

complaint

Mr H is unhappy with how British Gas Insurance Limited dealt with his 'Homecare' insurance claim.

provisional decision

I issued my provisional decision on this case in January 2020, which set out the background to the complaint and what I was minded to decide:

"background

In May 2018, Mr H found his overflow pipe was dripping. He notified a claim on his British Gas "Homecare Four" policy – which includes cover for boiler, central heating and plumbing issues. British Gas fixed the leak by replacing a ball valve.

The following month, Mr H found another leak (this time in his garage) so made a new claim. A British Gas engineer attended on 19 June 2018. Mr H says he had to wait three hours for the appointment. The engineer turned off his water supply – but didn't fix the problem. Instead, he arranged a further appointment with a company British Gas uses for plumbing claims – which I'll refer to as 'D'.

D came the following day (20 June 2018) – but advised that the issue should in fact be dealt with by British Gas directly. They did replace a ball valve during the visit. Mr H says this was the ball valve British Gas installed during the May 2018 claim – which D told him was faulty. He also says there was another long wait for D to arrive.

A British Gas appointment was meant to be scheduled for 2pm-6pm on the 20th – but it was missed. An engineer attended later that evening instead. Mr H says this engineer told him the overflow pipe was damaged because the expansion tank was overflowing. And this was happening because there was a pin-hole in the coil of his hot-water cylinder. The engineer said he wouldn't be able to fix the hole or get a replacement coil – which Mr H accepts, based on his enquiries with the manufacturer. He says the engineer then suggested he get a 'combi' boiler, which doesn't require a separate water cylinder. So he bought one from British Gas. This outlay wasn't covered by his insurance policy.

Mr H then complained to British Gas about the handling of his insurance claim. He was unhappy about the wait for appointments; the missed appointment; and the confusion between British Gas and D. He thought British Gas should have replaced his water cylinder – as he'd contacted the manufacturer and they'd told him this would have been possible. As British Gas didn't do this, he thought it should contribute towards his new boiler. He also queried why British Gas told him it had cancelled his cover, then sent him notices saying he'd be charged an additional £2.04 per year for cover on his new boiler. Although this charge wasn't actually applied, it kept on showing up incorrectly on his statements.

British Gas investigated Mr H's concerns and admitted there had been some problems with the handling of his claim. It offered £170 compensation – but didn't agree to contribute towards the boiler.

Dissatisfied with this response, Mr H referred the matter to our service. Our investigator agreed the claim should have been handled better. He recommended an additional £80 compensation, bringing the total up to £250. But he didn't think Mr H was eligible for a replacement boiler under the terms and conditions of the policy – as the fault related to the cylinder. And he thought Mr H was only entitled to replacements of parts of this cylinder

Both sides disagreed with the investigator's view. British Gas queried why the compensation had been increased. And Mr H raised some new points. He said British Gas had installed and maintained his 'faulty' cylinder, so should have replaced it. He also submitted that he was unhappy his cover had been cancelled following the claim. He queried whether the repair should have been covered under his warranty; and why he'd been told that the issue had been referred to 'independent arbitration' when it had in fact been reviewed by a 'local area manager'. The case has now been passed to me so I can decide how it should be resolved.

my provisional findings

jurisdiction

Before explaining my proposed outcome, I want to clarify a point about our jurisdiction. My decision can only consider issues in relation to the insurance policy Mr H holds with British Gas Insurance Limited. I can't comment on what should have been covered under any warranty Mr H holds with another company within the British Gas group. This is because we're only allowed to look at complaints under our compulsory jurisdiction if they're about FCA-authorized 'firms' carrying out either 'regulated activities' or other activities specified in the Financial Conduct Authority Handbook at DISP Rule 2.3.1. So, 'effecting and performing a contract of insurance' are regulated financial services; but maintaining or servicing boilers (etc) aren't.

Accordingly, we can only consider complaints about 'warranties' where it's established that they effectively constitute a contract of insurance – as opposed to a 'service agreement'. I also can't see that Mr H attempted to seek a repair/replacement under any warranty – or that British Gas has investigated a complaint about this. I wanted to address this before explaining my decision as I can't see that we've responded to Mr H's query about his warranty.

the merits

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded to overturn the outcome our investigator reached.

First, I've considered whether Mr H's insurance policy should have covered more – and if it would therefore be fair to expect British Gas to contribute to his new boiler. Mr H says the British Gas engineer told him the cause of the leak was a pin-hole in the coil of his hot-water cylinder. I've found his recollections of the claim to be detailed and plausible. British Gas also acknowledges that this explanation is consistent with its records. It says a pin-hole in the heating coil 'would cause the unit to overflow and this may of [sic] shown up an issue with the overflow pipe to outside'. On balance, I consider Mr H's explanation likely to be correct.

