

## complaint

Mr and Mrs D's complaint arises from a central heating insurance policy with British Gas Insurance Limited.

## background

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

*"Mr and Mrs D have held a policy with British Gas for some years. In October 2018, their boiler broke down and they called British Gas out. British Gas's engineer said the heat exchanger was leaking and there was also damage to the printed circuit board ("PCB"). He said the boiler couldn't be repaired and issued a warning sticker. The engineer said the problems were due to the quality of the water in the central heating system. Mr and Mrs D say he didn't do any tests on the water, just looked at it. They say the appointment only took 25 minutes and he didn't remove or test any part of the boiler.*

*British Gas said the repairs would not be covered under the policy because it excludes cover for repairs to damage caused by sludge, where British Gas has previously advised that a power flush is required. It says that it has advised Mr and Mrs D about the water quality in the system on a number of occasions dating back to January 2015. Under the terms of the policy, it will clear the first blockage caused by sludge or scale and then provide advice on how best to improve the system [i.e. by having a power flush done]. British Gas says this was done in January 2015 when it cleared a blockage at the expansion hose and it had to return and clear another blockage from the expansion hose in March 2018. British Gas says it advised Mr and Mrs D a number of times about the poor water quality in their heating system and that it would no longer cover any water carrying parts, as the water quality is having a detrimental effect on these parts.*

*Mr and Mrs D say they were never told that they needed a power flush. They had the boiler replaced but when their engineer was fitting it he told them the boiler could have been repaired. They say they had no choice but to have the boiler replaced, given what British Gas had told them and so they want compensation for the cost of this (approximately £1,500), as it was a negligent misstatement by the engineer.*

*British Gas maintained its position and says it is entitled to refuse cover for this claim, which was caused by the build-up of sludge. In addition, it says that if their engineer had advised the boiler was repairable, then they had a choice to have it repaired or replaced. It says it would have some concern that any gas engineer would fit a new boiler and then provide a customer with information confirming that the replacement boiler was not required at all. British Gas has also provided a copy of an online review of its service posted by Mr and Mrs D which it says confirms they [knew they] needed to have a power flush carried out.*

*One of our investigators looked into the matter. The investigator did not recommend that Mr and Mrs D's complaint be upheld, as he thought British Gas's records indicated that they had been told previously that a power flush was required.*

*Mr and Mrs D do not accept the investigator's assessment. They have made a number of submissions, which I've summarised below:*

- *They were never advised to have a power flush carried out. If they had been and*

*knew they were not covered, why would they have carried on paying over £50 per month for a policy that would not cover them.*

- The heat exchanger wasn't sludged and wasn't leaking. The British Gas engineer diagnosed this as a leak from the heat exchanger without removing it and examining it properly. It was impossible to diagnose this properly with it in situ. He took the cover off the boiler, shone a torch into it and then drained down the boiler and put the cover back on.*
- It was British Gas's engineer that said they could replace the heat exchanger for £400 after they asked if there was anything he could do given they had been paying for cover. When they declined, he proceeded to shut down the boiler and said British Gas would contact them with a price for a new boiler.*
- They were left with no heating and hot water, with the temperature below freezing at times. They have three children and this caused significant inconvenience.*
- When their engineer removed the boiler, he said the leak was caused by the deterioration of a washer, which had caused a small leak.*
- They asked British Gas to communicate with them in writing but it called them on the phone and a service manager also called at their home unannounced while they were out.*
- The investigator said that British Gas's files record that it cleared a blockage in January 2015; in 2018 issues relating to the PCB and heat exchanger were dealt with; and the engineer has noted on the visit in June 2018 a "history of sludge related faults". However, they obtained their files from British Gas under a subject access request and there is no mention of sludge related issues in the notes from June 2018 or elsewhere in the files, or any of the job sheets left with them by engineers.*
- The investigator made reference to British Gas advising upgrade work. They had changed their radiators and added inhibitor, which was the upgrade work suggested but there was no reference to a power flush.*
- They did leave an online review following refusal of their claim. British Gas asked the review site to remove their review on the basis it could not identify us them as customers when clearly it could.*
- In the review they refer to a flush, this doesn't mean they were told to do a powerflush. They [were referring to having] flushed out the magnafilter.*
- If British Gas says it could no longer cover water carrying parts since 2015, why did it continue to take their premiums for another four years?*

