

complaint

Mrs W is unhappy about the handling of a claim and cover provided under a home emergency insurance policy with British Gas Insurance Limited.

background

I issued a provisional decision on this matter in January 2020, part of which is copied below:

"Mrs W made a claim under her policy in August 2018 as a drain serving her property was blocked. British Gas sent its contractors out on 28 and 31 August 2018. They put a camera down the drain and cleared a blockage. They apparently found a fault whereby one of the joints had formed a 'lip' which was trapping waste and blocking flow. However, the contractors said they could not rectify this under the policy, as it only covers the alleviation of the immediate emergency (which they'd done) and rectifying the fault would amount to betterment, or an upgrade of the drains. The contractors apparently asked Mrs W to sign a mandate to allow it to manage a home insurance claim to have this work done on her behalf, which she refused.

Mrs W challenged this decision but British Gas would not agree to do the work. Mrs W asked what would happen if the drain repeatedly blocked, which she said would be inevitable if the joint had displaced and was trapping waste. British Gas said it would review the policy if it was being used too often.

In October 2018, the drains blocked again and Mrs W got her own contractors to inspect the entire pipe. They jetted the pipe to clear it and they also found a broken section further down from where British Gas contractors inspected, which was allowing sewage to seep into the ground. Mrs W says the drainpipe has blocked again since then and when there is heavy rain it also causes a foul smell in the downstairs toilet connected to it. Mrs W says her husband has been able to clear the drain himself so far, using a power washer.

One of our investigators looked into the matter. He recommended that it be upheld, as he thought the repair of the drains should be covered to stop further blockages. He also recommended that British Gas pay Mrs W £100 compensation for the trouble caused to her.

British Gas says although Mrs W says the drain has repeatedly blocked, it has only been called out about this once, in August 2018. It would have come out in October 2018, if it had been notified of the second blockage. In addition, comments Mrs W made suggests the blockage is on a shared part of the drain which is not covered under the policy.

Mrs W obtained confirmation from her water supplier that the drain was not shared with any other property. The water supplier also confirmed that there was a displaced joint, which was causing blockages.

Our adjudicator suggested that British Gas attend again to inspect the drains and if it agreed that was a fault, it should repair it.

British Gas sent different drain contractors who provided a report. It says the policy covers repairs to drains in the event that flow cannot be restored by using normal methods, or where waste water is leaking out of the drain under normal use. British Gas says the blockages have been cleared by jetting, so flow can be restored by using normal methods and suggests there is no leaking of waste. British Gas also says that the second report confirms that the drains were incorrectly installed, as there is insufficient gradient/fall and

rectification of poor installation isn't covered. And finally British Gas also says, the damage to the joint would be deemed to be accidental damage, which is excluded under the policy.

Following consideration of this second report, the investigator changed his mind and said he was not recommending that British Gas should carry out any further work.

Mrs W doesn't accept the investigator's assessment. She says:

- The investigator has changed his mind based on one final piece of evidence provided by British Gas's own contractors, which can hardly be considered fair or impartial.*
- The second contractor's report is also at odds with the findings of British Gas's previous contractors, her contractor and the water supply company.*
- The investigator has also accepted British Gas's word that all the defects in the drains were present since their installation, i.e. since 1966. She bought the house in 2001 and there were no drain problems until recently. The lack of 'fall' in the drain may well have been present since installation but the crack/hole in the drain cannot possibly have been. It is this, which is causing the problems.*
- British Gas has been continually allowed to search the contract for any clause which would allow it to abdicate responsibility and to continually generate new evidence to best-fit these get-out clauses.*

As the investigator was unable to resolve the complaint, it has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I do not agree with the investigator's findings and will explain why.

The relevant part of the policy says:

"Drains

What's covered:

- repairing and unblocking drains to restore flow*
- repairing leaks to internal waste water pipes and external soil and vent pipes*
- a replacement of parts we can't repair*
- accidental damage".*

It excludes shared drains and some other matters, not relevant to this case.

The damage to the joints might be considered 'accidental' but the drainage section of cover clearly includes cover for accidental damage. It excludes accidental damage to parts of the central heating system, but that is not relevant here.

I don't agree with British Gas that this policy wording means that it only needs to restore flow. The clause set out above, contains the conjunction 'and' which I consider means that British Gas is obligated to also repair the pipe and not just unblock it.

In any event, even if I accepted British Gas's argument that it only needs to unblock the pipe to restore the flow (which I don't), I don't think it has necessarily done enough to demonstrate it has done this. Flow may have been restored, in that soil waste is now flowing out, but a broken section of pipe and a displaced joint, will inevitably mean that some of the volume of water will be seeping out into the ground, rather than being carried away in the

pipe as intended. Therefore, it seems to me that 'flow' through the pipe cannot be said to have been properly restored.

Mrs W's contractor confirmed this in his report: "carried out CCTV and high pressure water jetting to clear and check condition. Large open joint and potential water escaping, minimal fall on rain, no vent all combining to create problem."