Under the 'central heating' section of the policy, Mr H is covered for repairs to his cylinder. 'Repairs' are described as a fix to a system/appliance '...following an individual fault or breakdown...'. This is a broad definition that would cover many scenarios. Here, I'm satisfied it's reasonable to describe the hole in the coil as an 'individual fault' and/or 'breakdown'. There's no requirement for the insured peril to occur suddenly or due to some sort of external force; and there's no exclusion for gradually-operating causes. I have thought about whether British Gas didn't intend to cover this sort of scenario. But if that were the case, it would have needed to make this very clear in the policy terms and conditions – and highlight such a limitation to customers at the point of sale. As currently drafted, the contract indicates that this sort of event is covered. If, on the other hand, the relevant terms were deemed to be unclear or ambiguous, then the interpretation most favourable to the consumer must prevail because he didn't draft them – see, for example, the Consumer Rights Act 2015. Either way, it seems to me that Mr H couldn't reasonably have realised at the points of sale or claim that loss or damage resulting from this sort of event wasn't covered.

*The investigator thought the coil was a part of the cylinder – so it wouldn't be fair to expect British Gas to replace the whole thing. The policy does contain a 'spare parts' term which allows it to cancel the cover if it can't get the parts it needs. But I don't consider that relevant here. It's my understanding that the only way to 'repair' a fault with the coil is to replace the whole cylinder. This isn't a unique feature of the model Mr H had; I understand this is a common feature of cylinders. So I don't think it would be reasonable to treat the coil as a separate 'part' under the policy. As 'Part' isn't defined in the terms and conditions, the normal, everyday understanding of the word applies – i.e. a separate piece of something. But the coil couldn't be separated from the cylinder. And the policy specifies that it will cover (my emphasis) 'a replacement of **parts of your central heating** if we can't repair them'. I therefore consider it reasonable to treat the cylinder as a part of the insured central heating which couldn't be repaired and was therefore eligible for replacement.*

There's nothing to show British Gas considered or put forward the option of replacing Mr H's cylinder. Instead, it advised him to buy a new combi boiler (which he got from British Gas) at his own expense. This purchase wasn't covered by his policy/claim. That's because there was no identified fault with the boiler – and upgrading a boiler would usually be regarded as a planned capital expenditure or general maintenance, so not a fortuitous, insurable risk. Additionally, due to its age, the policy would only cover its replacement in limited circumstances involving a fire/explosion.

As I've concluded that not indemnifying the broken cylinder was an omission on British Gas's part, I've considered the impact on Mr H. I'm conscious that, according to its records, his old boiler was installed in 2000. If the cylinder had been replaced, he would've been left with the old boiler – which, given its age, was likely towards the end of its lifespan. So Mr H may still have decided to buy a new combi boiler rather than pursuing the claim. But British Gas's error meant he couldn't make an informed decision about this – as he didn't know he had the option of replacing the cylinder under his policy. Given that he's repeatedly queried why it didn't offer him a replacement cylinder, I consider it likely that his position has been materially affected by British Gas's error.

However, I'm also conscious that—setting aside Mr H's costs—the new boiler he bought likely put him in a better position that he'd be in if the claim had been met. The functionality and life of his new boiler system is superior to his old system – even with a new cylinder. So I wouldn't expect British Gas to fully cover what he paid for the boiler. In the circumstances, I've decided the fair and reasonable solution is that it should pay Mr H the amount it would have spent—including parts and labour—replacing his cylinder had he been given the information/freedom to claim rather than upgrade. That means Mr H will receive the same value he was entitled to under the policy. But, as the new boiler probably leaves him in a better position in the long term, I don't think it would be fair for British Gas to be responsible for any additional costs he incurred.

Next, I've looked at the handling of the claim. It's true that an appointment was missed. And I do consider there to be some failings in how British Gas communicated with Mr H. For example, it's not clear why the claim was passed between British Gas and D. This was frustrating and inconvenient for Mr H. Particularly as he was left without water – at a time when I understand he and his wife were caring for their young grandchild. I appreciate that British Gas remedied the error/delay quickly, as the referrals between its own engineers and D only occurred across two days. But I'm not persuaded that it's fully appreciated the frustration and upset this caused Mr H considering his circumstances at the time.

I know Mr H was confused about British Gas cancelling his cover. However, as he got a new boiler, his cover would always have needed amending. So I'm not persuaded this in itself was an error. British Gas does admit that an 'additional cost' was wrongly mentioned on the paperwork it sent Mr H about his new cover. I haven't found anything which persuades me he actually incurred any incorrect costs. But I appreciate that the miscommunication caused him confusion and concern and added to his general frustration about the claim – which I've ultimately concluded that British Gas was incorrect not to indemnify.

I also appreciate Mr H's frustration around his May 2018 claim, which seems similar to the one he made the following month. On the evidence, I can't conclude that the pin-hole was the likely cause of this earlier claim – and that British Gas should have realised this. I do think the fact the ball valve needed replacing one month later suggests the repair wasn't satisfactory. This was remedied during the June 2018 claim, as the (likely faulty) ball valve was then replaced.