*Mr and Mrs D want compensation for the time they had to spend sorting out the claim and the new boiler; getting temporary heaters; and dealing with the complaint; as well as a refund of premiums paid plus interest; and compensation for the distress caused to them being without a working boiler in freezing temperatures.*

*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 am considering departing from the conclusions reached by the investigator and will explain my reasons below.*

*Home emergency insurance policies such as this do not provide cover for every eventuality and are not intended to operate as maintenance contracts. As such, the level of cover provided is limited by the terms, conditions and exclusions set out in the policy. In particular,*

*Mr and Mrs D's policy excludes: "Removing sludge or hard-water scale from your system or appliance".*

*As such, if a policyholder's central heating system requires a power flush, magna clean or similar procedure, British Gas would not cover the cost of this. The policy goes further and also excludes:*

*"Repairing damage caused by scale, sludge or other debris if we have told you on a previous visit that permanent repairs, improvements or a power flush (or a similar cleaning procedure) are needed to help ensure your appliance/system works properly".*

*If British Gas is seeking to rely on the above exclusion for any damage caused by sludge, then it is required to establish, on the balance of probabilities, that the exclusion applies. In this case therefore it has to establish that Mr and Mrs D were told previously that they needed to have a power flush done and that the damage to the heat exchanger was caused by sludge (which would otherwise have been removed by the power flush). We would also expect that when giving any such advice to have repairs, improvements or a power flush done, British Gas would make clear the consequences of not doing so. This means it would have to make clear to a policyholder that their cover is likely to be significantly reduced if such work is not done.*

*British Gas says Mr and Mrs D were told on many occasions since 2015 that a power flush procedure was necessary. It also seems to imply that the heat exchanger was damaged by sludge. However, despite requests from the investigator it has not provided any contemporaneous notes or records of any such advice. In addition, I have not seen any evidence of the water quality, such as confirmation of visual tests or sample analysis. I've also not seen any convincing evidence that the heat exchanger was damaged by sludge and that this would have been prevented by a power flush.*

*The only evidence provided from British Gas's engineer is the following system entry: "claim rejected. Heat exchanger and pcb req. Multiple advise given on system quality". There's also no explanation as to how a PCB can be damaged by sludge, as it is not a water carrying part of the boiler.*

*Mr and Mrs D say this [previous diagnosis of poor water quality and sludge in the system] ... was not communicated to them, in support of this, Mr and Mrs D have provided job sheets from the attendances in March and June 2018, which do not mention a power flush or any other remedial work. There is a box for any comments the engineer has which is crossed through on one of the job sheets and left empty on the other.*

*Based on the content of the job sheets provided by Mr and Mrs D, I am not satisfied that British Gas informed them that the system needed to be power flushed.*

*Against this, there is an online review in which Mr and Mrs D refer to having been told they needed a flush: "our last breakdown was filters and advised a flush would be needed". They have said that they'd been advised the filter of the magna clean needed flushing, which would have been expensive but they did it themselves. However, later in the same message they do refer to a system flush which does suggest it was more than just the magna filter.*

*It is therefore possible they were previously advised to have a power flush, even though it was not recorded on the job checklists. However, even if they were there is still not enough evidence that a power flush was needed; that the lack of a power flush caused the*

*breakdown in October 2018 or more importantly that they were also told in clear and unambiguous terms that future cover under the policy would be significantly reduced, if they didn't have it carried out. There is no such record and I would expect any such information to be conveyed to the policyholder in writing.*

