

## **The complaint**

Mrs U has complained about the service she received from British Gas (BG) when the boiler and heating system in her rental property broke down, and about the certification of her boiler as safe.

References to BG are to British Gas Insurance Limited (BGI) and British Gas Services Limited (BGS) taken together.

I have previously issued a provisional decision in this case. I received responses from both Mrs U and BGI and will refer to these below.

## **What happened**

Mrs U has a HomeCare Policy with BGS. This covers insurance products, which are provided by BGI but administered by BGS, and non-insurance products which are provided by BGS. The insurance products cover repairs to a range of domestic services including boilers and central heating systems. The non-insurance products include annual boiler services, safety checks and certificates.

Mrs U says that towards the end of November 2022, several of the radiators at her rental property weren't functioning. On 30 November 2022, a BG engineer attended the property and serviced the central heating system. A gas safety certificate was issued confirming the boiler's safety and that a number of checks had been undertaken with no issues arising.

A few days later, on 5 December 2022, a number of radiators were again not functioning. BG attended on 8 December and identified that two thermostat valves needed to be replaced.

Two days later, on 10 December, the whole hot water and central heating system failed, leaving the property without hot water and central heating. As BG wasn't able to attend again until 14 December, Mrs U was told she could order some electric radiators. She says she was told that the replacement valves, identified on 8 December as necessary, hadn't been ordered because the engineer who had attended on 8 December was a service engineer and not a repair engineer, and only repair engineers were able to order valves. Mrs U lodged a complaint.

A BG engineer failed to attend the scheduled visit on 14 December. Mrs U says that one of her tenants had taken the day as leave in order to be present for the engineer. Mrs U arranged for a third-party engineer to attend on 15 December. This engineer found Mrs U's system to be "a disaster" - corroded and dangerous – and he isolated it and recommended that the boiler be replaced. Mrs U's tenants therefore remained without heating and hot water for 5 days.

The BG engineer who had attended on 5 December returned on 19 December and identified that there was a leaking air vent inside the boiler which he said had caused the corrosion present. He disagreed with the third-party engineer's view that the system was dangerous. He ordered a replacement part. Mrs U pointed out that the visible corrosion would have been there when he had inspected the boiler 10 days before it broke down and when he had certified it as safe.

The same engineer returned on 22 December and installed the spare part he'd ordered but this didn't fix the problem of the radiators not heating. He decided that a new pump was needed which had to be ordered. The faulty radiator valves had also still not been ordered, let alone been replaced.

Another BG engineer attended on 29 December to fit the new pump but was unable to as the wrong pump had been ordered by the previous engineer.

On 3 January 2023, another engineer attended with the correct pump. After it was installed, hot water and heating were returned to the property, but this lasted only a matter of hours before the system failed again.

On 5 January, another engineer attended and considered that the boiler was overheating and that an internal safety mechanism was causing it to shut down. The engineer re-set this and adjusted the pump settings and the boiler was operational again until 14 January, when it started to make an unusual sound. Mrs U's tenants were obliged to disconnect it during much of the day given the previous warning that had been given by Mrs U's third-party engineer that the system was dangerous.

On 15 January 2023 another BG engineer attended but as the sound wasn't present during his visit he wasn't able to identify the reason. The noise was still present on 24 January when Mrs U's tenants again tried to use the system.

Mrs U says that between 17 February and 3 March 2023 she contacted BG at least nine times but wasn't told when the problem with her system would be addressed. A letter of complaint to BG's chief executive didn't receive any acknowledgement of her complaint.

On 26 April Mrs U received BG's response to her original complaint of 10 December 2022 in which it apologised that the level of service it had provided was not to the standard she was expecting.

In its response to Mrs U, BG says that an engineer attended on 23 March 2023 to increase the setting on the boiler pump and that no further faults had been reported since.

It would therefore appear that there were repair issues at Mrs U's property which began in November 2022 and weren't fully addressed until March 2023. However, other concerns about the safety of the system remained.

Mr U contacted Gas Safe to request an inspection as her third-party engineer had listed several defects, but BG had claimed the boiler was safe. On 7 August 2023 a Gas Safe inspection of Mrs U's system was made and a report was issued on 10 August.

