

## **The complaint**

Mr G complains about how Domestic & General Insurance Plc dealt with a claim under his home emergency policy when he had problems with his boiler, and cancellation of his policy.

References to D&G in this decision include their agents who provide services under the policy.

## **What happened**

The following is a summary of events in this case, primarily drawn on what Mr G said when making his complaint to this Service in January 2024. D&G dispute some of the version of events described by Mr G (as this decision will come on to consider).

Mr G had a home emergency policy with D&G, covering his boiler. In December 2021 the boiler failed, and a D&G contractor (B) was sent to fix the problem. Having fixed the boiler, Mr G noticed a leak so contacted D&G again. B returned but said the issue was with pipework (not the boiler itself) which wasn't covered under the policy. Mr G engaged a plumber who fixed the leak – which Mr G maintained was caused by B. Mr G complained to D&G, but they didn't respond. The boiler continued to leak, requiring reset every 4 -6 weeks.

In November 2023 the boiler stopped working, so Mr G contacted D&G. He was told the policy had been cancelled at the time of the previous issues in December 2021. Mr G subsequently found that B contacted D&G to recommend the policy be cancelled because of what they said were issues over access to the boiler and being able to work on it safely. D&G cancelled the policy, which Mr G said they never told him about until the boiler failed in November 2023. Mr G hadn't noticed D&G had stopped collecting the monthly direct debit for the policy (he had other policies with D&G).

As his boiler was over 12 years old, D&G wouldn't offer a new policy. Mr G took out a new policy with another insurer, who were able to repair the boiler. But Mr G was left without a working boiler for three weeks, during a cold period, having to purchase electric heaters and install and run an immersion heater to provide hot water. Unhappy at what happened, Mr G complained to D&G.

D&G didn't uphold the complaint. In their final response in January 2024, they said the policy had been set up in 2019 as boiler care. The policy had been cancelled in 2021 on advice from B as there was a leak from pipework (not covered under the policy) and the boiler was in an awkward space making repairs difficult. D&G apologised for any misunderstanding but maintained their cancellation of the policy.

Unhappy at D&G's response, Mr G complained to this Service. He said D&G hadn't told him they'd cancelled the policy. He'd had to employ a plumber to fix the boiler and he'd incurred additional costs purchasing electric heaters to compensate for the failed boiler. Living with sub-optimal temperatures had affected his health and the stress had also affected his wife. He wanted D&G (and B) to be substantially penalised financially for what had happened and pay him substantial damages.

Our investigator upheld Mr G's complaint in part, concluding D&G hadn't acted entirely fairly. On D&G's decision to cancel the policy, as D&G deemed the boiler wasn't safely accessible, they'd acted fairly in cancelling Mr G's policy. It was a health and safety decision for D&G to take and the policy also included a provision for the policyholder to arrange work required to make the boiler accessible and safe to work on. The investigator also thought it wouldn't be reasonable to ask D&G to refund the premiums paid under the policy.

On the notification of the cancellation, the notes of the call to Mr G outlined D&G communicating to Mr G his policy was to be cancelled. But in the absence of a call recording, the investigator couldn't establish exactly what was discussed. But in the absence of any evidence the cancellation was confirmed to Mr G in writing, the investigator upheld this element of the complaint. Considering the circumstances of the case and the impact of not knowing his boiler wasn't covered until November 2023, the investigator thought D&G should pay Mr G £250 compensation.

On damage to the boiler, the investigator didn't agree with Mr G that contractors for D&G had damaged his boiler. Before complaining to D&G in November 2023, the last contact Mr G had with D&G was following the visit in December 2021. At which point the issue of damage to the boiler wasn't raised. On the balance of probabilities, the damage occurred sometime between just after the visit and November 2023, a period in which D&G didn't attend Mr G's property.

Mr G disagreed with the investigator's view and requested an ombudsman review the complaint. He raised several points, challenging D&G's version of events. It wasn't true a D&G engineer deemed the boiler unsafe (it was a third party engineer that visited his property). And he'd never been asked to carry out any remedial work to improve or make access safe. He maintained the location of his boiler was safe and none of the paperwork he'd been provided with by engineers mentioned the boiler not being easily accessible.

He also thought that by covering (accessing) the boiler for twelve years, D&G set a precedent for it being in a location that could be safely accessed. So, it was unfair for the policy to be cancelled under the policy term relating to accessibility and safe access. And in saying D&G hadn't acted unfairly, this Service was setting a precedent for other businesses to act in the way D&G had acted.

Mr G also provided a copy of an email he sent to D&G complaining the engineer had damaged the pipework, which was now leaking. And if his policy was cancelled at the beginning of December 2021, why did an engineer visit five days later to inspect the leak he'd reported. He thought the policy terms and conditions meant D&G were liable for any damage to pipework caused by D&G's engineer.

