

complaint

This complaint arises from a central heating insurance policy provided by British Gas Insurance Limited. Mr U is bringing the complaint on behalf of the estate of his late father, Mr K, in whose name the policy was provided.

background

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

“Mr K took out the policy which provided cover for his boiler and central heating system in August 2015. It is a requirement of the policy that there is an initial inspection of the boiler to make sure British Gas is prepared to insure it.

British Gas sent a welcome letter to Mr K on 5 August 2015, which said it would be in touch soon to arrange the first service. British Gas says it also wrote to Mr K to arrange the first service for his boiler on 13 and 27 August 2015. It says it sent several more letters between 2016 and 2019 asking Mr K to book an annual service. I understand that Mr K's boiler was not serviced at all by British Gas.

In February 2019, Mr K made a claim as the boiler had broken down. British Gas sent an engineer to inspect the boiler. He said that the heat exchanger was split, there were issues with the flue and the water in the system was of poor quality. British Gas said that the system would not have passed the initial service and if that had been carried out as it should have been, it would not have agreed to provide cover. British Gas therefore cancelled the policy and refused to repair the boiler.

Mr U is very unhappy about this. He has provided evidence that the boiler was serviced in June 2014 by Mr K's previous insurer. Mr U says Mr K didn't speak or read English and didn't receive the letters about the first service and the other annual services. Mr U says his contact details had been provided to British Gas, so it could have contacted him by phone or email for such important matters. Mr U says he had to replace the boiler and has provided an invoice dated 9 February 2019, showing this cost £2,200. He wants British Gas to reimburse this cost and the claim excess which his father paid.

British Gas maintained its position about the policy but offered £50 compensation for the wrong information given during a call when it said it would reinstate the policy. It also offered to refund all the premiums £727.61 plus interest at 8% (£785.83 total).

One of our investigators looked into the matter. He said that the policy terms are clear that if problems are identified during the first service, the cost of the repair wouldn't be covered by the policy. The investigator said he was satisfied British Gas had made reasonable attempts to contact Mr K to carry out a first service and subsequent annual services, so it was not unreasonable that British Gas voided the policy on finding faults. The investigator also said that if Mr K had paid an excess when the claim was made in 2019 this should also be reimbursed. British Gas says no excess had been paid but if Mr U can provide evidence that this was paid, it can be considered.

Mr U does not accept the investigator's assessment. Mr U has made a number of submissions, which I've summarised below:

- *The engineer came out, stripped down the boiler, took out parts, taped it up and*

capped off the gas pipe. The engineer was on the verge of ordering the replacement part and said he'd had the go ahead from British Gas when he then said the policy was voided.

- His engineer wouldn't touch the boiler because of what British Gas had done to it and so he had no choice but to replace it.*
- Both his parents were vulnerable at the time (Mr K was recovering from a heart attack) and were left without heating and hot water for two weeks, with temperatures at the time being below zero, waiting for a response from British Gas. £50 compensation for this delay is not sufficient for this. He phoned British Gas during this time and was twice told the voidance would be overturned*
- Mr K had cover with another provider before taking this policy and had the boiler serviced every year. The boiler was around ten years old.*
- There is no reason the boiler would have failed that initial inspection.*
- Mr K arranged an annual service in January 2019 to take place on 21 February 2019. He received a call from a British Gas engineer on 21 February 2019, but the policy had already been voided at this point. The engineer told him the policy was in place and Mr K had to call British Gas to check.*
- The policy renewed three times since Mr K took out the policy and at no point did Mr K receive any information that the policy would be voided if it was not serviced.*
- He didn't receive any renewal documents and no information about the renewal prices.*
- British Gas is quick to chase payment by any means of communication but didn't use other forms of communication regarding the initial service visit.*
- If the claim had not been made, British Gas would have continued taking premiums for a policy it says was void.*

As the investigator was unable to resolve the matter 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.

Home emergency insurance policies, such as this one, do not cover every eventuality or incident which might befall the insured property. Rather, the policy sets out specific incidents which will be covered and in turn this cover may be subject to specified exclusions. We would generally accept that insurers are entitled to decide what risks they want to cover and which risks they want to exclude.

