

complaint

Mr and Mrs W through their representative Mr D complain that British Gas Insurance Limited didn't act fairly or reasonably when dealing with a service under a home emergency policy. They want a refund of all premiums paid with interest and compensation.

background

Mr and Mrs W had a home emergency policy with British Gas, which covered many aspects of their property, including their boiler. They bought their property in 1990, which already had a boiler installed and said that British Gas serviced it every year since. Mr D said that it didn't carry out the annual boiler service correctly and the boiler was preventing Mr and Mrs W from selling their property as it had been shut off by British Gas as it was dangerous. Mr D said he was experienced in gas; in his view, not enough gas was being supplied to operate safely and there were issues with the flue, pipework and the boiler itself. He said British Gas was at fault for not spotting the dangers during the yearly service. The boiler was condemned in December 2017 when British Gas visited; it had carried out work on it in August (when other work at the property was carried out) and previously had regularly carried out services or repairs on the boiler since 2009 (when the electronic records began).

Mr D complained to British Gas. It said that at each service, its engineers had checked the gas readings and they were of an appropriate level from a safety perspective. It noted that the carbon monoxide detector alarm never went off in the property. But British Gas thought it should've placed warning notices on the boiler (and warned Mr and Mrs W) as it was "at risk" earlier and offered £700 towards a new boiler installation by its engineers or a refund of £237.90 (to cover the three years when it should've marked the boiler as "at risk" at the annual service). It also pointed out that Mr and Mrs W had the full benefit of the policy over the years, it had advised them more than once to replace the boiler, and there wasn't any evidence that it had originally installed the boiler. British Gas said that Mr and Mrs W hadn't told it that appliances were struggling to work due to low gas pressure, and in any event this wasn't evidence of damage. It noted that there was a limitation period to bring claims.

Mr D complained to us. British Gas noted that Mr and Mrs W had sold the property to a relative of Mr D, and therefore no longer needed a new boiler. The investigator's view was that there wasn't sufficient evidence that British Gas installed the boiler originally or that it was incorrectly installed. She noted that the boiler was first marked as "at risk" in 2012 and declared dangerous in 2017, but nothing was recorded in the intervening years – the investigator said that this wasn't reasonable. The policy included annual servicing of the boiler (checking that it was working safely and as legally required under regulations) and the investigator thought four years' worth of annual service costs should be refunded due to this failure, together with interest.

The investigator didn't think it would be fair or reasonable to refund more as Mr and Mrs W had the benefit of the entire policy and there was no evidence that the boiler was dangerous from 1990. The investigator also awarded £300 compensation for the trouble and upset to Mr and Mrs W due to the failure to report on the state of the boiler between 2013 to 2016.

Mr D disagreed. He said the absence of integral parts of the boiler from installation meant the boiler should've been marked as "at risk", and Mr and Mrs W should receive all of their premiums back. Mr D believed that the central heating system couldn't have worked as required.

The investigator changed her view and said all annual service fees since 1990 (with interest) should be refunded by British Gas as she didn't think the required checks were carried out (in the absence of evidence from the business). But she said issues with the wider central heating system weren't something an annual boiler service would deal with, though it could've been pointed out to Mr and Mrs W. The investigator said nothing further should be refunded as Mr and Mrs W had the benefit of the full policy and the recommended compensation for trouble and upset shouldn't be increased.

Mr D still disagreed and said Mr and Mrs W had to use a microwave to cook due to the gas issues. He provided more technical evidence and evidence to support his personal claim for compensation, but the investigator didn't change her view. British Gas didn't accept the investigator's view either as it said it only started servicing the boiler in 2004 and there was no service undertaken in 2013 or 2017. It said that the flue was marked as not up to current standards as early as 2004 and repeatedly afterwards and this was disclosed to Mr and Mrs W at the time. British Gas noted that no harm or damage occurred and the boiler failed due to its age.

my provisional decision

In my provisional decision, I said:

"It's worth noting that this service doesn't deal with health and safety issues, is not a regulator and can only deal with complaints about regulated financial products. My role isn't to punish businesses if they've made a mistake, but to put consumers back into the position that they would've been in if the mistake hadn't been made.

The core of this complaint is whether British Gas should've spotted the various issues with the boiler and the gas supply earlier than 2017. As there's no evidence supporting the argument that it installed the boiler originally, which happened before Mr and Mrs W owned the property, I can't find British Gas responsible for any installation issues.

