

complaint

Mr H complains that British Gas Insurance Limited (BG) breached the conditions of his home emergency policy because it didn't identify damage to his boiler. This has led to the boiler being condemned (declared unsafe) by another provider.

All references to BG include their agents.

background

Mr H took out a home emergency policy with BG in 2010 and continued with this until 2018. Under his policy Mr H had annual services carried out and some repairs, including a service completed by BG on 5 November 2018.

Mr H moved home emergency providers on 19 November 2018 and on the initial visit, (on that day); the third party provider deemed the boiler to be unsafe and an *immediate danger* due to corrosion of the flue. The appliance was then removed and Mr H had a new boiler installed.

Mr H was unhappy about this and complained to BG.

BG said its work reports from the times it has serviced and repaired the boiler don't show any issues with a damaged flue or corrosion. But it said it had advised Mr H about the age and efficiency of the boiler and quoted him for a new one. According to BG the boiler went out of production in 1997 and the flue became obsolete in 2013.

BG agreed that the service it carried out on 5 November was below standard, although it says, the readings from the boiler showed no evidence of leakage or combustion. BG said signs of corrosion may have been evident on previous visits, but it is impossible to ascertain when the actual breach of the flue occurred as a result of this corrosion and how long it had taken to get to that stage. It offered a refund of the last year's premiums (£283.45) and an additional £100 for inconvenience.

Mr H didn't accept BG's offer. He said that he has paid BG since 2010 to service and maintain his boiler and ensure it was safe. He said while he had been advised of the age, availability of parts and efficiency of the boiler, BG hadn't told him that the boiler wasn't operational or was unsafe at any point. So he doesn't think there was any need to replace it; at least not until he was told it was unsafe to use. He feels BG has breached its contract with him by failing to identify any problems with the flue or corrosion.

Mr H then complained to us. He said he wanted a refund of the money he paid for the maintenance of his old boiler. He doesn't agree with BG that everything was safe as there were no symptoms of the breached flue identified on the call outs and work reports; he says he paid BG to ensure the boiler was safe and he doesn't think it did this.

Our investigator looked into this for Mr H and he thought that BG should pay Mr H an additional £150 in compensation for the distress and inconvenience suffered once the third party condemned the boiler. He didn't feel that BG should refund Mr H's premiums for previous years (other than the last one which it had offered to refund) because he thought the boiler was insured and the contract of insurance was carried out.

BG disagreed with our investigator because it felt it had already offered the right redress bearing in mind the age of the boiler. It said that although the engineers didn't advise of the corrosion it was difficult to say when it got to the state it did, and the removal of the flue by the new provider could have caused more damage than would have been evident at its visit.

Mr H also disagreed and asked for an ombudsman's decision. He accepted a return of all of his premiums wouldn't be right but thought some of the premiums should be returned. He said this was because he was told by an engineer that corrosion would have occurred over a number of years. He feels he was put at risk by BG and didn't get the level of service he paid for. He feels BG is missing the point by saying this wouldn't have been an issue if he'd replaced the boiler earlier. He says he relied on BG telling him the boiler was safe and operational.

As neither party agreed with the investigator, the case has been passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint and having done that I'm going to uphold it in part.

I've looked carefully at the policy and as our investigator has said, it doesn't cover installation of a new boiler, because Mr H's boiler was over 7 years old. So I think Mr H would've had to pay for a new boiler in any event.

From what I've seen, BG attended to complete the annual service every year from 2010. And I understand each time Mr H was advised that the boiler was safe and operational. I can also see that he was advised that a new boiler would be more efficient, and he was advised about the unavailability of some parts for his existing boiler. But I don't think because the boiler was old and not as efficient as a new one, it follows that it's necessarily unsafe. And, from what I've seen, at no point did BG tell Mr H his boiler was unsafe. So I don't think Mr H did anything wrong by not replacing his boiler while it was insured by BG.

I've seen the pictures Mr H has provided of the condemned boiler. I agree it's unlikely the corrosion will have occurred over the two weeks between BG and the new provider's visits. But it's not possible for me to say when it did occur. Mr H said an engineer told him it would've been happening for at least five years. But, other than what Mr H has said, I have no evidence to support that.

BG has accepted that the service carried out by their engineer on 5 November was below standard, although it does say that there was no evidence of any combustion leak. I understand Mr H's concern that it is unlikely a third party could condemn the boiler two weeks later without there being any evidence of this at the earlier visit by BG. So I think it's likely BG missed something at that appointment.

Part of BG's annual service involves checking the emissions coming from the boiler. I haven't seen any evidence that there were any concerns about this before the boiler was condemned. Without this evidence I don't think BG should refund Mr H his premiums for the years before 2018. But as I said above, it's likely that BG had missed something during the final service, on 5 November. For that reason I think its offer to refund Mr H his premiums for 2018 was fair and reasonable.

In terms of the inconvenience Mr H has suffered, I can only award this from time of the event being known about. I can't award for potential distress that Mr H could have suffered before he knew about the damaged boiler. But I think having the boiler classified as an *immediate danger* would have clearly been very distressing to Mr H and I think warrants more than the £100 offered by BG. In any event this appears to have been offered as compensation for the delay in responding to his complaint.

So I think BG should pay Mr H some compensation for the distress caused by discovering the boiler was condemned just after BG had told him it was safe. I can see how this would have worried Mr H and how it could have caused him to doubt what he had been told previously by BG. I think BG should pay Mr H an additional £150 for this.

I understand that BG has sent Mr H two cheques, one for £383.45 (to cover the refund of one year's premiums (£283.45) and £100 compensation) and another for £100, making £483.45 in total, which I understand Mr H has cashed. So BG should pay Mr H another £50 to make £533.45 in total.

my final decision

For the reasons above, I'm upholding Mr H's complaint in part. In addition to what it has already paid, British Gas Insurance Limited must pay Mr H an additional £50 for the distress and inconvenience it caused him, to bring the total to £533.45 (£283.45 for the premium and £250 compensation).

British Gas Insurance Limited must pay the £50 within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 May 2019.

Clare Barker
ombudsman

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