

complaint

Mrs J complains about British Gas Insurance Limited's handling of her insurance claim relating to a fault with her boiler.

The circumstances and background to this complaint were set out in my provisional decision in November 2013, as follows:

"background

Mrs J held an insurance policy, underwritten by British Gas. The policy was set up in June 2011 and, shortly afterwards, British Gas carried out a first service of Mrs J's boiler. During this service, the magna filter was cleaned and a quotation was provided to extend the pressure relief valve.

In November 2011, Mrs J contacted British Gas to register a claim under her policy because her water was not heating as it should. A British Gas engineer attended and noted "lots of black scale" present. The engineer therefore diagnosed that a powerflush was required.

Mrs J says she was told a powerflush might resolve the fault but that she may still continue to experience problems every few months. Mrs J says British Gas' engineer suggested that she replace her boiler and British Gas subsequently provided a quotation for a replacement boiler.

The following month, Mrs J's private contractor attended in order to install a new boiler.

However, the private engineer could not initially install the new boiler due to low pressure.

National Grid subsequently identified and resolved a problem with the outside mains pipe and the replacement boiler was then fitted by Mrs J's private contractor, at a cost of £2,860, which Mrs J paid for by way of a credit agreement.

Unhappy, Mrs J complained to British Gas, stating it had misdiagnosed that a powerflush was required and as a result of this advice, she had replaced her boiler unnecessarily.

British Gas cancelled Mrs J's policy at her request, and refunded £76.37 in respect of the premiums paid as a gesture of goodwill. However, British Gas said it had not misdiagnosed the fault, as sludge in the boiler would have resulted in the fluctuating hot water temperature which Mrs J experienced and that it was not responsible for mains pipes.

As Mrs J remained dissatisfied, she brought her complaint to the attention of this service for consideration.

Our adjudicator recommended that British Gas should reimburse Mrs J for the cost of her new boiler together with interest, and pay £250 compensation for the distress and inconvenience caused.

British Gas did not accept our adjudicator's recommendations and says its engineer tested the gas pressure, recording acceptable readings and there would therefore have been no reason for it to investigate the mains pipes any further. British Gas maintains its powerflush diagnosis was correct and that a powerflush would have resolved the sludge which was

blocking the heat exchanger. Furthermore, British Gas says it is not possible to determine for how long the mains pipe had been partially blocked.

As our adjudicator was unable to resolve the complaint to the satisfaction of both parties, the matter has now been referred to me for final determination.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am minded to conclude that Mrs J's complaint should be upheld in part.

The key question for me to determine is whether British Gas mis-diagnosed the fault with Mrs J's boiler. Where there is a dispute as to what has happened, this service assess complaints on the balance of probabilities – that is to say what we consider is most likely to have happened in the circumstances.

British Gas diagnosed that a powerflush was required in order to resolve the fault with Mrs J's boiler. This diagnosis was based on its engineer's findings from the November 2011 attendance, when it was noted that there was "lots of black scale".

Mrs J says British Gas told her a powerflush may not resolve the problem and that a new boiler was suggested as the best course of action. British Gas disputes that it recommended a new boiler and says, in any event, the problem with Mrs J's hot water would have continued without a powerflush as there would still have been sludge present in the system outside of the boiler.

What is clear is that British Gas provided a quotation to install a new boiler at Mrs J's property. British Gas says Mrs J requested this quotation, an assertion which Mrs J disputes and I agree with our adjudicator that there is no conclusive evidence to support British Gas' submissions in this regard. Mrs J has said British Gas' engineer offered to arrange for a quotation for a new boiler to be provided to her and I see no reason to doubt Mrs J's version of events.

British Gas also says that the company which provided the quotation, British Gas New Heating Limited, is not a business which is regulated by the Financial Conduct Authority ("FCA") and, therefore, the provision of the quotation for a new boiler is not something which the Financial Ombudsman Service has the legal power to consider.

Under our rules we have the power to consider complaints about, among other things, businesses effecting and carrying out contracts of insurance, regulated by the FCA.

As I am satisfied that the attendance by British Gas New Heating was arranged in connection with Mrs J's insurance contract, I therefore consider the quotation provided related to the actions of British Gas Insurance Limited in connection with the effecting or carrying out of a contract of insurance. Therefore, although Mrs J's complaint does not directly relate to the provision of the quotation for a new boiler, I consider the arrangement of the quotation falls within our jurisdiction and is therefore a matter which I can take into account when making a determination about Mrs J's complaint.

Mrs J subsequently arranged for a private engineer to install a new boiler but, upon attending, the engineer found the gas main to be partially blocked. The engineer reported

that “this situation must have existed for quite some time” and also noted “the system water was found to be very clean....so the problem with the hot water delivery couldn't be attributed to sludge in the system”.

I have considered all of British Gas' submissions about the diagnosis made by its engineer in this case. I understand British Gas says Mrs J's private engineer would have no way of knowing how long the system had been blocked for and that British Gas had recorded the gas pressure of the original boiler as being within acceptable readings.