*Given this it seems to me that British Gas has not established that the exclusion fairly applies. Therefore, I consider British Gas did not act fairly or reasonably by not repairing the boiler and instead apparently seeking to charge them privately for this work. This was, in my view, work which ought reasonably to have been carried out under the terms and conditions of Mr and Mrs D's insurance policy.*

*Turning to the remedy which I consider appropriate in the circumstances, I understand Mr and Mrs D opted to have the boiler replaced. They say this was largely because British Gas's engineer had condemned the boiler. I can understand why they might have decided that it was more economical in the long run to replace the boiler, rather than have it repaired. However, that doesn't mean British Gas should reimburse this cost.*

*Instead, I consider the fair and reasonable outcome in this case would be for British Gas to pay what it would have paid to replace the heat exchanger; the work which it ought to have carried out under the terms and conditions of the policy. Mr and Mrs D were apparently told this would cost £400. There's no documentary evidence of this in the papers provided to me. I also note that British Gas said the PCB also needed replacing. However, this is not an exact science. There is a lack of evidence around this, so I can only determine what I consider to be fair and reasonable based on the evidence available. Unless any further evidence is provided, I consider British Gas should pay the sum of £400, in lieu of the repairs that it should have carried out.*

*There were other consequences of British Gas failing to respond to Mr and Mrs D's insurance claim properly. As a result of its refusal to repair the boiler, they had additional appointments to accommodate and were without heating and hot water for longer than would otherwise have been the case. This occurred during a particularly cold period and I understand that Mr and Mrs D have three young children who were also affected, I have no doubt that this would have caused distress and inconvenience, I therefore consider that an additional payment of compensation is warranted.*

*It seems to me that the sum of £350 would be appropriate taking into consideration all the circumstances of this case. This is in line with other awards of compensation made for similar cases...*

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

*My provisional decision is that I am minded to uphold this complaint and recommend that British Gas Insurance Limited do the following;*

- pay Mr and Mrs D £400 together with interest at 8% simple per annum from the date of the original claim to the date of reimbursement; and.*
- pay Mr and Mrs D £350 compensation for the distress and inconvenience caused by its handling of the claim."*

### **responses to my provisional decision**

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

British Gas doesn't accept my provisional decision. It has asked me to consider the following:

- Mr and Mrs D had replaced the boiler before it could verify what their engineer said.
- Its engineer said the heat exchanger had burst and was leaking onto the PCB.
- Its records show it has been advising Mr and Mrs D about water related issues for a number of months previously.
- If Mr and Mrs D had taken the advice given and a filter had been fitted then there is a possibility that the heat exchanger would not have leaked.

Mr and Mrs D have confirmed that they accept my provisional decision and have nothing more to add.

### **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.

British Gas has said again that it had advised Mr and Mrs D for some time before this claim, that they needed to have a power flush carried out. It has not provided any further evidence to show how and when this advice was given. Although its internal work record contains some reference to this. There is still no contemporaneous, convincing evidence that Mr and Mrs D were given such advice; or that if they were given this advice, they were also told in clear and unambiguous terms that future cover under the policy would be significantly reduced, if they didn't have a power flush carried out. There is also still no convincing evidence that a power flush was needed; that the lack of a power flush caused the breakdown in October 2018.

Given this, I remain of the opinion that British Gas has not established the exclusions it relied on applied. Neither party has provided any comments regarding the cash in lieu settlement that I proposed in my provisional decision, so I also remain of the opinion that British Gas should pay £400 in lieu of the repairs it should have carried out; and £350 compensation for the trouble its wrongful refusal of the claim caused.

**my final decision**

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

- pay Mr and Mrs D £400 together with interest at 8% simple per annum from the date of the original claim to the date of payment; and
- pay Mr and Mrs D £350 compensation for the distress and inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 22 July 2020.

Harriet McCarthy  
**ombudsman**