the boiler wasn't a write off, so they wouldn't be offering a settlement.

On the issue of the communication of the [potential] settlement, I've looked at the email exchanges between DG and Mr B between October and December 2022. Having done so, there's an email from DG to Mr B in October (in response to Mr B providing a gas safety certificate) that states:

*"We have received the certificate and it has been sent to our complaint handler...he will be contacting you for the £750.00 to be processed."*

There's a further email from DG to Mr B at the beginning of December that states:'

*'I have forwarded the invoice/receipt you sent into me to our Claims department; they will be the ones issuing the settlement. I did this on 7 December.'*

So, I can understand Mr B thinking DG were going to make a settlement for his boiler. DG's final response issued in November 2022 states Mr B would need to provide a report (from V or other repair agent) confirming the boiler was a write off. It's not clear why DG subsequently communicated (as above) giving the impression a settlement would be issued. I think this created a clear expectation for Mr B. I'll come on to set out what I think is a fair and reasonable outcome to Mr B's subsequent loss of expectation.

Under the terms of the policy, it provides for a settlement to be made if the boiler cannot be repaired or is uneconomical to repair. Under the *What is insured?* Section of the Insurance Product Information Document (IPID) it states:

*"✓ if we cannot repair your product or it is uneconomical for us to repair it we will arrange to provide you with a new boiler up to a value of £750."*

However, DG say Mr B hasn't provided any evidence the boiler was beyond economical repair (a write off). Looking at the evidence available, I'm persuaded that's the case. I've seen the gas safety certificate provided by Mr B (from a third-party engineer) and while it concludes the boiler is safe (according to the engineer) it doesn't indicate the boiler is beyond economical repair (it would be contradictory for a certificate to be issued in respect of a boiler that was beyond economical repair). And from DG's case notes, V wouldn't carry out the repair for which they visited Mr B's property because they concluded the incorrect flue was fitted. They didn't decline to carry out the repair because they considered the boiler to be beyond economical repair.

On the question of whether the flue was incorrect, this was V's conclusion. And subsequently confirmed by a specialist engineer from the boiler manufacturer. While Mr B says the flue was correctly installed with the boiler (and neither had been changed since) on balance I'm more persuaded by the views of V and (in particular) the specialist engineer. And it may be that changes in regulations may have made the flue incorrect (or non-compliant) from when it was first fitted.

And while the flue may not have been thought to be incorrect before V's inspection (from the repairs carried out over the years) that doesn't mean that the conclusions of V and the specialist engineer were wrong when they inspected the boiler and the flue. I've also considered the other points made by Mr B. First, that DG had made a firm offer of £750 settlement and as he'd accepted the offer this should form a binding contract (which DG had failed to honour). However, as indicated in DG's final response in November 2022, they required a report showing the boiler was a write off. So, the offer was conditional (even

allowing for the misleading communication point). But as I've concluded I've not seen such a report, then I've concluded DG haven't breached a binding contract.

On the point about DG continuing to take payments under the policy without offering any service or justification, as DG had advised remediation work on the flue (which wouldn't be covered under the terms and conditions of the policy) then I don't think it's unreasonable for them not to agree to carry out any other repair work on the boiler until the remediation work had been carried out. This didn't mean they'd cancelled the policy, which remained in force.

Turning to DG's points, I acknowledge the point they make that advising about the event of the boiler being written off being done in good faith, as it was Mr B who'd advised the boiler had been written off. But V hadn't written off the boiler. But as I've concluded above, their communication with Mr B gave a clear impression a settlement had been offered (and would be processed). So, as I've concluded, there was a clear loss of expectation on Mr B's part.

I also appreciate DG's view they've recognised this in their offer of £50 compensation. But my role is to come to a conclusion – where I think a business hasn't acted fairly – about what would be a fair and reasonable way of putting things right. Given the clear loss of expectation, taking account of all the circumstances of the case, I've concluded £100 would be fair and reasonable compensation for the inconvenience caused to Mr B.

### **My final decision**

For the reasons set out above, my final decision is to uphold Mr B's complaint in part. I require Domestic & General Insurance Plc to:

- Pay Mr B £100 compensation for inconvenience (loss of expectation).

Domestic & General Insurance Plc must pay the compensation within 28 days of the date on which we tell it Mr B 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 Mr B to accept or reject my decision before 16 August 2023.

Paul King  
**Ombudsman**