

## **complaint**

Mr P and his company complain that British Gas Insurance Limited gave poor service under a home emergency insurance policy.

## **background**

The Financial Ombudsman Service deals with complaints about regulated activities and ancillary activities carried on by regulated financial firms. Where I refer to British Gas, I refer to the insurance company of that name and I include its engineers and others for whose actions I hold it responsible.

Mr P or his company own a property that is let to tenants. There was British Gas insurance cover for the central heating boiler. It didn't cover a power-flush. And there was an exclusion relating to damage caused by sludge.

The British Gas agreement also related to an annual landlord's safety inspection and certificate.

In August 2017 Mr P called for help with the boiler at the property. But British Gas didn't fix it. British Gas recommended that Mr P pay for a power flush, so he got a third party company to do a flush.

He complained that British Gas had said the third party company hadn't done the flush properly, so it still wouldn't replace the boiler's heat exchanger. Mr P paid for an independent report that said the system water was clean.

Mr P sent a letter of complaint dated 25 October 2017. He complained that British Gas should pay him £624.00 for the repair of the heat exchanger plus £136.50 for the independent report, a total of £760.50.

Mr P's letter also complained that British Gas had for many years overlooked a safety hazard – that the exhaust flue of the boiler had been near an opening window.

British Gas said we had no jurisdiction to deal with the complaint. An investigator recommended that we did have jurisdiction to deal with the complaint

An ombudsman decided that we do have jurisdiction over how British Gas has responded to a claim made under a regulated insurance policy. As regards the potential safety issue with the flue, the ombudsman couldn't see from the file whether this was part of the insurance cover. She said that if it was then this also relates to a regulated activity and would also be in our jurisdiction.

## *our investigator's opinion*

Our investigator recommended that the complaint should be upheld in part. She thought that the third party had done the power flush correctly. She recommended that British Gas should reimburse Mr P:

1. the cost of the independent report; and
2. the cost British Gas would've charged to get the heat exchanger replaced.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr P and to British Gas on 19 March 2019. I summarise my findings:

I'd seen many homes with a flue near an opening window. Mr P and his company had fallen short of showing me a regulation that prohibits that – or from what date.

In any event, Mr P and his company had fallen short of showing that they suffered any detriment. There's no evidence that Mr P's tenants were harmed. And I don't think British Gas was obliged to pay to move the flue. So if it had to be moved, Mr P or his company would have to pay for it.

I found that sludge had damaged the heat exchanger before the flush, because there had been years without a flush before the heat exchanger was found to need replacement.

Therefore I didn't find that British Gas treated Mr P or his company unfairly by declining to clean, repair or replace the heat exchanger.

But I didn't think British Gas communicated as clearly as it should've done about the effect of its policy terms. And I think this caused Mr P and his company to waste £136.50 on the report.

Subject to any further information from Mr P or from British Gas, my provisional decision was that I was minded to uphold this complaint. I intended to direct British Gas Insurance Limited to pay Mr P or his company:

1. £136.50 in reimbursement of the plumbing company's invoice of 5 September 2017;
2. simple interest on that amount at the yearly rate of 8% from that date until the date of reimbursement. If British Gas considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr P disagrees with the provisional decision. He says, in summary, that:

- all boiler manuals clearly state that the flue must be at least 300 mm away from any window opening in order that poisonous gases should not blow back into the house.
- Lots of firms know how to do a power flush the same way as British Gas does.
- A power flush cleans everything – the heat exchanger and the plate to plate heat exchanger.

British Gas hasn't responded to the provisional decision.

## my findings

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

From the British Gas records, I think the boiler at the property was an old one – dating from about 1989.

### The flue

There is a question whether we have jurisdiction to deal with the complaint insofar as it arises under the annual landlord's safety inspection and certificate. But I don't think that makes any difference in this case.

I say that because the complaint about the safety inspection is that British Gas had for many years overlooked a safety hazard. I've looked carefully at the British Gas work history. And British Gas had made visits to do repairs under the insurance as well as the annual landlord's safety inspection and certificate.

So whether or not I have jurisdiction to deal with that complaint insofar as it relates to what British Gas should've seen on the safety inspection, I have jurisdiction to deal with it insofar as it relates to what it should've seen on the repair visits.

I've seen many homes with a flue near an opening window. Mr P and his company have fallen short of showing me a regulation that prohibits that – or from what date. And he hasn't provided the manual for his old boiler or any other boiler.