On notification of cancellation of the policy, as he had five policies with D&G, he hadn't noticed payments no longer being taken for the cancelled policy. But he didn't accept the policy had been cancelled from the date D&G said it had been cancelled.

D&G also disagreed with the investigator's view and asked that an ombudsman review the complaint. They didn't accept Mr G suffered distress and inconvenience from not being told his policy was cancelled. D&G provided a call recording which they said showed Mr G's wife was told the policy would be cancelled. And the fact no payments for the policy were then collected (or renewal documents subsequently issued) meant Mr G should have been aware his policy had been cancelled. And by cancelling the policy, Mr G had been saved the £800 in premiums he would have paid from cancellation to his complaint in 2023. Had a claim been made during that period,

their contractor would have declined it because of their deeming the boiler to have insufficient access.

### **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 D&G has acted fairly towards Mr G.

There are several issues in Mr G's complaint. From what I've seen, the main ones are: D&G's decision to cancel the policy in 2021; D&G not telling Mr G they were cancelling the policy; and D&G (B) causing damage to pipework, for which they should be liable.

In coming to my decision I've looked at everything Mr G and D&G have said, and the evidence and information provided during our Service's investigation. Although I may not comment on every specific detail. In doing so, I've considered the differing views of Mr G and D&G about what happened. I've sought to reach findings and conclusions on the basis of the evidence and information provided by both parties and what I think is most likely to have happened.

On the issue of cancellation of the policy, looking at the policy terms, they state the following:

***“Our right to cancel your policy or bringing it to an end***

*We may cancel this policy where there is a valid reason for doing so by giving you at least 7 days' written notice. Valid reasons include but are not limited to the following:*

- Where you fail to comply with certain conditions and obligations (see important conditions above)...*

*If we cancel your policy using this provision, you will receive a pro rata refund of the premium paid for the remaining unexpired days of your policy.”*

On the decision to cancel the policy, D&G refer to the following policy terms and conditions about making access to the boiler safe:

*“You (the consumer) must arrange any work required to make your heating equipment accessible and compliant with all relevant safety standards and safe to work on (as determined by our engineer) We (D&G) will not do any work where these standards are not met.”*

D&G say their decision was based on a recommendation from B, following a visit in December 2021. In the call referred to by D&G in response to our investigator's view, Mr G refers to B's engineer cancelling a repair because of restricted access. On the report (action advice note) left by B when they visited (subsequently, from the date recorded on it) there's the following reference under health and safety:

*“Provide Plywood Board to cover sink to allow safer/better access to boiler in future.”*

Listening to the call, Mr G refers to the engineer having to stand on a toolbox to reach the boiler. He also says access to the boiler hadn't previously been flagged as an issue when it was serviced in earlier years.

However, the above condition makes it clear the issue of accessibility (safely) is determined by the engineer. And health and safety standards do change over time, so I can't reasonably

say the engineer's view was wrong or otherwise unreasonable, as that's a matter for their professional judgement. And it's for D&G to decide whether to accept a recommendation from the engineer (B) on whether they are able to safely access a boiler. Nor am I persuaded by Mr G's view that previous access without issues necessarily means there won't be an issue in the future, nor that it sets a binding precedent (Mr G's point when responding to our investigator's view).

Taking all these points together I've concluded D&G didn't act unfairly or unreasonably within the terms and conditions of the policy in deciding to cancel Mr G's policy.

Having reached this conclusion, I've then considered the issue of whether Mr G was notified of the cancellation, Mr G says he wasn't notified of the cancellation. D&G maintain he was aware, citing a call recording at the time (December 2021) in which he says his wife was told (on a call earlier the same day) the policy was being cancelled.

D&G provided a recording of the call between them and Mr G. I've listened to the call and Mr G says his wife was told the policy was being cancelled, following B's engineer visit and his difficulty accessing the boiler. There's discussion about the reasons for that, Mr G makes the point B have previously carried out servicing of the boiler without any issues. However, while Mr G refers to his wife being told the policy is being cancelled, the D&G call handler says there are no notes on their system to indicate the policy is being cancelled. So, I don't think it would have been clear to Mr G the policy was being (or going to be) cancelled.

Mr G also says an engineer (B) visited six days after the call (the subsequent visit referred to above) and he's provided a copy of an action advice note from B's engineer dated 13 December 2021 (the call provided by D&G is dated 7 December 2021). It's unclear why, if the policy was cancelled – or being cancelled – on the earlier date, an engineer would visit six days later. It may have been a communication issue between B and D&G or, given the wording above about 7 days' notice of cancellation being provided under the policy terms, the policy was still technically in force at the date of the visit.