Mr H has also queried why British Gas told him the issue had been referred to independent arbitration when it had only been seen by a local area manager. This appears to refer to the terminology British Gas used when looking into his complaint. I appreciate why the phrasing may have caused some confusion. But I'm not persuaded this adversely affected his complaint. Many financial businesses use dedicated teams to investigate and respond to complaints directly before giving customers the option of referring the matter to our service. This often leads to complaints being resolved efficiently and with agreement from both sides.

There will always be a spectrum of what's fair when awarding compensation for non-financial impact. Our investigator recommended a further £80 compensation on top of the £170 British Gas had previously offered – bringing the total to £250. I do think this is towards the higher end of what I'd consider fair. However, taking into account what I've said above—and the fact that Mr H has had to pursue the matter so far and for so long in order to get a fair remedy—I'm minded not to interfere with this award. Ultimately, I'm satisfied that £250 compensation does fairly reflect the distress and inconvenience Mr H suffered due to British Gas's errors – and is in line with awards we've previously made in similar cases.

my provisional decision

For the reasons given above, my provisional decision is that British Gas Insurance Limited should pay Mr H the net amount it would have spent on parts and labour in replacing his cylinder. 8% simple interest per year should be added to this amount from the date Mr H paid for his new boiler to the date of settlement (less any tax properly deductible).

British Gas should also pay Mr H £250 compensation (less any compensation it's already paid in relation this complaint) if it hasn't already done so. This should be paid within 28 days of being notified by us of Mr H's acceptance of any final decision, failing which interest will accrue at the simple rate of 8% a year from the date of decision to the date of settlement (less any tax properly deductible)."

I invited both parties to provide further comments/evidence before I made my final decision. Mr H said he thought my findings were fair – but he would find it helpful if my final decision confirmed the exact amount British Gas should pay, to avoid any further dispute. British Gas disagreed with my provisional findings. It confirmed that the replacement cylinder *would* have been covered under the policy. But it said it provided the options to Mr H and he decided to get a new combi boiler. So, there would have been no benefit in replacing his cylinder. It therefore doesn't think it's fair that it should pay for work which never took place and which it considers unnecessary.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same conclusion as I did in my provisional decision.

British Gas says it set out Mr H's options and he decided to get a new, combi boiler. But I've already explained in my provisional decision why I'm not convinced that Mr H was given the option of replacing his cylinder under his policy. And British Gas's response doesn't persuade me otherwise. So I haven't amended my conclusion that Mr H wasn't given the option of claiming for a replacement cylinder – which British Gas has now confirmed that he would have been entitled to under the terms of his policy.

When our service establishes that a business has made a mistake, we aim to put the complainant back in the position they'd be in but for that error. As explained in my provisional decision, "*Given that [Mr H has] repeatedly queried why it didn't offer him a replacement cylinder, I consider it likely that his position has been materially affected by British Gas's error.*" So I'm still satisfied that directing British Gas to pay Mr H the amount it would have spent replacing his cylinder under his policy is a fair remedy. This award doesn't reimburse Mr H for his actual costs; it compensates him for the value he was entitled to under his policy but didn't receive due to British Gas's errors.

I've said British Gas should pay the net amount it would have spent replacing the cylinder under the policy. I understand why Mr H wants my decision to specify exactly how much it should pay for this. But British Gas is best placed to perform this calculation. For the sake of managing expectations, I consider it worth noting that it may have contracts/arrangements in place which mean it can procure and install a cylinder for less than Mr H would be able to. Additionally, if an excess applies, it will be entitled to deduct this from the overall cost – as Mr H, rather than British Gas, would have paid this amount if the claim went ahead.

I'd reassure Mr H that, if he accepts my decision, British Gas will be legally bound by the directions I've given over what it should pay. And I'd expect it to provide him with a breakdown of how it's calculated this amount – based on how much it could have procured and installed a cylinder for at the time of his claim.

So, for the reasons set out above, my final decision is the same as my provisional decision.

my final decision

For the reasons given above, my final decision is that British Gas Insurance Limited should pay Mr H the net amount it would have spent on parts and labour in replacing his cylinder. 8% simple interest per year should be added to this amount from the date Mr H paid for his new boiler to the date of settlement (less any tax properly deductible). It should also provide him with a breakdown of how it's calculated this amount.

British Gas should also pay Mr H £250 compensation, less any compensation it's already paid in relation this complaint. This sum should be paid within 28 days of being notified by us of Mr H's acceptance of the final decision, failing which interest will accrue at the simple rate of 8% a year from the date of decision to the date of settlement (less any tax properly deductible).

If Mr H accepts this decision, it becomes legally binding on both parties. So he wouldn't then be able to take legal action in relation to any issues covered in this case. If he rejects the decision, whilst that won't affect his legal rights, British Gas won't be bound my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 April 2020

Rachel Loughlin
Ombudsman