

## **complaint**

Mr A is unhappy with the handling of a claim by British Gas Insurance Limited under his home emergency insurance policy.

## **background**

I issued my provisional decision on this matter in January 2014, an extract from which is copied below and forms part of this, my final decision.

*“Mr A holds a HomeCare policy, underwritten by British Gas.*

*In October 2011, Mr A contacted British Gas to report that he had no heating on the ground floor of his property. A British Gas engineer attended at the property the following day and said that due to poor circulation in the system, a power flush was needed, but this was excluded from the policy.*

*Following this visit, Mr A arranged for an independent engineer to attend at his property. The independent engineer was unable to resolve the fault. He did not carry out a power flush.*

*A British Gas engineer attended at Mr A's property again in February 2012 and said that there was a restriction on the return to the downstairs radiators and again recommended that a power flush be carried out.*

*Mr A's independent engineer attended at his property again in March 2012 and drained down the radiators, cleaned them out with a high pressure hose and replaced a pump (at a cost of £250) but found no improvement.*

*Mr A remained unhappy with British Gas' service and responses and therefore brought his complaint to this service for consideration.*

*Following our involvement, British Gas attended at Mr A's property in December 2012 in order to carry out a further assessment. During this visit, the engineer reported that due to the pipe material and size, a power flush could not in fact be carried out. The engineer considered there to be a blockage in the pipes and that the pipe work should be replaced. This, however, would be on a chargeable basis as replacing the pipe work would not be covered under the terms and conditions of Mr A's policy.*

*Our adjudicator suggested that Mr A have the required repair work carried out by his independent engineer, and if the required repair work would have been covered under the terms and conditions of the policy, the adjudicator would ask British Gas to reimburse the cost.*

*In February 2013 Mr A's independent engineer was able to carry out a successful repair, without carrying out a power flush or replacing any pipe work, at a cost of £490.*

*Our adjudicator recommended for the complaint to be upheld and asked British Gas to reimburse the cost of the repair, as it would have been covered under the terms and conditions of the policy, and to pay Mr A £500 in recognition for the distress and inconvenience caused. British Gas agreed to our adjudicators recommendations.*

*However, Mr A did not accept our adjudicators' recommendations and wants British Gas to refund his insurance premiums, in addition to the £990 offer it had already made.*

*Mr A considers that his policy was mis-sold to him, due to British Gas excluding replacement of his pipe work, should it have been required. Mr A also considers that British Gas should have checked his pipe work prior to offering him cover.*

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

### ***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.*

*I understand why Mr A feels that British Gas did not carry out a proper investigation of the fault with his central heating system, as the issue was resolved without British Gas' recommendation of a power flush or the replacement of his pipes.*

*Although British Gas initially recommended a power flush, it later became apparent that a power flush would not have been possible, due to the particular pipe work at Mr A's property.*

*I agree that British Gas should have been in a position to rectify the fault under the policy cover earlier, even though it does not appear to have been a straightforward diagnosis.*

*British Gas has now offered to refund Mr A the sum of £490, being the money he paid for a private repair. However, it seems to me that it should also reimburse the previous costs of Mr A's own engineer attempting to repair – ie £250 – as it seems to me that this would not have been incurred had British Gas not been insistent on a power flush which was never appropriate for Mr A's property. Mr A's engineer did flush out the individual radiators, during this attendance, but this did not improve matters.*

*In addition, in line with our usual approach, interest at our normal rate should be added to these payments.*

*Turning to the distress and inconvenience suffered by Mr A, I have no doubt that being without heating on the ground floor of his property for an extended period will have caused substantial discomfort.*

*British Gas has offered Mr A a payment of £500 compensation in respect of this, which is in line with awards we would make for examples of significant distress and inconvenience. This seems to me to be fair and reasonable in the circumstances.*

*Mr A would like British Gas to also refund his insurance premiums, as he considers the policy was mis-sold. However, British Gas has now offered to effectively pay a benefit under the policy (ie the costs of the repair) and a policy holder cannot receive a benefit under a policy as well as obtaining a refund of premiums.*

*In any event, we would not usually recommend a refund of premiums on the basis that a claim under a policy has not been dealt with as expected.*

*Although British Gas carried out “First Visits” in regard to boilers, replacing the pipe work would be considered as an upgrade, which is excluded from the policy terms and conditions.*

*We generally consider a business is free to decide what it wishes to cover and exclude under its policies and, as we do not regulate financial businesses, we have no power to require a business to amend the terms of its policies or to alter its internal practices and procedures. The Financial Conduct Authority is the regulator of the financial services industry in the UK.*

*While I appreciate Mr A’s comments regarding the replacement of his pipe work being excluded from the policy, I am unable therefore to recommend British Gas carry out first visits or initial inspections on customers pipe work.*

### **my provisional decision**

*For the reasons set out above, I am minded to uphold this complaint against British Gas Insurance Limited and direct that it should:*

- reimburse the costs that Mr A paid his own engineer – ie £740 – together with interest 8% simple per annum from the date he made payment to the date of reimbursement; and*
- pay Mr A £500 compensation for the distress and inconvenience caused as a result of its handling of his claim. “*

### **developments**

British Gas responded and confirmed that it has no further information or evidence to add.

Mr A has also responded. He still considers that the premiums should be refunded as he feels that the policy terms, relied on by British Gas, were not made clear to him.

### **my findings**

I have considered all the information and evidence afresh to decide what is fair and reasonable in all the circumstances of the case.

Mr A considers that the policy was mis-sold, as the policy terms were not made sufficiently clear to him when he took out the policy. I explained in my provisional decision that we would not normally expect an insurer to refund the premiums paid for a policy – even if it were mis-sold – where there has been a successful claim under the policy.

This is because the normal remedy for a case where a policy has been mis-sold is to put the parties back into the position they would have been in had the policy not been mis-sold. In order to insist on a refund of premiums, we would need to be satisfied that Mr A would not have taken out the policy, if he had known about these terms. If he would not have taken out this policy, he would not have had cover for the amounts which I have decided he should be reimbursed.

And, even if he had decided to take a different policy instead, he would still have been in the same position as he is in now – ie have paid premiums in order to get the cover which he has now received.

I am therefore not persuaded that the premiums should be reimbursed in addition to the amounts that I have decided should be reimbursed to Mr A.

Neither party has made any further representations about the other aspects of my provisional decision, so I do not see any reason to change my provisional findings.

**final decision**

For the reasons set out above, and in my provisional decision, I uphold this complaint against British Gas Insurance Limited and direct that it should:

- reimburse the costs that Mr A paid his own engineer – ie £740 – together with interest 8% simple per annum from the date he made payment to the date of reimbursement; and
- pay Mr A £500 compensation for the distress and inconvenience caused as a result of its handling of his claim.

Harriet McCarthy  
**ombudsman**