

## **complaint**

Mrs M has complained about the way British Gas Insurance Limited (British Gas) dealt with a claim she made on her home emergency insurance policy after her boiler stopped working.

## **background**

I issued a provisional decision on this complaint last month. An extract from that decision follows:

*"In August 2018 an engineer was called out to visit a property Mrs M rents out to tenants. The engineer said the boiler was "at risk" because the flue wasn't compatible with the boiler.*

*In February 2019 during a further call out due to an error message on the boiler an engineer turned the boiler off and said it was causing an "immediate danger". Mrs M said she then had to urgently replace and relocate the boiler and until this was done, her tenants, including their young baby, were left without heating or hot water for nine days.*

*Mrs M complained to British Gas about its customer service and said it gave her conflicting information about why the boiler had to be turned off and eventually told her it shouldn't have insured the boiler at all. She said she had her policy with British Gas since 2014 and it was never pointed out to her that there was an issue with the flue despite its engineers inspecting it each year. She also said when she decided to go through British Gas for the installation of the new boiler it didn't give her good advice and it also charged her for additional building work and demanded payments before the work finished.*

*British Gas responded to the complaint and said that it had told Mrs M the flue was unsuitable both in August 2018 and in February 2019. It said that this was a pre-existing issue caused by those who installed the boiler, who weren't employed by British Gas. It also said it wasn't able to tell that the flue was unsuitable any earlier because it didn't look out of the ordinary and the readings taken from the boiler were normal. It added that it was only able to establish the flue was unsuitable after it contacted the manufacturer. It offered Mrs M a partial premium refund which amounted to £627.27 as a goodwill gesture. It set up a separate complaint about the new boiler but later told us this was outside our jurisdiction.*

*Mrs M was unhappy with British Gas's response and complained to us. She asked for an apology from British Gas and also compensation for what she referred to as her "tangible" and "intangible" costs. These included three excess payments she made over 2018 and 2019, the cost of the new boiler, rent compensation she paid her tenants and the cost of building work and repairs. She also asked for compensation for the inconvenience caused to her and her tenants.*

*One of our investigators reviewed the complaint but didn't think it should be upheld and thought that British Gas's offer to Mrs M was fair and reasonable bearing in mind that it didn't install the boiler originally and that the error wasn't obvious. He also said he couldn't comment on the issues about the installation of the new boiler as this wasn't done under the policy. He said this meant it didn't relate to a regulated activity and was, therefore, outside our jurisdiction.*

*Mrs M didn't agree and asked for an ombudsman's decision.*

### **my provisional 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'm considering upholding it in part.*

*what does the policy cover?*

*The starting point is the policy. It includes boiler and controls cover which covers the repair as well as the replacement of a consumer's boiler depending on a number of criteria including its age; it has to be under seven years old or between seven and ten but installed by British Gas and insured with it since. The policy excludes the repair or replacement of flues which are over one metre in length. Under the general exclusions it also doesn't cover pre-existing faults that existed when the policy was first taken out and also any that British Gas couldn't reasonably have been expected to know about before, for example pipes which are buried under concrete floors etc.*

*I don't think the fact that the flue was unsuitable is in question and I haven't seen any expert evidence to contradict British Gas's engineer's evidence. So, based on the evidence, I think British Gas acted fairly and reasonably in following its engineer's advice that the boiler had to be turned off because of the issue with the flue. I also don't think that there is any expert evidence which says the issue wasn't pre-existing and so, again, I think British Gas was being fair and reasonable when it said it wasn't responsible for repairing or replacing the flue.*

*Mrs M said British Gas should pay her the cost of buying and having a new boiler installed. British Gas said this isn't something her policy would cover because the issue was pre-existing and also because her boiler was over seven years old and wasn't installed by British Gas in the first place. From what I understand the boiler was installed in 2006 but not by British Gas. This would make it 12 years old in 2018 and 13 in 2019 so I don't think the policy would've covered the cost of a new boiler. Also, even if the issue with the flue wasn't pre-existing and had been identified in 2014, the boiler would've been eight years old at the time and again not covered. So, I think British Gas's decision not to cover the cost of the new boiler is in line with its policy.*