The report's conclusion was that there were a number of defects with the system with certain defects not to current standards but two were classified as "At Risk". These related to the casing of the boiler and rust damage, both of which could have led to products of combustion escaping. A "Danger Do Not Use" Warning Notice was issued but Mrs U's tenants didn't want the boiler to be turned off.

Mrs U says that the Gas Safe report confirmed that her third-party engineer had correctly diagnosed the problem and that it therefore followed that BGI was wrong to conclude that her boiler didn't need repairing or replacing.

Mrs U maintains that BG has either intentionally or recklessly been maintaining, servicing and certifying the gas system in the property in a dangerous manner, and that the unsafe state of her system is chronic and of long duration. She says that BG should have replaced her boiler and other dangerous parts of the gas system under her HomeCare policy years ago.

Mrs U has provided a list of fifteen complaints which she says is non-exhaustive. Two of these relate to BGS's certification of Mrs U's boiler as safe when a third-party engineer and Gas Safe determined it to be unsafe and as "At Risk". The other complaints relate to the service she received in relation to the various attempts to fix her boiler and heating system in late 2022 and early 2023. She says that more than a dozen visits were required, and that her tenants were without heating and hot water for at least 24 days.

Dissatisfied with the BG's response to her complaint, Mrs U brought her complaint to this service. Our investigator considered whether Mrs U's complaints were within the jurisdiction of this service. She explained that this service can only consider complaints relating to an act or omission by a firm in carrying out regulated activities or any connected ancillary activities. Insurance is a regulated activity. In her view, Mrs U's complaints were connected to the safety checks undertaken by BGS, and these fell outside those parts of her HomeCare policy which provided insurance cover.

Mrs U didn't agree with our investigator's view of her complaint and asked that it be re-considered by an ombudsman. It was therefore referred to me for a final decision from this service.

I issued a provisional decision as I was considering a different view to that of our investigator. Mrs U and BGI were invited to provide any further comments they wished to make before I made a final decision.

BGI responded to say that it accepted my provisional decision. Mrs U corrected one point I had misunderstood and provided a further submission which I have considered and which I will address below.

### **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.

Having done so, I'm upholding Mrs U's complaint, but maintaining my provisional decision and I'll explain why

I consider that Mrs U's various complaints fall into two categories – those relating to the delays in restoring heating and hot water to her property in late 2022 and early 2023 (the Repair Complaint), and those relating in broad terms to the certification and safety of her boiler (the Safety Complaint).

As our investigator has explained, this service is restricted by the powers given to it by the Disp. Rules. We can look at insurance agreements because insurance is a regulated activity, but we don't have jurisdiction to look at non-regulated activities.

Mrs U's HomeCare Policy makes it clear that the services set out in pages 8 – 17 of the HomeCare Policy booklet are insurance services, which are underwritten by BGI, and that the services set out at pages 18 – 25, which include annual boiler servicing and gas safety checks and certification, are non-insurance products provided by BGS.

In my view, the Repair Complaint should be addressed to BGI as this is the entity responsible for those parts of Mrs U's HomeCare agreement that are designated as insurance products. As insurance is a regulated activity, I can therefore look at the Repair Complaint. I therefore asked our investigator to set this complaint up against BGI instead of BGS.

As the other services provided by BGS under the HomeCare policy are not regulated activities, they don't fall within the jurisdiction of this service. I'm therefore unable to consider the Safety Complaint.

I will therefore now give my decision on the Repair Complaint.

I consider that the timeline that Mrs U has provided speaks to the length of time it took BG to fully restore heating and hot water to Mrs U's property during which time she lost two of her tenants. The first appointment was made for 30 November 2022 and the various problems with the heating and hot water system don't appear to have been fully rectified until March 2023. BG was ultimately able to restore heating and hot water by means of her existing boiler. So whatever other issues there may have continued to be with this boiler, a new boiler wasn't required to restore this service.