I also agree with Mrs W that there is a reasonable expectation that any 'repair' will last for a reasonable period of time. In this case, it seems that British Gas accepts that it is inevitable that the waste pipe will block again and says it will attend again to unblock. I don't consider this reasonable.

British Gas says that no further blockages have been reported to it. There was clearly a blockage which led to Mrs W instructing her own contractor and since then she says her husband has had to use a pressure hose to clear further blockages. I have no reason to doubt what she has said about this and the reasons why she was put off reporting any further incidences to British Gas. I therefore also consider that she would not have had to incur this expense, if British Gas had advised her properly when it first attended to the claim. It should therefore reimburse this cost, together with interest at our usual rate.

British Gas has also said that the drains have not been installed correctly and it will not cover the cost of rectifying such faults. The policy doesn't cover pre-existing faults with drains but I can't see that this is relevant to this case. There is no evidence that the displaced joints were pre-existing. The drains may have been installed with insufficient fall (though this has not been proven, as the gradient may have changed over time, which might explain the displacement at the joints) and this may be a contributory factor to the problems. However, the primary cause of the blockages appears to be the displaced joints. But for the displaced joint, I am not persuaded that Mrs W would be experiencing any issues.

In addition, I note that her contractor recommended that the pipe be excavated, a new plastic manhole installed, the rain vented and a sleeve installed. He didn't recommend relaying the entire pipe at a different gradient.

For the reasons given, I consider that the policy terms do provide that British Gas should have repaired the broken pipe when it first attended. If British Gas wishes to make any representations about the additional costs of a new manhole and vent, it can do so in response to this provisional decision.

my provisional decision

I intend to uphold this complaint against British Gas Insurance Limited and require it to do the following:

- reimburse the cost of Mrs W's contractor of £108 (on provision of proof of payment) together with interest at 8% simple per annum from the date she paid it to the date of reimbursement;*
- arrange for the work required to repair the broken/displaced pipework, or pay cash in lieu if agreed otherwise; and*
- pay compensation of £150 for the distress and inconvenience caused to Mrs W by this matter.*

responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

Mrs W has confirmed she has nothing further to add.

British Gas has also responded. It does not accept my provisional decision and has made the following submissions:

- it is disappointed with the proposed outcome.
- The investigator accepted British Gas's word that all the defects in the drains were present since their installation, *i.e.* since 1966.
- The drainage system was originally laid using salt-glazed clay pipes, parts have since been updated to PVC but without giving enough fall in some areas.
- The water level (in the affected section of pipe) is minor and whilst relaying this short section would be a benefit it is by no means essential. It is poorly installed.
- It has fulfilled the policy terms and conditions by restoring the flow, by which it means that waste can get from point A to point B. This would be deemed serviceable by the Water Regulations Advisory Scheme. Its current policy is to unblock and monitor. If a second blockage occurs at the same point it will normally survey the problem section of the drain with a camera to assess the serviceability, and then excavate/line the drain if needed.
- There is little to no correlation between the number of drain repairs and the likelihood of a return visit. As all drains have some level of displacement (they're not designed to have a tight rigid seal) it can't say it will repair leaks on drains. If it did, it would be liable to repair nearly all drains, hence why it says it will 'restore flow' in the policy terms and conditions.
- On occasions some waste does leak into the ground. Whilst this is not ideal, it does happen, however, we always repair any leak above ground or if it enters or is near to the home.

my findings

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

I set out in my provisional decision why I did not agree that British Gas had adequately restored the flow in the drains. British Gas says it has done so, as waste is carried from point A to B and some seepage into the ground is normal.

While I accept that drains may not be entirely water tight and that there will sometimes be seepage even if a drain is serviceable in other respects, in this case the displaced joint has been shown to be the cause of the drain blocking up. So it would seem to me that this is interfering/hindering flow. And the evidence provided by Mrs W suggests the drains were continuing to block periodically. Given this, I remain of the opinion that British Gas has not done enough to demonstrate that it has adequately restored flow in the drains.

In any event, however, I also set out in my provisional decision why I did not think that restoring the flow alone would be enough for British Gas to have met its obligations under the policy. The policy says it will cover "*repairing and unblocking drains to restore flow*" (my

emphasis). So I think it is obliged to repair the drain, even if it has unblocked it and restored flow.

British Gas has said again that the drains were installed incorrectly but the primary cause of the blockages appears to be the displaced joints. But for the displaced joint, I am not persuaded that Mrs W would be experiencing any issues. British Gas has not provided any convincing evidence that this is not correct.

I therefore remain of the opinion that the policy terms provide that British Gas should have repaired the broken pipe when it first attended.

my final decision

I uphold this complaint against British Gas Insurance Limited and require it to do the following:

- reimburse the cost of Mrs W's contractor of £108 (on provision of proof of payment) together with interest at 8% simple per annum from the date she paid it to the date of reimbursement;
- arrange for the work required to repair the broken/displaced pipework, or pay cash in lieu if agreed otherwise; and
- pay compensation of £150 for the distress and inconvenience caused to Mrs W by this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 6 March 2020.

Harriet McCarthy
ombudsman