*did British Gas give Mrs M conflicting information?*

*British Gas didn't turn the boiler off in 2018 despite saying it was "at risk" and later suggested that Mrs M had a year to rectify the issue- though this isn't in the notes of what Mrs M was told during the 2018 visit. Mrs M said though she was made aware there was an issue, she wasn't told that she had a limited amount of time within which to rectify it. I haven't seen any evidence to contradict what Mrs M has told us and I would expect something like this to be reflected in the engineer's notes so, on balance, I don't think Mrs M was made aware that she had a year to rectify the issue, if that was indeed the case.*

*In addition to the above, British Gas said that it shouldn't have insured the boiler in the first place and offered Mrs M a refund of her boiler cover between 2014 and 2018 (her premium also included additional cover such as cover for plumbing and electrics which wasn't refunded) which came to around £630 as a goodwill gesture. I think saying it should've never insured the boiler goes against what British Gas did in 2018 in not turning the boiler off at the time and continuing to cover it. I think if it believed it should've never insured the boiler, this should've been obvious when it first identified the issue with the flue in 2018. So, it's not clear why British Gas continued to insure the boiler and only refused to cover it beyond 2019. So, I agree with Mrs M when she said that British Gas gave her conflicting information.*

*Having said the above, I think the fact that British Gas has refunded Mrs M's boiler cover premium since 2014 as a goodwill gesture is fair and reasonable because at worst, it should've never covered the boiler and at best it should've stopped covering it in 2018. But I also think this goodwill gesture should also include a refund of Mrs M's boiler cover premium for 2019 because British Gas continued to cover the boiler until then when it, arguably, shouldn't have.*

*when should the issue with the flue have been identified?*

*British Gas said it didn't identify the issue with the flue any earlier because the boiler's readings were normal and so the error with the flue wasn't obvious at inspection. As far as I am aware there is no expert evidence to contradict British Gas's engineer's and for that reason I think, on balance, this was something that wasn't obvious. And I also note that in British Gas's notes it states that it had to speak to the manufacturer to confirm whether the flue was suitable or not and I think this further supports British Gas's argument.*

*Mrs M disagrees and says that this should've been detected in 2014 rather than later and that this left her and her tenants in a difficult situation where she had to change her boiler with no warning and also meant that her tenants were without heating and hot water for almost nine days. As I said above, I accept what British Gas's engineer said about the difficulties in identifying the problem with the flue. But even if I didn't, and I were to accept that this should have been identified in 2014, I don't think this would've put Mrs M in a better position to the one she finds herself in now. This is because all this would've meant is that she would have had to replace the boiler sooner.*

*However, as I said above British Gas has given Mrs M confusing information and suggested that she had a year to rectify the issue with the flue in 2018 (though I accept it is unclear whether that was correct or not). Regardless of whether this was correct or not, I think if it had said this to Mrs M in 2018, Mrs M would not have gone through the distress and inconvenience of having to buy a new boiler within a limited time or leave her tenants without heating or hot water for around nine days. I think she would've sourced a new boiler whilst the old one was still in operation (bearing in mind British Gas didn't feel it was necessary to turn it off in 2018) and this would have avoided the distress and inconvenience she had to go through in 2019. For this reason, I think British Gas should pay her £250 compensation. Mrs M said she would like her tenants to also be compensated for their distress and inconvenience, however, as they are not insured under the policy (the policy is in Mrs M's name) they are not eligible to complain to us, and for that reason I cannot award them any compensation.*

*other issues*

*Mrs M said she refunded her tenants £325 for a week's rent for when they were left without heating and hot water. As I said above, this could've been avoided if British Gas had told her to replace the boiler in 2018 and allowed her time to do so before the old boiler was turned off, so I think British Gas should reimburse her this cost, subject to her providing the necessary evidence such as bank transfer or bank statements etc.*

*Mrs M asked for three excesses to be paid back to her for three claims she made while she had her British Gas policy. But as British Gas attended the property and did some work on the boiler over those times and also carried out yearly inspections, I don't think it would be fair to ask British Gas to return those.*

*As our investigator explained, as the new boiler purchase and installation were carried out by British Gas on a private basis and not under the policy, these aren't regulated activities and therefore not something I can look at or award compensation for. This also means I can't look into any damage caused during the installation.*

