

complaint

Mrs L complains that British Gas Insurance Limited ("BGI") caused damage to her home when it came out to make repairs under her home emergency policy.

background

Mrs L had a new water tank installed in her loft. The tank ruptured, and BGI's engineer attended to make repairs. But while he was in the loft, he dropped a tool, which fell through the ceiling below. Mrs L said that meant that she had to make a second claim on her home insurance. She said that the ceiling could otherwise have been dried out, but because of the tool falling through it, it had to be replaced. And there was some presence of asbestos in the ceiling, which had been spread into the room below because of the damage BGI did.

BGI said the tool only fell through the ceiling because it was so damp. It said that this was consequential damage, which it wouldn't accept responsibility for. BGI said it would pay Mrs L £30 for the delay in responding to her complaint, but it wouldn't pay anything else.

At first, our investigator didn't uphold this complaint. She said that the damage had already been done to the ceiling, and the asbestos had been spread into the room, because of the leak. So she didn't think that BGI had to pay anything for the repairs.

Mrs L didn't agree with that. A family member contacted us on her behalf. She said that Mrs L had been using the room where the tool went through the ceiling, before the engineer caused that additional damage. The water damage was mainly in a different area of the house, and this ceiling was expected to just dry out. Mrs L thought that the "tool" was actually a boot mark, but she said that really, that didn't matter, she just wanted the repairs done. And it was this penetration of the ceiling that spread the asbestos into the room, not the leak. That meant that clothing and furniture had to be thrown away, as well as some personal items which couldn't be replaced.

Mrs L sent us the assessments made by her home insurers, which included an assessment before the ceiling was damaged by BGI, and one after.

Our investigator considered this new evidence, and she changed her mind. She said the engineer that BGI sent should've taken more care when working with a damp ceiling. She thought that it was this hole in the ceiling which caused the asbestos to spread, meaning that Mrs L had had to throw away a number of personal items.

Our investigator thought it was BGI's fault that Mrs L had to make a second insurance claim. She thought BGI should pay the two £50 excesses, that Mrs L had to pay for her second buildings and contents claims, and she thought it should pay the difference in her premiums. She also thought it should pay £500 in compensation for the distress and inconvenience caused to Mrs L.

Mrs L didn't agree. She thought BGI should also pay £450 for a mattress that her insurers had refused to replace. Mrs L's home insurers had said the mattress could be cleaned, but Mrs L didn't feel comfortable sleeping on it any more.

BGI didn't agree either. It thought the tape measure which fell was only able to penetrate the ceiling because it was damp. So it thought it was the original damage from the leak which caused the problem, not the dropped tape measure. BGI thought the ceiling damage and the

original leak should all have been included in one property claim. And it said a check for asbestos had already been recommended, but the likelihood of contamination was negligible. And it thought £500 was too much compensation, for minor damage caused by a tape measure falling through a ceiling.

Because neither side had agreed with our investigator, this case was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- I'd looked carefully at the evidence, including the report of damage on Mrs L's home. And I understood that before the ceiling in this room was damaged, it was expected to just dry. I thought that was also consistent with what Mrs L told her home insurer when she reported the damage, which she had first noticed in the downstairs area of her property, not the bedroom.
- So, I thought that before BGI's engineer unfortunately dropped a tool onto the damp ceiling, and that tool fell through, there was no need to replace that ceiling. There was also no need to throw away any personal items in the room below.
- BGI said it didn't cause this problem. It thought the real cause wasn't the dropped tool, it was the leak. I accepted it was more likely that this tool would fall through, because of the condition of the ceiling. But, like our investigator, I thought the engineer knew that the ceiling was damp, and so also knew he needed to be careful. I also noted that if this tool hadn't been dropped, the ceiling would just have dried. Because it did drop, the ceiling had to be repaired.
- For these reasons, I said the cause of the damage to Mrs L's ceiling, and of her second home insurance claim, was the falling tape measure, not the pre-existing damp.
- Our investigator said BGI should pay the two £50 excesses, that Mrs L had to pay for her second buildings and contents claims. As I'd decided the second claims happened because of the falling tape measure, I thought that was right. Mrs L wouldn't have had to pay that if it hadn't been for that damage.
- Our investigator also thought BGI should pay the difference in Mrs L's home insurance premiums. I thought that if Mrs L's home insurance premiums had increased as a result of this second claim, then BGI should pay that, for the same reason I'd set out above. But it shouldn't have to pay any increase that happened because of the first claim.
- It wasn't clear, when this case came to me, whether Mrs L had needed to pay higher premiums, or whether she would do so in the future. So I asked Mrs L about that.
- Mrs L got her home insurer to write explaining how much her premiums had gone up, as a result of the second claim only. It said this cost her £48.44 more this year. And it expected that the second claim would continue to affect her premiums for the next renewal after this one. I thought it was reasonable to assume that this effect would be roughly the same amount next year. So I thought that BGI should pay £100 towards the increased costs of home insurance for Mrs L.