So it is not unreasonable for British Gas to want an initial inspection of the boiler before deciding if it is prepared to cover it. British Gas has suggested this is effectively a condition precedent to cover. A condition precedent imposes an obligation on the policyholder to take certain steps in relation to the insured property, before any right to benefit under the policy commences.

As such a term could have a significant effect on cover – effectively removing all cover if not complied with – it needs to be made sufficiently clear to the policyholder. That means that it should not just be written clearly but should be sufficiently prominent in the policy terms. The more significant and restrictive a term is, the clearer it should be.

In addition, even if such a term is sufficiently clearly expressed in the policy documentation, insurers should not unreasonably reject a claim by relying on technical breaches of condition that are not materially connected with the circumstances of the claim. In other

words, insurers need to show prejudice as a result of the breach of condition in order to reject the claim. The breach has to be material to the loss – not material to other considerations. This has long been our approach and is also ratified in legislation and the Financial Conduct Authority rules.

So, in order to rely on the condition relating to the initial service, British Gas would have to show that the significance of it was adequately brought to Mr K's attention and that the lack of the initial service directly caused the breakdown of the boiler.

The welcome letter sent to Mr K on 5 August 2015 confirms cover is in place and then lists in bullet points the main features and benefits of the cover. There is then the following paragraph:

*"We'll be in touch soon to arrange your First Service
This lets us check everything is working safely and that we'll be able to get approved parts for your heating system if we need to."*

The letter sent on 13 August 2015, says:

"For your safety, please call to book your First Service...As your safety is always our prime concern, we want to carry out your First Service as soon as possible.

This service, which is included in your agreement, lets us:

- Make sure all appliances and systems covered in your agreement are working safely.*
- Check we will always be able to carry out necessary repairs using approved parts, so we can look after your system throughout your HomeCare agreement.*
- Check that everything is working as efficiently as possible."*
A further communication has been provided which says: "don't miss out on your HomeCare service. You've already paid for it."

There is no indication in any of these communications that cover depended on this inspection being carried out. To the contrary the letters confirm cover is in place.

The policy document sent to Mr K says:

"First service

Your first service will usually be within 42 days of you first taking out the product or changing your address. If we've already carried out a first service or an annual service at your address in the last twelve months, we won't carry out another one – even if you've just moved in. If we've installed a new boiler for you the first service will be carried out as part of the installation.

At the first service our engineer will check that your boiler is on our approved list and your boiler or central heating and ventilation don't have any pre-existing faults. If we find it's not on the approved list or it has a pre-existing fault we'll either:

- Tell you what needs to be done to fix it – and how much it'll cost*
- Offer you a different product or level of cover*
- Or, cancel your agreement or product*

If we cancel your agreement or product at your first service, we'll refund you in full, unless

we've completed any work since you bought your agreement or product in which case you may have to pay cancellation charges – see cancellation charges table."

The above term is reasonably clearly written. However, it is found at page 26 of the policy document. And it does not state what will happen if the initial service is not carried out – only what will happen if the boiler fails that initial service. I do not consider this to be sufficiently prominent or clear therefore.

These documents are not clear enough to inform Mr K what would happen if the initial service visit was not carried out. After the letters sent in August 2015, no further correspondence was sent about the initial service visit. There were apparently requests to arrange a regular annual service instead. And the policy was renewed three times, with no further mention of the initial service visit and no indication that full cover might not be in place.

I have no reason to doubt the renewal documents were sent and I've seen no evidence that any specific request not to write to the property was ever made, so British Gas could not have been aware that there was any problem with writing to Mr K at his home address. But even if they were sent, none of the documents were clear enough, even if Mr K had assistance in reading them.

I agree with Mr U that on a matter of such significance to the cover, it would have been reasonable for British Gas to try other means of communication to arrange the initial service visit. British Gas has said that as Mr K couldn't speak English, this would not have made any difference. I do not accept this to be a reasonable defence. It made no such attempts and it should have done so. In any case, I note Mr U says the phone number associated with the policy was his. He was called by the engineer when the annual service visit was booked.