However, in the absence of any water quality tests carried out by British Gas and as Mrs J's private engineer removed the original boiler, I am inclined to find the report of Mrs J's private engineer persuasive.

Although I appreciate that if British Gas had diagnosed a problem with the gas main then any work required may not have been covered under Mrs J's policy, it is likely Mrs J would have opted to have remedial work to the main carried out rather than replacing her boiler.

For the reasons I have outlined above, I consider it most likely that British Gas incorrectly diagnosed the fault with Mrs J's boiler. I am persuaded that, as a result of this, Mrs J had her boiler replaced unnecessarily.

Having said that, I do not agree with the redress recommended by our adjudicator in this regard. I do not consider it would be fair or reasonable to require British Gas to reimburse Mrs J for the full cost of the replacement boiler and I am instead minded to recommend that British Gas should pay a contribution towards the cost, less a deduction to take account of the fact that Mrs J now has the benefit of a new boiler.

Mrs J told us, as her private engineer had removed the original boiler (which was approximately five years old) and placed the boiler outside, the original boiler could not be reinstated after National Grid had resolved the problem with the gas main. However, I consider it may have been possible for the private engineer to take some alternative action allowing Mrs J to mitigate her loss.

It is difficult for me to quantify with any precision the betterment which Mrs J has enjoyed in financial terms in having her five year old boiler replaced with a new one. Based on the circumstances of this case and in the absence of any persuasive evidence from either party as to an alternative figure, I consider a deduction of £500 from the cost of the new boiler would represent a fair and reasonable outcome.

I also consider Mrs J suffered distress and inconvenience as a result of British Gas' actions in this case. I say this as Mrs J and her children were left with fluctuating hot water for approximately three weeks and I have also taken into account the inconvenience to Mrs J in having to arrange for a private engineer to attend on two occasions.

In light of our published guidance on the payment of compensation for distress and inconvenience as well as awards previously made by this service in cases sharing similar features, I consider a payment of modest compensation of £250 is warranted in the circumstances.

my provisional decision

My provision decision is that I uphold this complaint in part.

I am currently minded to recommend that British Gas Insurance Limited should do the following;

- *reimburse Mrs J for the cost of her new boiler, less a deduction of £500 in recognition of the fact that she now has the benefit of a new boiler;*
- *pay interest at 8% simple per annum on any payments already made under Mrs J's credit agreement from the date of the payment until the date of settlement;*
- *pay Mrs J £250 compensation for the distress and inconvenience caused.*

I now invite both parties to provide any further submissions they may wish to make, in writing within one month, after which I will issue my final decision, or further directions."

developments

British Gas did not accept my provisional decision and queried whether the technical evidence it provided, showing that the gas pressure was correct and that there was therefore no issue with the gas mains during its visits, had been taken into account. British Gas also said it provided a quotation for a powerflush but did not provide Mrs J with a quotation for a new boiler.

Mrs J acknowledged receipt of my provisional decision and had no further information to add, other than to say she had no recollection of receiving a quotation to extend the pressure relief valve from British Gas following the 2011 boiler service.

my findings

Considering firstly British Gas' comments, I confirm I have had regard to the gas pressure readings it has mentioned.

During the June 2011 service, the gas pressure was recorded as 30.07kw and British Gas' file indicates that a reading 10% either side of 30kw is acceptable. The gas pressure was recorded as 24.72kw during the November 2011 attendance and British Gas diagnosed that the problem with the boiler had arisen due to sludge, with the suggestion the reduced pressure was connected with the sludge.

However, I must also have regard to the information provided by Mrs J's private engineer – that the gas main was partially blocked and the 'situation must have existed for quite some time'. The private engineer has also stated that the boiler fault could not be attributed to sludge in the system.

I cannot conclude with any certainty when the problem with the gas main first arose. Having taken into account all of the information provided by both parties – including the gas pressure readings – I do not consider it more likely that British Gas' diagnosis was correct.

The notes which British Gas has sent to us state that an advisor provided Mrs J with a quotation for a new boiler on 1 December 2011. Correspondence sent by British Gas to

Mrs J and to our adjudicator also refers to a quotation for a new boiler. I am not therefore persuaded by the submissions British Gas has now made, that no such quotation was provided.

For these reasons, I see no reasonable grounds for departing from my provisional decision.

As a final point, British Gas' records indicate that a quotation was provided to Mrs J for the purpose of extending the pressure relief valve – a boiler part - during the annual service in June 2011. I mention this as Mrs J has queried the matter but this issue has no bearing on the outcome of this complaint.

my final decision

My final decision is that I uphold this complaint in part.

British Gas Insurance Limited must do the following;

- reimburse Mrs J for the cost of her new boiler, less a deduction of £500 in recognition of the fact that she now has the benefit of a new boiler;
- pay interest at 8% simple per annum (less tax if properly deductible) on any payments already made under Mrs J's credit agreement from the date of the payment until the date of settlement;
- pay Mrs J £250 compensation for the distress and inconvenience caused.

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Christopher Tilson
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