In any event, Mr P and his company have fallen short of showing that they suffered any detriment. There's no evidence that Mr P's tenants were harmed. And I don't think British Gas was obliged to pay to move the flue. So if it had to be moved, Mr P or his company would have to pay for it.

### The boiler

From what British Gas has said, I think the boiler had two heat exchangers. There was a main heat exchanger and a plate-to-plate heat exchanger for domestic hot water.

In July 2011 the British Gas work history includes an entry as follows:

*"CODE 5 CLEAN OUT HEAT EX. POWERFLUSH REQ. CHARGE NEXT TIME"*

From that note I find it likely that British Gas had told Mr P his system required a power flush. I haven't seen any evidence that Mr P arranged a flush at any time in the six years from July 2011.

The British Gas policy terms dated October 2015 and the British Gas "new" policy terms dated February 2017 each said that the following wasn't covered:

*"Damage caused by limescale, **sludge** or other debris – if we've told you before that you need to carry out **repairs**, improvements or a **British Gas Powerflush**, or a similar process, but you haven't done so"*

I think that means that British Gas won't cover repairs to damage caused by sludge in the period after British Gas has told the policyholder he needs a power flush but before he gets a flush done.

The new British Gas policy terms included a condition as follows:

*"If someone else carries out a powerflush for you, you'll need to show us the receipt before we carry out any more **repairs or replacement** work for damage caused by **sludge**."*

I don't think that means that British Gas will carry out repairs to damage caused by sludge in the period after British Gas has told the policyholder he needs a power flush but before he gets a flush done.

The work history also shows that British Gas cleaned the plate-to-plate heat exchanger in July 2017. It also shows that British Gas sent Mr P a quote for a power flush. So I find it likely that it had again told Mr P his system required a power flush.

When Mr P called for help in August 2017, British Gas fixed a leak. Its work history says that Mr P was getting a power flush from a third party.

Mr P has sent us an invoice from the plumbing company which did the independent report. It is dated 5 September 2017. It is for £113.75 plus VAT a total of £136.50. On the same day, the company reported as follows:

*"Looks like power flush is ok  
water is clean  
hot water runs warm - cold. - Suspect domestic heat exchanger needs replacing.  
Boiler very old, flue too near openable window  
I am getting costs for the part and will advise you  
I enclose our invoice - please confirm receipt"*

From that, I find it likely that the plumbing company was getting information about the cost for the only spare part it had mentioned - which I think was the domestic hot water or plate-to-plate heat exchanger.

Mr P has sent us a second invoice from the plumbing company. But it isn't an invoice for a heat exchanger. The second invoice is dated 18 September 2017. It was for £2,055.00 plus VAT, a total of £2,466.00. It was for the installation of a new boiler at the property.

Mr P sent us a copy of his letter to British Gas dated 25 October 2017. His letter said he enclosed a copy of the flush company's invoice. British Gas hasn't disputed that, so I find that he did. I haven't seen the invoice myself.

Mr P's letter also included the following:

*"we would like to claim from you the repair of the heat exchanger being £624.00 plus the cost of [independent company] charges of £136.50 being a total of £760.50"*

From that, I find it likely that the plumbing company had quoted £624.00 as the cost of a plate-to-plate heat exchanger.

Mr P must've known that – rather than paying for a heat exchanger - he'd paid for a new boiler.

I don't think the point is whether or not the third party flush had worked. I think the point is whether sludge had damaged the heat exchanger before the flush. I find that it had, because there had been years without a flush before the heat exchanger was found to need replacement.

Therefore I don't find that British Gas treated Mr P or his company unfairly by declining to clean, repair or replace the heat exchanger.

In any event there's no evidence that Mr P or his company paid £624.00 or any other sum to repair or replace the heat exchanger. Rather, Mr P had decided the time had come for a new boiler.

So I don't find it fair and reasonable to direct British Gas to pay Mr P or his company compensation for the old boiler, its heat exchanger or its flue.

But I don't think British Gas communicated as clearly as it should've done about the effect of its policy terms. And I think this caused Mr P and his company to waste £136.50 on the report.

So I find it fair and reasonable to direct British Gas to reimburse Mr P or his company. And – as one of them has been out of pocket since 5 September 2017 – I will direct British Gas to add interest at our usual rate.

### **my final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct British Gas Insurance Limited to pay Mr P or his company:

1. £136.50 in reimbursement of the plumbing company's invoice of 5 September 2017;
2. simple interest on that amount at the yearly rate of 8% from that date until the date of reimbursement. If British Gas considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and his company to accept or reject my decision before 4 May 2019.

Christopher Gilbert  
**ombudsman**