Mrs U has referred to BG being in breach of contract. It is one of the General Conditions of the HomeCare agreement that BG will carry out repairs within reasonable timescales. It states:

*"We'll carry out any repairs or visits you're entitled to within a reasonable time, unless something beyond our control makes that impossible – in which case we'll let you know as soon as possible and give you another time when we can visit."*

Mrs U has referred to instances of parts not being ordered in a timely manner, incorrect parts being ordered, engineer visits cancelled and rescheduled causing inconvenience, and requests for call-backs being ignored. Her tenants were left without heating and hot water for

at least 24 days over December 2022 and January 2023 – a particularly cold time of year. Mrs U had to spend a considerable amount of time communicating with BG and with her tenants.

In my view, BGI should've been able to identify and fix the fault with Mrs U's heating and hot water system more quickly than it did. There were significant gaps between engineer visits, the fitting of replacement parts was delayed by the part not being ordered in a timely manner, or the incorrect part being ordered, or replacement parts not solving the problem. A third-party engineer had to be called in when a BGI engineer wasn't able to visit.

In her response to my provisional decision, Mrs U introduced a further submission as to BGI's obligation to replace a boiler under the insurance section of her policy. She argues that as her boiler was corroded and had been deemed to be "At risk", it therefore needed to be replaced, irrespective of whether there had been a breakdown.

Mrs U has previously stated that her boiler was installed in 2014 or 2015. She's provided a photograph taken by an engineer on 19 December 2022 which shows corrosion. She says this didn't just occur in November 2022, and the risk this posed had therefore been present for some time.

Having considered again the policy terms, BGI doesn't have any liability to replace a boiler unless it is less than seven years old and can't be repaired. Even if it were to be the case that Mrs U's boiler is less than seven years old, it is still operational although it shows signs of corrosion.

In the policy "repair" means "*to fix your boiler, appliance or system following an individual fault or breakdown*". I don't think it is reasonable to regard the presence of corrosion, which by its nature is something that develops over a period of time, as falling within the definition of a repair. The leaking air vent that was identified by BGI's engineer on 19 December 2022 as responsible for the corrosion had been replaced.

Mrs U has referred to the policy covering both "Boiler and Controls" and "Boiler and Controls Breakdown cover". I should clarify that the distinction can be seen from pages 8-9 of the policy booklet. They are separate products as can be seen from the second column. "Boiler and Control breakdown" is a separate policy that only provides boiler and controls cover as set on pages 10-11.

My conclusion is that I consider that BGI has not acted fairly towards Mrs U and has caused her distress and inconvenience over a significant period of time. I consider that it should provide her with compensation. As I can't consider the Safety Complaint, the compensation I refer to relates to the distress and inconvenience relating to the Repair Complaint.

Mrs U has provided a breakdown of the compensation she is claiming from BG which amounts to £4,485.97. BGI has paid Mrs U £510.97. This comprises reimbursement for the cost of her third-party engineer (£315), for the additional heaters she had to purchase (155.97) and £40 as a goodwill gesture.

I consider £40 to be inadequate to compensate Mrs U for the distress and inconvenience she has personally suffered.

This service doesn't make the same awards as a court might. It assesses compensation by reference to the impact that what the business has done wrong has had on the consumer. For an award to be made for distress and inconvenience, we need to see that the impact of a business' mistake was more than what someone might expect when things go wrong. The impact also has to have been on the complainant.

In my view, the inconvenience of the delay in fixing the hot water and heating in Mrs U's property was primarily suffered by Mrs U's tenants. It was they who suffered the loss of amenity and incurred higher energy bills.

However that is not to minimise the effect on Mrs U. Her tenants were angry, to the extent that two tenants left. I think it is reasonably foreseeable for a tenant to leave a rental property if there is a lengthy failure of heating and hot water, although the extent of the financial consequences would not be.

The impact on her tenants would've caused Mrs U considerable upset and inconvenience as well as financial loss. She had to spend considerable time on the phone to BGI from the UK and abroad to deal with matters on behalf of her tenants over a lengthy period to deal with their welfare and to prevent any claims they might make against her.

I've considered the levels of compensation this service might award in similar circumstances and consider that the level of distress and inconvenience suffered by Mrs U in relation to the repaid Complaint justifies an award of £500 compensation. This is in addition to what BGI has already paid her.

### **My final decision**

For the reasons I've given above, I'm upholding Mrs U's complaint and I require British Gas Insurance Limited to pay her £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 13 February 2024.

Nigel Bremner  
**Ombudsman**