

## **complaint**

Mr C complains about British Gas Insurance Limited's refusal to repair his boiler under his insurance policy.

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

### ***"background***

*Mr C held a central heating cover insurance policy, underwritten by British Gas. The policy provided cover for a rental property owned by Mr C.*

*In December 2010, British Gas replaced parts in the boiler and issued a notice stating that the boiler flue was not to current standards, because it was situated in a void.*

*In early April 2011, Mr C contacted British Gas to cancel his policy but then shortly afterwards asked for it to be reinstated. As the policy was treated as a new policy, British Gas required a first inspection service to be carried out. It wrote to Mr C, providing an appointment date for the first service under the policy. However, when an engineer attended in May 2011, he was unable to gain access to the property. Over the next few months three more letters were sent to Mr C regarding this service.*

*However, in early September 2011, before the service was carried out, the boiler broke down.*

*An engineer attended the following day and reported that the boiler was "in bits", and the flue was at risk. Mr C said that the engineer commented that no insurance contract was set up for the boiler. Another British Gas engineer attended the next day and concluded that they should not provide cover for the boiler because it looked like it had been worked on by a third party.*

*Mr C says that the only work which had been carried out on the boiler previously was by British Gas. Mr C said his boiler was five to six years old and the control panel was hanging down but the boiler was not "in bits". Mr C also queried how the rules in relation to flues could have changed half way through his policy.*

*Two days after British Gas attended, as his tenants did not have heating or hot water, Mr C paid £1,200 to a private engineer to replace the boiler. He also paid £150 for the boiler flue to be removed from its position in a cupboard.*

*Unhappy, Mr C complained to British Gas. British Gas sent a final response letter, stating that due to third party interference with the boiler, his claim was not covered and his policy had been cancelled.*

*Our adjudicator recommended that Mr C's complaint should be upheld, on the basis that his policy provides cover for accidental damage. British Gas did not accept our adjudicator's recommendations and maintains the boiler was not accidentally damaged but was tampered with by a third party.*

*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 findings**

*At the outset, I should explain that Mr C's policy does not provide cover for British Gas to carry out upgrades, repairs or improvements to bring an appliance up to current standards. Therefore, British Gas has no liability to reimburse Mr C for the £150 he paid for work carried out on the flue.*

*British Gas' records show it advised Mr C in December 2010 that his boiler flue was not to current standards at that time. I understand Mr C says that legislation condemning boilers with flues in voids as immediately dangerous was not due to come into force until January 2013. However, the reason the September 2011 claim was rejected and cover refused was not because of the position of the flue (although this may have affected British Gas' ability to offer cover in the future) but because British Gas said the boiler was "in bits" and relied on the following policy exclusion;*

*"...Where work is undertaken on your system or appliance by a third party, whether or not following our advice, which results in damage to that or another part of your system as a result of poor workmanship, the repair of any such damage will be excluded from your Agreement".*

*Generally, if an insurer is seeking to rely upon a policy exclusion to reject a claim, it is for the insurer to demonstrate that the exclusion in question applies.*

*British Gas says Mr C's boiler had effectively been taken apart and therefore that the above clause applies. The system diary notes show that the engineer reported "failed visit flue in void a. risk boiler in bits on arrival refunded", but there is no further information about what this actually meant or what parts had been removed.*

*Mr C disputes that his boiler was "in bits" but says that the front of the boiler had been held on by tape because during the December 2010 attendance, a pin on the boiler control board broke and British Gas' engineer taped it back on. Mr C said this did not affect the operation of the boiler and the tape had since either fallen off or his tenants may have removed the tape to change the settings, leaving the control panel hanging down.*

*Mr C says no third party has touched his boiler and he would have had no reason to have a third party interfere with the boiler when he had a service and repair insurance contract with British Gas.*

*Where there is a dispute as to what has occurred, this service assesses complaints on the balance of probabilities – that is to say what we consider is most likely to have happened in the circumstances.*

*Whilst I can see that it would be unlikely, given that he had continuous cover with British Gas for some time, that Mr C would have paid another party to carry out work on his boiler, it is very difficult for me to establish exactly what has happened.*

*It seems unlikely that an engineer would record a boiler as being "in bits" if the only problem was that the front of the control panel was hanging down, or had been taped shut. However, although British Gas says that his record of the call out indicates that the boiler had been taken apart this does not appear to be verified anywhere in the papers I have seen. The*

*second engineer said “the boiler is in really poor condition and looks like there has been 3<sup>rd</sup> party engineers out doing work”.*

*This does not indicate that it has been taken apart and there is no detail as to why he thought any third party had carried out any work on the boiler.*

*I also note that the engineers were inspecting the boiler in the context of whether to accept it for future cover, rather than as a call out on an existing policy.*

*There is no evidence, as far as I am aware, that the reason for the boiler not working is that a third party has carried out any work on the boiler. Even if I accepted that parts had been removed - which has not been proven – British Gas has to show that this is the cause of the damage for which Mr C was seeking to claim, for the above exclusion to apply.*

*On the basis of the evidence currently available therefore, I am not satisfied that British Gas has established that the exclusion should apply.*

*Furthermore, the terms and conditions of Mr C’s policy provide cover for accidental damage caused to the boiler. If the damage to the control panel on Mr C’s boiler had affected the operation of the boiler and was in some way related to the September 2011 breakdown, I consider British Gas should fairly and reasonably have regarded the claim as one of accidental damage.*

*According to British Gas’ records, Mr C’s boiler was installed in 2006, making it five years old at the time of the claim. Mr C’s policy states:*

*“Whether or not we installed your boiler, if we agree that your boiler is less than seven years old we will provide a suitable new replacement boiler approved by us if it is not possible to repair yours because, for example, spare parts are not available, or we decide that it would cost more to repair the boiler than to replace it”.*

*The invoice provided by Mr C’s private engineer describes the existing boiler as “defunct” but provides no further details as to the condition of the original boiler.*

*I am not able to order British Gas to reimburse this entire cost – as there is no evidence available, as far as I am aware, of what was wrong with the boiler and whether it could have been repaired.*

*It seems to me however that it is right that British Gas make a contribution towards the cost, as I consider that it should have dealt with Mr C’s claim. In the absence of any evidence as to what was wrong with the boiler and the possible repair costs, I am minded to award Mr C £600 as a contribution towards his costs. It is a rough and ready estimate on my part and is the best I can do on the evidence currently before me. Either party can produce further and better evidence in response to this decision if needs be.*

### ***my provisional decision***

*For the reasons set out above, I am minded to uphold this complaint and order British Gas Insurance Limited to pay Mr C the sum of £600, together with interest at 8% simple per annum, from the date of payment of the private invoice until the date of reimbursement.”*

### **developments**

Both Mr C and British Gas acknowledged receipt of my provisional decision but said they had no further comments to add.

As neither party has made any additional submissions, I see no reason to depart from the findings set out in my provisional decision.

### **my final decision**

My final decision is that I uphold this complaint. British Gas Insurance Limited must pay Mr C the sum of £600, together with interest at 8% simple per annum, from the date of payment of the private invoice until the date of reimbursement.

Harriet McCarthy  
**ombudsman**