*Mrs M raised concerns about neighbouring properties that may have similar issues, however, in this decision I am only looking at her individual complaint against British Gas which means I'm not able to look at potential complaints from other consumers here.*

*Finally, Mrs M asked for an apology for British Gas but, at this stage, I don't think a forced apology would have much meaning so I am not going to ask British Gas to do this.*

### **my provisional decision**

*For the reasons I've given I am considering upholding Mrs M's complaint against British Gas Insurance Limited in part and asking it to pay Mrs M:*

- *The amount she paid towards her boiler cover premium between 2014 and 2019 (less the £627.27 it has already refunded).*
- *£250 for the distress and inconvenience it caused her.*
- *£325 for the refund she gave to her tenants in respect of a week's rent, subject to her providing the relevant evidence and documentation in support."*

### **developments**

Both parties responded to my provisional decision but neither agreed with it. British Gas said that it didn't understand why further premiums are to be returned for 2019 if I agree that excess payments are valid since work had been carried out. It added that this means that Mrs M benefitted from the policy. It also said that it was Mrs M's decision to refund her tenants' rent and not something that British Gas should be responsible for. It added that whilst it was unfortunate that Mrs M's tenants were without heating or hot water it assumes that they used heaters over that period and that the refund I asked it to pay is not reflective of the heating or hot water element of the weekly rental.

Mrs M also responded making several points including the following:

- The engineer who first identified the flue was unsuitable in 2018 did not carry out any extra checks and had the same access to the boiler as all the engineers since 2014. She questioned why British Gas found it necessary to speak to the manufacturer in 2018 and not before. She said neither the flue nor the boiler was changed since 2014. She added that she believed that the engineer who inspected the boiler in 2018 probably carried out the correct tests which other engineers had failed to do up to that point.
- She asked for evidence as to why the flue was suitable before 2018 and questioned the checks that were carried out by British Gas since 2014. She added that if the boiler was deemed safe then there was no pre-existing fault.
- She also asked for evidence that the boiler was installed in 2006 and not by British Gas. She said she bought the property in 2014 and as the fault was identified in 2018 this would make the boiler four years old which means, under the terms and conditions of the policy, that British Gas should cover the replacement boiler.
- She said she hasn't received the good will gesture payment of £627.27 yet.
- If issues with the boiler had been identified in 2014 when she bought her property, she would have had the chance to go back to the person she bought it from and perhaps got the replacement costs covered.

- She doesn't feel that the £250 compensation I awarded takes into account the distress caused by British Gas when it was rude to her on a call or when it failed to check and offer her tenants heating alternatives.
- She attached a screen shot of her bank transaction where she refunded her tenants £325 for a week's rent.
- She believes she should get all her premium payments back.
- The new boiler installation was carried out by British Gas and not on a private basis and I should therefore consider the damage this caused including to Mrs M's carpet.
- She believes British Gas should've reviewed the other boilers it covers in the area and that its failure to do so is a failure of health and safety precautions.

### **my findings**

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

#### *British Gas's comments*

I'll firstly deal with British Gas's comments. It queried why I thought further premium payments were due if I accepted that none of the excess payments should be refunded. As I explained in my provisional decision, I thought that Mrs M's policy either shouldn't have been offered at all- meaning the boiler premiums from 2014 onwards were due- or should've been cancelled in 2018 when the fault was initially identified. This is why I think the 2019 premium should be refunded. British Gas already offered to refund the premiums that related to the boiler between 2014-2018 as a goodwill gesture. From what I understand the reason why it didn't offer to refund the 2019 premium was because it thought Mrs M was aware of the issue with the flue since 2018. But as I explained in my provisional decision, I didn't think this was made clear to Mrs M at the time and I thought that the information British Gas had given her was confusing. That's why I think the 2019 premium, as far as it relates to the boiler and not the other cover provided such as for electric or plumbing for example, should also be refunded.

British Gas also said it shouldn't be responsible for the refund Mrs M paid her tenants in terms of their rent. In my provisional decision I said that British Gas left Mrs M with very little time to replace the boiler and this also led to the property being without hot water or heating for over a week. As I said I thought all this could have been avoided had British Gas explained to Mrs M in 2018 that she had a year to rectify the issue- thus giving her enough time to replace the boiler without it having to be turned off. I think being without heating and hot water in February when the weather tends to be cold would've rendered the property uninhabitable even if heaters were used. I therefore understand why Mrs M felt the need to refund her tenants' rent. And because I think that this was caused by British Gas's actions, I think it should be responsible for it.

