

complaint

Ms T complains that British Gas Insurance Limited refused to do repairs on her home.

background

Ms T got in touch with us to tell us about a claim that BGI had declined. She said that BGI had told her it wouldn't cover her for a leak at her property, because the copper pipes which leaked in her home hadn't been covered in plastic to protect them from the corrosive effect of the concrete that surrounded them. But she said that her builder had told her that at the time that this pipework was installed it just wasn't common practice to lag pipes in that way. So she didn't think it was fair for BGI to say that the problem was bad workmanship.

BGI wrote to Ms T to say that a leak had been located on the shower pipework, which was under floor level. It said that the pipework was found to be brittle, as it had been exposed to concrete. It said that this may be linked to poor installation. BGI said that this wouldn't be covered under Ms T's policy.

It sent the relevant part of its terms and conditions to Ms T. That says:

*"...our products don't include cover for any faults or design faults that:
We couldn't reasonably have been expected to know about before. For example,
faulty pipes that don't have the correct protection, which are buried under concrete
floors."*

Our investigator upheld this complaint. She said that there wasn't a fault with the plumbing before the policy started. And it wasn't clear to her that there was a design fault either, because she'd not seen anything to suggest that the pipework wasn't installed correctly, in line with industry standards as they were at the time. She said that Ms T's claim should be covered, and BGI should pay £150 in compensation for the frustration this has caused Ms T.

BGI didn't agree with that. It said that its terms and conditions were very clear that repairs such as these weren't covered under Ms T's policy. It said that pipework which is exposed to concrete must be lagged for protection or the lime in the concrete would eat away at the copper. Regrettably no type of survey would show that the pipework wasn't lagged. And it was the pipework not being lagged that had caused the leak.

Our service replied to say that our established position is that when we're considering if something is faulty, we'll consider if it was faulty at the time it was made or built. And BGI hadn't shown us that there was anything wrong with this pipework at the time it was installed.

BGI said that it hadn't changed its view. As an insurer it took a business decision to exclude repairs to unprotected pipework which was buried in concrete. It said that it appreciated that this was frustrating, and it noted our comments regarding building regulations at the time, but it said that it didn't agree that it should repair something that was a clear exclusion in its terms and conditions.

Ms T didn't agree with what BGI had said. She said that BGI was just relying on this clause to exclude expensive repairs. She said that she couldn't have known in advance either that this pipework had been installed in this way, and questioned how this insurance had been sold to her.

Ms T also said that if the exclusion was for problems that BGI "*couldn't reasonably have been expected to know about before*" which included "*faulty pipes that don't have the correct protection, which are buried under concrete floors*" then she didn't think that applied in this case. Firstly, she said that plumbing dating from the time her house was built, installed in line with the practices of the time, could be expected to be found in a house of that age. And secondly, she said that the pipes which leaked were in a wall behind the tiles in the shower cubicle rather than under the floor. The pipes under the floor weren't embedded in the concrete, they were raised above it.

Because no agreement had been reached on how to resolve this case, it was passed to me for a final decision.

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:

- Ms T had home emergency insurance which covered her for repairs to her plumbing. Aside from the exemption that it relied on, BGI hadn't suggested that there was any other problem with covering her claim.
- The first question I needed to consider was whether the leak was in fact in an area of pipework which was likely to have been damaged as a result of being surrounded by concrete. Ms T said that the leak was in the wall, and that area was surrounded by concrete. But BGI's report stated that the leak was under the floor. And Ms T told us that the pipework under the floor was raised above the concrete, rather than embedded in it. BGI hasn't shown us any job sheets for this work, or pictures of the problem. So it wasn't clear to me that I could safely conclude, on the evidence that had been provided here, that the problem had actually arisen in the way that BGI suggested.
- The second question was, if the pipework was damaged by being exposed to concrete, whether it would be fair to exclude the leak from cover because of that. I'd set out the exclusion that BGI relied on. For this exclusion to apply, the leak had to have been caused by a "*fault or design fault*". And it had to be something that BGI "*couldn't reasonably have been expected to know about before*".
- Our investigator pointed out that there had been nothing from BGI to show that this installation would've been considered either a fault or a design fault at the time of the installation. That is the test that our service applies in these cases. I agreed that BGI hadn't shown that the installation that leaked was a "*fault or a design fault*".
- Ms T also told us that her builder viewed this as a standard installation for a home of this age. Whilst we had suggested to BGI that it might like to show that this installation would've been considered faulty at this time, it hadn't done so. The information from Ms T's builder was the only expert evidence that I had on this point. It seemed likely that he was right, and many homes from this era do have unlagged copper pipes encased in concrete.
- For that reason, I didn't think it was likely that there was a fault or design fault. And without that, I didn't think that BGI could rely on this exclusion.

- Our investigator suggested as a resolution to this complaint, that BGI should pay some compensation, and also do the work to repair the leak in Ms T's home. But we'd spoken to Ms T recently, and she had since had a considerable amount of work done on her bathroom, which included these repairs. So I thought that instead of doing the work, BGI should make a contribution towards the work that Ms T had done.
- I thought that BGI should pay £500 towards the work that Ms T had done. I said I would consider further evidence from either side on this point, but my view then was that this would be a reasonable contribution towards the part of the work she had done that should've been covered by her policy, which was work to repair the leaking shower and make good. I thought that would be a fair resolution to this complaint. I didn't think that BGI would need to pay any further compensation in addition to that.
- I anticipated that BGI may have paid rather less for this work if it had commissioned the repairs itself. But I didn't think it would be fair to limit the payment to what BGI would've paid if it had sent its own workmen to do the job. BGI had repeatedly refused to do this work. When BGI did that, it left Ms T without a functioning shower. And that situation went on for quite some time. It wasn't unreasonable for Ms T to have decided in late 2018 to get this work done herself, in these circumstances. And it wouldn't be fair if the financial burden of fixing her shower, which should've been covered by her policy with BGI, then fell predominantly on Ms T because of a decision that BGI made.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides accepted my provisional decision.

my findings

Even though neither side has put forward any new arguments against my proposed decision, I've still 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.

my final decision

My final decision is that British Gas Insurance Limited must pay Ms T £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 27 April 2019.

Esther Absalom-Gough
ombudsman