I note Mr D wants compensation for himself and the work he's done in bringing this complaint. That isn't something this service would award. Mr D isn't a party to this complaint and we don't award payment for work done to bring a complaint as it isn't necessary to have a representative (though Mr D isn't a professional representative). And as Mr and Mrs W no longer own the property, it wouldn't be fair or reasonable for the costs of a new boiler to be paid. Given the current circumstances, the only appropriate compensation I could award, if persuaded that it's fair and reasonable to do so, would be compensation for trouble and upset suffered by Mr and Mrs W and a refund of all or some of the premium relating to servicing for the six years prior to the complaint being brought to British Gas. Mr and Mrs W had the benefit of the rest of the policy.

I felt that it was necessary to investigate the complaint further. British Gas explained that its electronic records only went back to 2004. It also said that the boiler was manufactured without slip sockets and this hadn't stopped the combustion gas test being performed as shown by the readings. British Gas confirmed the evidence supplied of the gas readings was the only evidence available of those readings.

British Gas also said that when a boiler was marked as “at risk”, it meant there was a fault which in the future may cause danger. It said such boilers could only be turned off with the consent of the customer (unlike the situation when a boiler was condemned), and that the marking “NTCS” (Not To Current Standards) wasn’t a defect marking and didn’t have to be recorded from 2015 onwards. This was a different position to that put forward by Mr D, but was supported by the information I had from Gas Safe.

I invited British Gas to comment on the Gas Safe report on Mr and Mrs W’s boiler (with Mr D’s consent), carried out five months after the property was sold by Mr and Mrs W. I noted that the Gas Safe report said that much of the boiler and gas supply was NTCS. It also said the failure to fit a slip socket connector and the failure to adequately seal the flexible flue liner were “at risk” issues, while the corrosion of the draught diverter and spillage on the heat exchanger were dangerous (though it couldn’t comment on when that had happened, and the boiler was condemned the previous year for these reasons).

British Gas’ comments on the Gas Safe report were limited. It noted that the report was carried out months after Mr and Mrs W no longer owned the property, and Mr and Mrs W never raised any issues before the boiler was condemned. British Gas said that there was no evidence of ill-health or financial loss.

The policy covered servicing. There’s no dispute that by 2017 the boiler in particular was dangerous and had to be condemned. The Gas Safe report agrees. But it can’t help me with the issue of when any of the dangerous issues arose – it could only report on the state of the boiler and other gas work five months after Mr and Mrs W sold the property to a relative of Mr D (which shows that the property was saleable), and this was the year after the boiler was condemned.

The key question is whether British Gas acted fairly and reasonably before 2017 (when the boiler was condemned). There’s simply no objective evidence as to when the dangerous issues found by Gas Safe happened. Corrosion happens over time but the time taken varied from case to case. I’ve borne in mind Mr D’s evidence, though he didn’t inspect the boiler during the entire relevant period. I have also noted that Mr D’s relative bought the property and he seems to be charging Mr and Mrs W money to bring their claim, despite not being a lawyer or accredited claims management company. British Gas visited in 2016 and I think as it condemned the boiler in 2017, it’s more likely than not it would’ve done so in 2016 if necessary. This means I think it’s more likely than not that the dangerous issues arose after the visit in 2016.

There’s no evidence of ill-health and no supportive independent evidence of the claim that the gas supply was too poor, or the cooker was unusable as a result while Mr and Mrs W were living there. Mr and Mrs W don’t seem to have raised this with British Gas at the time, despite servicing and other visits. Gas Safe didn’t say that there was a real issue with the gas supply. And we don’t consider cases in light of “what might’ve happened”; we consider what did happen and there’s no evidence of ill-health or financial loss.

I have seen evidence of all the visits by British Gas, including readings of gas tests and I accept that it’s more likely than not that the tests and works recorded were carried out. I think it’s unlikely that the readings and job records were consistently falsified. And I can’t agree with the investigator that nothing was done between 2012 and 2017; the evidence shows that regular servicing was carried out and work undertaken. The boiler was marked as “at risk” in 2011 due to the flue bend, not 2012. I accept Gas Safe’s position that “at risk” doesn’t mean that the boiler was dangerous at that time.