- Our investigator also thought that BGI should pay £500 in compensation for the distress and inconvenience caused to Mrs L. BGI thought that was too much money. But I didn't agree. Firstly, I thought that Mrs L had previously been able to use this room. It was little affected by the leak, and was expected to just dry out. Because of the damage BGI caused, she had to have ceiling repairs in that room. Those may have been needed elsewhere in the property anyway, but they weren't otherwise needed here.
- I also noted that Mrs L had personal items in the room, which had to be thrown away. I expected her home insurer would compensate her for the replacement cost. But Mrs L explained to us the sentimental value of some of the items, which couldn't be replaced.
- Taking account of all of the above, I thought that a payment of £500 in compensation was fair and reasonable in this case.
- Mrs L also wanted us to ask BGI to pay for a new mattress, because the old one was damaged, and she didn't want to use it again. But I thought that if Mrs L's home insurer said the mattress could be cleaned and returned to an acceptable standard, then it wouldn't be fair for me to expect BGI to replace it for her. I understood why Mrs L didn't want to sleep on it any more, but I thought that was her choice in this instance. So I didn't think BGI had to pay for that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Mrs L got in touch to agree with my provisional decision, and to set out the relevant events for us. BGI replied to disagree.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mrs L described the events after the leak. She said the builders had already been in to her property to assess the damage and provide a report after their inspections. The loss adjuster visited later, which happened to be the same day that BGI's engineer was there to fit a new tank. The loss adjuster had told Mrs L that ceiling repairs were needed in one room only, the box room, and the ceiling in the bedroom she was using should just dry out. But then the tool had fallen, and the ceiling in the bedroom she was using did need to be repaired. So a separate claim had to be made.

That description fits with the evidence I've seen in this case. I continue to think that Mrs L had to make a second claim on her insurance, because of what BGI did.

BGI has written to our service a number of times about this case. It said that it wanted to see details of the premium increase, which we've shared with it.

BGI said for it to investigate further, it would require something in writing from Mrs L's home insurer to show that the whole ceiling needed to be repaired, the dates of each of the two claims and confirmation of the work carried out. BGI thought that proof of repairs to the whole ceiling would show whether the ceiling needed to be replaced before the tool fell. If the tool had caused the problem, then it would expect a spot repair would've been sufficient.

BGI also said it wouldn't be fair to make it pay the excess for the second claim and the increase to future home insurance premiums. Mrs L might not end up paying these amounts, if her home insurer made a counter claim against BGI. And BGI said Mrs L could change insurers, and might find that the claim does not impact her as much, or at all with other insurers. BGI thought I was suggesting it should pay for something that hadn't happened and may never happen, if a counter claim was successful or if Mrs L changed insurer.

I'd like to start by setting out again that I think that the cause of the second home insurance claim that Mrs L made was a dropped tape measure. I think there's good evidence that the ceiling in Mrs L's bedroom was expected to just dry out, before the tape measure was dropped, but that it had to be repaired after the tape measure dropped.

I don't know whether the ceiling had a patch repair, or was totally replaced. But, as I've explained to BGI, I just don't think the extent of repair work which had to be done makes a difference to my considerations. I don't agree that the extent of the repair required, after the tape measure fell, could be used to prove whether or not Mrs L's home insurer was wrong to say that the ceiling would've dried if a tape measure hadn't been dropped through it.

Whether the home insurer needed to replace the whole ceiling, or just do a patch repair, this was treated as a separate home insurance claim. BGI's engineer's negligence caused Mrs L to pay two £50 excesses that she otherwise wouldn't have paid.

It's my view that Mrs L has also provided good evidence of the increased costs to her, and has shown that those are from the second claim only. As I understand it, she's already paid just under £50 in increased premium.

If Mrs L's home insurer is now seeking to counter claim for the cost of the claim resulting from the dropped tool, it could try to claim back the policy excesses for Mrs L. But it doesn't have to. That doesn't automatically happen. And I note that BGI told us around a month ago that it thought a counter claim had been received. If the home insurer was trying to recover Mrs L's costs, then I would have expected BGI to alert us to that. It hasn't done so. In the absence of evidence that Mrs L's insurer is trying to recover the excesses that she's paid, I don't think that I should assume both that it's going to try to do that, and that it will succeed. I think it's reasonable to tell BGI to pay Mrs L for the two excesses.

BGI said it wouldn't offer to cover those excesses, because it thought that would be an admission of liability for the second claim. I understand why concerns around a counter claim may have affected BGI's position on this complaint. But my decision is binding on BGI if Mrs L accepts it. This isn't an admission by BGI.

I also don't think I can assume that Mrs L's insurer will be successful in any counter claim, and then will also return some of the premium she's already paid. And we do know that Mrs L has already paid that money. So I think it's fair to ask BGI to pay that now.

It's possible that Mrs L's next premium increase, for 2020, may not materialise, if her home insurer succeeds in its counter claim against BGI, or if she moves to a different insurer. But my understanding is that, at the moment, Mrs L has a lower no claims discount than would be the case if her second claim hadn't been necessary. And I don't think it would be fair to refuse to compensate Mrs L for this now, because there's a possibility that this might change in future. So I think it's reasonable to say that BGI should pay a further £50, on the basis that Mrs L currently has a reduced no claims discount due to BGI's negligence.

BGI also said that it thought a payment of £500 in compensation was disproportionate. It said that the cause of the inconvenience to Mrs L was the leak. I don't agree with that. I think that Mrs L was still able to use her bedroom before the tape measure fell through the ceiling, and if it hadn't fallen, she would have been able to continue to use that room. Because it fell, she was put to a considerable amount of inconvenience, on top of the existing inconvenience of the first claim caused by the water leak.

Mrs L also had to throw away some personal possessions which were damaged when the tape measure went through the ceiling. Some of those cannot be replaced. She's told us of the impact that this had on her. And I also note that Mrs L hasn't been able to deal with this complaint to us herself, until very recently. She said she's been too upset.

I still think that a payment of £500, to make up for the additional distress and inconvenience caused to Mrs L by BGI's engineer's negligence, provides a fair and reasonable resolution to this part of her complaint.

I'll now make the award I proposed earlier.

my final decision

My final decision is that British Gas Insurance Limited must pay Mrs L £200 towards the extra costs she's incurred for home insurance. And it should pay Mrs L £500 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 31 August 2019.

Esther Absalom-Gough
ombudsman