

complaint

Mr B complains that British Gas Insurance Limited has wrongly refused to replace a radiator under the terms of his Home Emergency policy.

background

British Gas is dealing with other complaints made by Mr B about the timing of his 2017 annual service and how this may affect cover for his boiler and the increase in premium for the current year's policy. I don't consider these matters as part of this decision as they are separate. I don't consider either the issues that have been raised about fitness for purpose and satisfactory quality as they fall outside the remit of this service.

Mr B bought a HomeCare Policy from British Gas in 2008 after the one year warranty on the central heating he'd had installed in 2007 had expired. Each year British Gas sent Mr B a renewal letter and a policy booklet setting out terms and conditions, and the policy renewed on that basis.

After the December 2016 policy renewal, a British Gas engineer carried out an annual service in February 2017. Mr B pointed out to the engineer that the radiator (towel rail) in the bathroom had lost its coating in some places. Mr B was worried that the radiator was unsafe and would leak, and he isolated it from the system for that reason. The engineer said he couldn't change the radiator since it wasn't leaking.

Mr B complained to British Gas who didn't uphold his complaint but they did pay him £30 as a gesture of goodwill because they took a long time to respond to his complaint.

Mr B was unhappy and complained to this service. In summary, our investigator's view was that the terms and conditions that applied didn't make it clear enough that the damage that the radiator has suffered wouldn't be covered, that there'd been a change in the cover the policy provided since Mr B took out the 2016 policy and that British Gas should arrange for an engineer to inspect the radiator and agree with Mr B what should happen. British Gas didn't agree with our investigator's view so the complaint was referred to me for a final decision.

Mr B and British Gas made several points both before and after our investigator gave his view and I summarise the key points here.

Mr B says:

- the radiator could leak, it's already damaging items placed on it, it's dropping flakes of paint and rusty metal substrate and it could cause damage to anybody using the bathroom. Mr B says he has had one of the rusty flakes embedded in his foot
- British Gas are relying on terms and conditions which are different to those sent with the renewal letter, the policy wording is contradictory and the policy covers minor and cosmetic defects as well as substantial problems

British Gas says:

- the damage to the radiator is cosmetic and this isn't covered under the policy
- the general exclusions specifically say that they don't replace working radiators

- radiators and towel rails fitted in bathrooms are prone to surface rust after a period of time due to the damp atmosphere and degrade much sooner than radiators in other rooms

I recently provided a provisional decision. An extract from my provisional decision follows:

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint including the following documents:

1. *Renewal letter dated 11 November 2016.*
2. *Policy booklet sent with the letter dated 11 November 2016.*
3. *Terms and conditions that British Gas rely on.*
4. *Engineers visit record.*
5. *Information and photographs provided by Mr B.*

Mr B has HomeCare Two cover which includes cover for the boiler, controls and central heating on a service and repair basis.

The renewal letter set out a summary of what was included in the agreement and made it clear on page 3 that the full details were in the terms and conditions set out in the policy booklet that was sent with the renewal letter.

The policy booklet sent with the renewal letter contains some terms and conditions that are different to those which British Gas rely on but the version sent to Mr B is the right one to look at. I set out below the relevant terms and conditions in the policy booklet sent to Mr B and highlight the important words.

Page 5 of the terms and conditions sets out the definitions of words that are used in the policy. It doesn't set out the terms and conditions themselves.