In addition to the above, I do not consider that British Gas has established that it would have made any difference to its decision to provide the cover, if the initial service visit had taken place in 2015.

There is evidence the boiler was serviced in 2014 and had continued to work, seemingly without problem (as no other claims were made) for almost four years before this claim was made.

The notes of British Gas's engineer say: "contract void no response to letter to service boiler. Hex [heat exchanger] split no asv [annual service visit] for 5 years".

British Gas also referred to the water in the system being orange indicating air in the system. But this does not tell me why British Gas thinks it would have found faults with the boiler if it had attended in 2015 and why it deems it reasonable to void the policy.

There is no evidence at all that the boiler would have failed an initial inspection visit in 2015. Given the above, I do not therefore agree that refusal of the claim and voidance of the policy was reasonable. It was not fair or reasonable for British Gas to renew the policy three times, knowing that the initial service visit had not taken place and then seek to rely on that fact to void the policy, with no evidence of any prejudice.

I now have to consider the effect this had on Mr K.

The claim was made on 5 February 2019 and British Gas didn't attend for two days. There is

no explanation about this delay. Mr K and his wife were both vulnerable and with no heating and hot water. An attendance should have been arranged for the same day or the next day at the latest.

Mr U says the refusal to deal with the claim meant Mr K and his wife were without heating and hot water for around two weeks. However British Gas attended on 7 February 2019 and the invoice for the new boiler was dated 9 February 2019. It seems to me therefore that Mr K and his wife were without heating and hot water for around three days longer than should have been necessary due to British Gas. And Mr K should not have had to find his own engineer to come and look at the boiler, when he had taken this cover so that he would not need to do so.

Mr U says BG stripped the boiler down and left it in a state that it could not be worked on by anyone else, so he had to replace it but that it could have been repaired. There is nothing from Mr U's engineer to confirm this.

British Gas would have had to pay for the replacement of the heat exchanger and repair of the other issues. I have no evidence of what that would have cost. Even if I accept the boiler had to be replaced because it had been left stripped down by British Gas, I do not consider it should reimburse the entire cost of the boiler. I have to take account of the fact the old boiler was over ten years old and there is benefit in having a new boiler. I also have to take account of the refund of premiums, which I consider to be a contribution to the cost of the new boiler.

Having taken everything into account, I consider the sum of £500 (in addition to the refund of premiums) to be appropriate to reflect the loss of expectation, the distress and inconvenience caused by the incorrect refusal of this claim and voidance of the policy, including being without heating and hot water for longer than should have been the case; and having to arrange and pay for the replacement of the boiler.

my provisional decision

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

- refund the premiums paid for the policy together with interest at 8% simple per annum, from the date each premium was paid to the date of reimbursement (if not already paid); and*
- pay £500 compensation for the distress and inconvenience caused by its handling of the matter."*

responses to my provisional decision

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

Mr U confirms he accepts my provisional decision and has not added anything further.

British Gas has also confirmed that it has nothing further to add. It has confirmed that it sent two cheques to Mr U in February 2019, one for £727.61 being the refund of premium and one for £108.21 being the interest and £50 compensation. Its records show that both cheques have been cashed.

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.

As neither party has provided any further information or evidence, I see no reason to change my provisional findings. I remain of the opinion that British Gas should not have voided the policy and should have dealt with the claim. I therefore also remain of the opinion that compensation of £500 is appropriate to reflect the distress and inconvenience caused by the handling of this claim. This is in addition to the £50 already paid for telling Mr U it would reinstate the policy.

British Gas has provided evidence that it has already refunded the premiums together with interest at our usual rate, and the £50 compensation, and that this has been cashed. The refund will remain as part of my decision but as it has already been paid, British Gas only therefore needs to pay the £500 compensation now.

my final decision

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

- refund the premiums paid for the policy together with interest at 8% simple per annum, from the date each premium was paid to the date of reimbursement (which I understand has already been paid); and
- pay £500 compensation for the distress and inconvenience caused by its handling of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U, on behalf of Mr K's estate, to accept or reject my decision before 20 August 2020.

Harriet McCarthy
ombudsman