Financial Ombudsman Service

complaint

Mr C complained that British Gas Insurance Limited ("BGI") charged him the policy excess from his home emergency policy to repair some damage that a previous BGI engineer had caused while doing work under the same policy.

background

Mr C said that BGI sent a plumber to fix some bath taps. That plumber flooded Mr C's bathroom, and the water went into his kitchen below. He booked an electrician to visit Mr C's house to inspect the kitchen lights and electrical appliances. But Mr C said that BGI then treated this visit as a new claim, and sent him an invoice for his policy excess.

Mr C said that he complained about this, and wrote and emailed BGI, but it kept sending him demands for payment. He said he was threatened with debt collection action, or a county court judgment. He said that he eventually paid the £50 that BGI was asking for, to stop things getting worse.

BGI accepted that its first engineer had caused the damage that its second engineer visited to repair, and said that it shouldn't have charged the policy excess in these circumstances. It said that it would waive the invoice, and paid Mr C £25 in compensation.

Mr C said that he hadn't cashed BGI's cheque for £25, and he said it hadn't paid him back the policy excess of £50 he had paid it.

Our investigator upheld this complaint. He said that he thought that BGI could've acted more reasonably in this situation. But he also thought that Mr C could've resolved the issue at the time by calling the number on BGI's letters. So he said that he thought that BGI should pay Mr C £100 in compensation.

Mr C wrote to ask if BGI had yet returned the £50 excess that he'd paid, because of BGI's threats of court action. Our investigator said that BGI had said this would be waived. But Mr C said that BGI had cashed his cheque, and hadn't sent this money back.

Our investigator spoke to BGI, and BGI said it would pay the money back straight away. But Mr C said it hadn't done that. He said he had checked our service's approach to compensation, and he wanted somewhere between £500 and £2,000 in compensation for this complaint.

Because Mr C didn't agree with our investigator, this case was passed to me for a final decision. BGI contacted us to confirm that the excess Mr C paid had been refunded.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- Mr C had home emergency cover with BGI. There's an excess of £50 payable on this policy. But BGI accepted that some work it did under Mr C's policy caused further damage, and it shouldn't have charged him a policy excess for repairs to that damage.

- Mr C said he wrote to BGI to complain, but it kept sending demands for payment. I wasn't clear if BGI received Mr C's first correspondence about this. But the dates of letters I'd seen show BGI continued to pressure Mr C for payment, after it had received his complaint.

- Our investigator said that Mr C could've rung BGI to try to stop the letters demanding payment. I thought that, as BGI was at fault here, and as it had separately entirely accepted that, the onus was on BGI to stop sending Mr C payment demands, at least once it had received his complaint.

- I also noted that when BGI finally dealt with Mr C's complaint, it said it would waive the excess. But Mr C had paid this excess, and BGI didn't return that until repeatedly prompted by our service to do so.

- So I thought that BGI should pay a little more than the £100 that our investigator suggested. I noted that when he suggested that, he had been told that BGI had dealt with Mr C's complaint and waived the invoice, but he wasn't aware that BGI hadn't returned Mr C's excess payment.

- But I didn't agree with Mr C that BGI should pay Mr C around £2,000. I didn't agree with his suggestion that this case was comparable to examples of cases provided by our service, where awards have fallen into this range. I appreciated that Mr C was inconvenienced, and I also understood that he was upset and concerned to receive threats of court action and debt collection. But I noted that none of those threats were acted upon. And aside from the understandable upset to Mr C, which I'd taken into account, there was no wider impact of these actions that Mr C had made us aware of.

- Considering all of the evidence in this case, I thought that an award of £150 would provide a fair and reasonable outcome to this complaint.

- I appreciated that this might be disappointing to Mr C, as he'd pressed for a much higher award, but I didn't think that it would be fair and reasonable, or consistent with awards I'd made in other cases, for me to award £2,000 in this case.

- BGI told us that it sent Mr C a cheque for £25. I didn't know whether he'd cashed this. And it told us it had paid him back the excess of £50. Mr C hadn't confirmed he had received this. So I said I'd make sure that my award required BGI to pay a total of £150 in compensation, and to refund the £50 excess Mr C paid. BGI could count towards this award the amount of £25 it offered in compensation if Mr C had cashed that cheque, and it could count the refund of £50 excess if it had paid that to Mr C.

I invited the parties to make any final points, if they wanted, before issuing my final decision. BGI said it would agree to the increased compensation. Mr C wrote to object, and sent us further evidence he wanted me to consider.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr C wanted me to award more compensation. He said that a low amount would only be a "gentle slap on the wrist" which wouldn't act as a deterrent to BGI in future. But our service doesn't have any powers to award amounts which are intended to act either as a punishment or a deterrent to the business. We can only take into account the effect of any mistakes on the complainant. So I can't make BGI pay more to Mr C now, to try to stop it from doing the same to someone else in future.

Mr C also said that he hadn't cashed the cheque for £25 that BGI had issued. He sent us that cheque, and said that he thought this would now be out of date. I think that's quite likely. When I proposed the provisional award, I wasn't clear that Mr C had cashed this cheque, or that he would now be able to. So the award I suggested would, in these circumstances, require BGI to include the £25 in its future payment.

Mr C said that, more importantly, BGI still hadn't refunded the excess he'd paid. And even though he'd already paid this excess, Mr C said that BGI was still harassing him for the payment.

I said when I wrote my provisional decision that Mr C hadn't confirmed he'd received a payment from BGI. I thought then it was possible that this payment would not be received. So I drafted the provisional decision to require BGI to make this payment as part of the award I make, if it hadn't already done so.

I don't think I should make a higher award of compensation now, because Mr C hasn't received this refund. As I've explained, I did have this possibility in mind when I wrote my provisional decision.

I didn't anticipate that BGI would still be asking Mr C to make a payment for this excess. He says it is still pursuing him for the money. I'm not sure it is pursuing him for money for this particular job, because the invoices he has sent us aren't clearly for the date that this work was done. In fact, they seem to show dates for work which are after Mr C told us he'd cancelled his policy.

I've thought about whether I should now pause this case, and get BGI to confirm that it is no longer seeking to recover an excess that Mr C has told us he's already paid, and that BGI accepts he never really owed. But I think there are practical reasons why I shouldn't do that. BGI may be better placed to resolve this issue as a whole, once it has a decision from our service. And I don't think that I should delay paying Mr C the £150 I've proposed, in order to consider a new issue. I'm also not clear, from what Mr C has sent us, whether Mr C is being asked to pay for the excess for this work, or for other work. The dates on the invoices don't make that clear.

So, instead, I'll go ahead with the provisional decision I've proposed. I hope that will resolve the issue about payment for an excess that Mr C doesn't owe, and I think it's likely to do so. But if, following this, Mr C continues to receive requests from BGI to pay an excess that he doesn't think he owes, then he can complain to BGI, and ultimately to our service, about that.

my final decision

My provisional decision is that I intend to tell British Gas Insurance Limited to pay Mr C a total of £150 in compensation, and to refund the £50 excess he has paid. British Gas Insurance Limited can count towards this award the amount of £25 it offered in compensation, if Mr C has cashed the cheque, and it can count the refund of £50 excess it told our service it had made, if it has paid that to Mr C.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 13 June 2019.

Esther Absalom-Gough
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