It's evident that while the boiler was aged and not in the best condition, there's simply no evidence on which I could find that prior to 2017, it was in such a state that it should've been condemned or that harm was caused to Mr and Mrs W. Even the issue of the slip connector is at most an "at risk" issue according to Gas Safe, and NTCS is a lower level of issue (though British Gas hasn't shown that it did mark the boiler as NTCS or told Mr and Mrs W about it). I thought about whether Mr and Mrs W were told about the "at risk" issue; it's standard practice to mention it (more so than NTCS issues) but equally Mr and Mrs W's case was that they couldn't afford to change the boiler, so if this was a failing, it didn't make any practical difference and couldn't have caused trouble and upset (as it would've been an unknown failing).

Having considered all the evidence, I think there's sufficient evidence for me to find that it's more likely than not that servicing was carried out to the required standard and British Gas hasn't acted unfairly or unreasonably."

my findings

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

Both parties made comments after reading my provisional decision. I will address the key relevant and pertinent responses. British Gas said that there was evidence that it told Mr and Mrs W about the boiler being NTCS and sent a list of dates where engineers recorded this. I was aware of this when writing my provisional decision, but I was not satisfied that it was sufficient evidence that Mr and Mrs W had been told about the issue, or a notice had been placed on the boiler confirming the NTCS rating/confirmation given to Mr and Mrs W in writing, as opposed to British Gas noting it.

But Mr D in response to my provisional decision provided a document dated 15 November 2012 where British Gas told Mr and Mrs W that the boiler was at risk and other parts were NTCS. The section within the form that dealt with immediate danger was uncompleted, which in my view suggests that the engineer believed that there was no such danger. What this document shows is that British Gas did provide Mr and Mrs W with information about the boiler and it wasn't immediately dangerous. Mr and Mrs W didn't replace the boiler.

Mr D said that my provisional decision was incorrect in a number of ways, particularly about slip sockets, the last date of the servicing of the boiler and the manufacturers' instructions. He felt that I didn't understand the complaint. Mr D also sent a number of emails and attachments to this service raising his concerns about my provisional findings. I have carefully considered all the responses from Mr D and the additional evidence he has submitted, but I can't agree with his position.

For example, while Mr D says the boiler was last serviced in 2016, it was seen again by British Gas' engineers in 2017 and then condemned – my provisional decision does set this out. Mr D complains about the installation of the boiler, but I haven't found that British Gas was responsible for this. Mr D says that it's irrelevant who installed it, but I disagree – if British Gas didn't install the boiler, it isn't responsible for any failures by the installer. I appreciate Mr D's position is that British Gas should've flagged issues with installation as part of the servicing of the boiler, but this still doesn't mean British Gas is responsible for the installation.

Mr D sent evidence of a service in 1998, but I was aware when writing my provisional decision that Mr and Mrs W had such documentation. It doesn't change the point that a refund of all premiums paid since 1998 wouldn't be appropriate as this is outside of the six year time period prior to raising a complaint with British Gas as mentioned in my earlier view.

Mr D added that he felt that I was unhappy that he was representing Mr and Mrs W in their complaint. However, when dealing with a complaint and a claim for the costs of the representative to be paid by a financial business, I do need to address why such a claim is not appropriate (as there is no need to appoint a representative to complain to this service and the representative is not the complainant). The sale of the property is also relevant to this case as Mr D initially claimed that the boiler issue prevented a sale. I note Mr D now accepts that it is too late to prove whether Mr and Mrs W's health was affected by the alleged failures of British Gas.

I asked if British Gas had any comment to make in response to Mr D and the evidence he provided. It said that Mr D's belief that the services couldn't have been properly carried out due to the absence of a slip socket was incorrect and the heat exchange had been exchanged. British Gas pointed out that Mr D in his responses was referring to the current standards in place, not those before 2019, and noted that there was no evidence that Mr and Mrs W suffered any harm. Given that all the various engineers who visited the property over the years who didn't think the absence of a slip socket was a problem and Gas Safe also didn't think this was dangerous, as shown by its report, I think it's more likely than not that the slip socket absence didn't mean the boiler wasn't serviced as required by the standards in place at the time; certainly there's no evidence of Mr and Mrs W suffering as a result.

Having reviewed the complaint and evidence again, I remain of the view as set out in my provisional decision. In particular, my findings remain that the evidence showed that it was more likely than not the boiler became dangerous after British Gas' visit in 2016; that there's insufficient evidence of ill health, financial loss or problems with gas supply; and that British Gas acted fairly and reasonably in how it dealt with Mr and Mrs W's boiler.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 20 April 2020.

Claire Sharp
ombudsman