#### *Mrs M's comments*

I don't think the fact that Mrs M bought her property in 2014 made the boiler four years old in 2018. British Gas's engineer's notes show that the boiler was installed in 2006 and this is what I have relied on to say that the boiler would've been 12 years old in 2018 and 13 in 2019. I haven't seen any other expert evidence to contradict this. I also don't think the boiler's age is affected by the date Mrs M bought her property- it is accepted by both parties that the boiler was already there when she bought the property.

Mrs M said that British Gas's engineers had the same access to the boiler from 2014 to 2018 and that the engineer who attended the property in 2018 didn't carry out any extra tests.

Although she said he probably carried out the correct tests which other engineers had failed to do previously. She said for this reason the fault should've been identified in 2014. As I said in my provisional decision, the only expert evidence I've been provided with is from British Gas and it says that the fault wasn't identifiable before 2018. Mrs M may believe that the same tests were carried out each year or that they weren't done correctly before 2018. But she hasn't provided any expert evidence to support her view. And there could be many reasons why a fault might only become apparent at a certain time. So, without any expert evidence that the engineers hadn't previously tested the system correctly, I don't think it would be fair to say that qualified engineers didn't do their jobs properly based solely on Mrs M's belief that that's what happened.

Mrs M said if the issue with the boiler had been identified in 2014, she may have asked the seller of her property to cover the cost of replacing the boiler. As I said above, on the evidence available to me, the issue with the flue wasn't identifiable before 2018. Even if it had been identified in 2014 there is no evidence to suggest that Mrs M would've been able to recover these costs from the seller, even on the balance of probabilities. If I were to award Mrs M the cost of replacing the entire boiler on this basis, I would be making a highly speculative assumption and not one based on any tangible evidence.

Mrs M asked me to provide evidence about the flue, but this isn't my role. My role is to assess the evidence that has been presented to me by the parties.

Mrs M has also said that the new boiler installation was done by British Gas and not on a private basis. She said she has to pay £4,420 for the new boiler and has provided me with a copy of the relevant invoice. British Gas said that the new boiler was being provided on a private basis. From what I've seen I think the boiler is being provided on a private basis, albeit, by British Gas. If the installation was being done under an insurance policy, I would've expected Mrs M to be charged a fraction of what she is being charged now (for example by only having to pay an excess) and not for the full price of the boiler plus the installation costs. So, I think British Gas is installing the boiler as a private company rather than as Mrs M's insurer. And for this reason, this isn't something I can look into as part of this decision and this includes the damage to her carpet which happened as a result of the installation.

I've already explained in my provisional decision why I can't, in this decision, ask British Gas to look at other boilers it installed in the area.

With regards to the distress and inconvenience award I made I think the £250 figure would take into account any issues with British Gas's customer service. I also note that the majority of the distress and inconvenience was suffered by Mrs M's tenants who- as I have already explained- I can't award compensation to in this decision.

### **my final decision**

For the reasons I've given I am upholding Mrs M's complaint against British Gas Insurance Limited in part and asking it to pay Mrs M:

- The amount she paid towards her boiler cover premium between 2014 and 2019. Mrs M said the goodwill gesture of £627.27 is yet to be refunded and if that is the case it should be refunded now as part of this payment.
- £250 for the distress and inconvenience it caused her.
- £325 for the refund she gave to her tenants in respect of a week's rent, subject to her providing the relevant evidence and documentation in support. I note Mrs M has

provided us with a screen shot of the bank transaction which we will provide to British Gas. It should add simple interest to this amount at a rate of 8% per year from the date this refund was issued by Mrs M to the date British Gas pays it back to her.

British Gas Insurance Limited must pay the above within 28 days of the date on which we tell it Mrs M accepts my final decision. If it pays the £250 compensation and the premium refunds later than this, it must also pay interest on these amounts from the date of my final decision to the date of payment at 8% a year simple.

If British Gas Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 December 2020.

Anastasia Serdari  
**ombudsman**