*What's covered by the policy is set out on page 11 and the relevant part for radiators is under the heading "Central Heating". This says that "**What's Covered**" includes "**All repairs to the heat and hot water system on your property including...Expansion tanks, radiators, bypass and radiator valves**".*

*In the definitions on page 5, **Repairs** are defined as follows:*

"to fix your boiler, appliance or system following an individual fault or breakdown"

*British Gas have been relying on a version of the terms and conditions which contains the following additional wording as part of the definition of Repairs - "**but not repairs that are purely cosmetic or related to software which doesn't stop the main function of your boiler, appliance or system from working or make it unsafe**" - but this wasn't included in the terms and conditions sent to Mr B under cover of the renewal letter in December 2016.*

The general exclusions on page 31 of Mr B's policy booklet included:

“Cosmetic damage

Your product doesn't include repairs or replacement for minor damage that doesn't stop your boiler, appliance or system from working properly or make it unsafe. For example, if you've scratched your boiler casing”

“Making any improvements

Your product only includes repairing or replacing your boiler, appliance or system when it stops working properly – it doesn't include any improvements or upgrades, for example: replacing working radiators, swapping radiator valves for thermostatic ones and replacing electrical cables and fuseboards that still work.”

I agree with British Gas that radiators fitted in a bathroom are likely to degrade more quickly than those in other rooms because of the damp conditions. However, my role is to decide what is fair and reasonable in the circumstances of Mr B's complaint including what cover Mr B can expect his policy to provide.

Although the British Gas engineer's report says that the radiator wasn't leaking, Mr B's photographs show that some of the plastic coating is coming off the radiator and that it's rusty. Mr B says he has had one of the rusty flakes embedded in his foot.

I think it can be argued that the radiator is suffering more than “cosmetic damage” as defined in the terms and conditions because the damage is more extensive than the example given in the general exclusion I've set out above. Since the radiator's a towel rail, its function isn't only to heat the bathroom but also to dry towels. I have some sympathy with Mr B's argument that the radiator can't be used because of its condition and I think that means that it isn't working properly. If British Gas wanted to reject Mr B's claim using this exclusion it would need to establish on the balance of probabilities that the exclusion applies and I think there is some doubt that they would be able to do so.

I agree with our investigator that it's reasonable to ask British Gas to carry out an inspection of the radiator and to discuss and agree with Mr B whether British Gas should carry out any work to repair it or whether the radiator should be replaced.

Because Mr B has been unable to use the radiator for many months and it has taken him a lot of time and trouble to get this issue resolved, I also think it's fair to award Mr B some compensation.

my provisional decision

My provisional decision is that I intend to uphold the complaint. British Gas Insurance Limited should arrange to inspect the radiator within 28 days from my final decision, (or if that's inconvenient for Mr B on a later date that's convenient to him), to agree with Mr B an acceptable repair or, if that can't be agreed, to replace the radiator.

I also think it's reasonable to ask British Gas to pay to Mr B compensation of £200 for the distress and inconvenience caused to him.

developments

Mr B has helpfully clarified some facts and confirmed he accepts my provisional decision.

British Gas have asked me to consider three points:

1. That I've have contradicted my view by quoting the general exclusion on page 31 of Mr B's terms and conditions which states:

“Cosmetic damage

Your product doesn't include repairs or replacement for minor damage that doesn't stop your boiler, appliance or system from working properly or make it unsafe. For example, if you've scratched your boiler casing”

2. That the radiator's out of warranty and the policy doesn't provide for the replacement of working radiators.
3. That Mr B could restore the radiator by rubbing it down and redecorating with radiator enamel which can bought from DIY stores.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've noted British Gas's comments. I explained in my provisional decision why I think it can be argued, by reference to the terms and conditions of the policy, that the damage to the radiator is more than cosmetic and that the radiator isn't working properly. I also said that I think it's doubtful that British Gas would be able to establish that the exclusion applies. If they couldn't, it would be British Gas' responsibility under the terms of the policy to repair the radiator. In the circumstances I think it's fair and reasonable for British Gas to find a solution for Mr B and I see no reason to change my decision.

my final decision

My final decision is that I uphold the complaint.

I direct British Gas Insurance Limited to

1. arrange to inspect the radiator within 28 days from my final decision, (or if that's inconvenient for Mr B on a later date that's convenient to him), to agree with Mr B an acceptable repair or, if that can't be agreed, to replace the radiator; and
2. to pay to Mr B compensation of £200 for the distress and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 March 2018.

Julia Wilkinson

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