D&G say cancelling the policy would have generated a letter confirming the cancellation. However, they've not been able to provide a copy of any such letter – either giving notice of cancellation or subsequently confirming it. So I can't conclude they met the policy obligation to give 'at least 7 days' **written** notice' (my emphasis). So, while the indications are there was a verbal indication the policy was going to be cancelled, there's no clear evidence D&G gave the 7 days' written notice required under the cancellation terms of the policy.

D&G also say Mr G should have been aware of the policy cancellation by the monthly direct debit no longer being collected (the collection was on the first of each month, so the last collection was at the start of December, which is what D&G's records indicate). And that he wouldn't have received renewal documentation (for renewal in October 2022 and 2023). Mr G acknowledges he didn't notice the direct debit wasn't collected after December 2021, as he had several policies with D&G. However, this doesn't change what I've concluded above about D&G not being able to show they provided the written notice of cancellation under the policy terms and conditions.

Taking all these points into account, I've concluded that on balance, D&G didn't provide the required written notice of cancellation of the policy.

On the issue of damage to the pipework, D&G say this wouldn't be covered under the policy, which relates only to the boiler itself. Mr G maintains they are liable for the damage he says was caused by B, because of the following policy terms, under the *General exclusions* section:

*"We shall not be liable for:*

- *Damage to any other property or possessions, unless it is our fault*

Mr G argues that as B caused the damage to the pipework, it is therefore their fault and so should be liable for the damage. He also says he told D&G about the leaking boiler – and he mentions this in the call with D&G referred to above.

However, leakage from pipework to/from the boiler wouldn't be covered under the policy terms and conditions. Mr G says the above general exclusion means D&G should be liable as they caused damage 'to other property'.

However, I haven't seen any independent evidence to show the leak was the result of the actions of D&G (of B). Mr G had the issued fixed by a plumber – this is also what the action advice form from B's engineer indicates. It includes the following comments:

*"Leaking System Pipework above boiler..."*

*Customer to contact Plumber to rectify as not covered by policy."*

In the absence of clear evidence D&G (B) caused the leak, I can't reasonably hold them responsible for it, particularly given the time elapsed from December 2021 to when Mr G contacted D&G again in November 2023.

When bringing his complaint, Mr G set out what he said were additional costs incurred as a result of the failure of his boiler, such as increased electricity consumption from electric heaters. However, even if I concluded this was the case, the same *General Exclusions* section referred to by Mr G includes a further specific exclusion for:

- *""costs or loss arising from not being able to use your heating equipment (e.g. hiring a replacement), or incidental costs caused by breakdown or repair (e.g. costs to remove or reinstate built-in or fitted equipment)..."*

So, the additional costs Mr G says he incurred wouldn't be covered – even if the policy had still been in force. And because I've concluded it was reasonable for D&G to cancel the policy (even though I've concluded they didn't properly notify him) then this would also mitigate against asking D&G to reimburse Mr G for these costs.

Taking all these conclusions together, while I've concluded D&G acted fairly towards Mr G in cancelling his policy, as I've concluded they didn't properly notify him of the cancellation, then I've considered what D&G need to do to put things right. Contacting D&G in November 2023 about his failed boiler, thinking he was still covered, this then led to delay in establishing the fact of the policy cancellation and Mr G seeking alternative cover elsewhere. Had he been clearly notified of the policy cancellation, he could have secured alternative cover (or make provision to fix his boiler) sooner than he did. There's also an element of loss of expectation (that he was covered).

Mr G has set out the impact this caused, being without his boiler at a cold time of year. He's also asked for D&G to be substantially penalised for what he considers their failings. However, it isn't the role of this Service to punish businesses when things go wrong, it's to decide what's fair and reasonable in the specific circumstances of each individual case. This latter point is also relevant to what Mr G says would be a precedent from this Service should the decision not go in his favour. A don't agree that would be the case, as we assess each case on its merits based on the specific circumstances.

D& G also argue Mr G has saved some £800 from his policy being cancelled, as he wouldn't have been entitled to cover because of the access/safety issues. However, I don't accept

this view. While Mr G hasn't paid premiums under the policy, the policy hasn't been in force because of its cancellation. So, while he hasn't incurred the costs of the policy, neither has he had the benefits (of cover) from the policy being in place.

Having considered what would be fair and reasonable in the circumstances of this case, including reference to the published guidelines from this Service on awards for distress and inconvenience, I think £250 would be fair and reasonable.

### **My final decision**

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

- Pay Mr G £250 compensation for distress and inconvenience.

Domestic & General Insurance Plc must pay the compensation within 28 days of the date we tell them Mr G 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 G to accept or reject my decision before 17 October 2024.

Paul King  
**Ombudsman**