

complaint

Mr B complains that British Gas Services Limited has declined his claim under his home emergency cover.

I'll refer to British Gas Services Limited in this decision also with reference to its agents.

background

Mr B has explained that around 20 years ago, he had a blocked rainwater drain leading to a soakaway. He says that engineers from his local council lifted the covering paving stone and said that the soakaway couldn't be cleared; and he was therefore instructed to install and extend the pipework below ground and divert the flow into the sewer system, even though it is not normal practice to divert surface water into the main sewer system.

Mr B emphasises that the council is responsible for all drainage, and the review, approval and subsequent supervision of all new building works in the area; and he can only assume it was fully familiar with whatever regulations were in place at the time.

Mr B contacted British Gas Services about his home emergency policy and a new blockage in his piping system in 2018.

British Gas Services decided that this blockage isn't covered under the policy. It said that the pipes used were the wrong type and wrong size, and it pointed to the pre-existing faults section of the policy's general exclusions.

Mr B disagrees and he referred his complaint here. Our investigator recommended that his complaint be upheld. She said that drainage standards have changed over the years, and she didn't think it was fair or reasonable for British Gas Services to apply current standards in drainage to assess whether there was a pre-existing fault. She said that without further information to show that the pipework didn't meet the standards in place at the time it was installed, British Gas Services should reassess Mr B's claim, without relying on the pre-existing faults general exclusions, subject to the remaining policy terms and conditions.

British Gas Services disagrees with our investigator's recommendation. It says that it may have said Mr B's pipework doesn't meet current standards, but it's the type of pipe used that is the issue; when it visited Mr B's property, it quickly established that an incorrect pipe had been installed – a downpipe for guttering, unsuitable for underground work. It also says that it simply isn't able to use any equipment to remove the blockage, as the pipe would break.

Mr B's complaint was passed to me for a decision. I sent Mr B and British Gas Services my provisional decision on 19 September 2018 explaining why I was intending to uphold Mr B's complaint and to direct British Gas Services to accept and settle the claim. I said that before I made my final decision I'd consider anything else anyone wanted to give me.

Mr B has responded and says I'm intending to direct British Gas Services to accept and settle the claim; the word 'settle' suggests he could be involved with further negotiations with British Gas Services about what it will and will not do, in which case he could end up referring the dispute back to this service. He would instead prefer a direction that British Gas Services restores the pipework to its original state and repairs free of charge any damage it causes. He also says that the pipe has never been blocked before and the first section was cleared without the pipe breaking.

British Gas Services has responded and largely repeated previous points. It says the pipe used is the wrong pipe under both today's standards and when it was installed.

my findings

I've again 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 reached the same conclusions and for the same reasons as in my provisional decision. I've explained my reasons again below, with some further comment where appropriate to address the responses to my provisional decision.

British Gas Services declined Mr B's claim relying on the pre-existing faults section of the general exclusions in the policy terms and conditions. These state that:

I'm not persuaded that it's fair and reasonable for the pipe to constitute a fault or design fault for the purposes of the policy. I'm therefore not satisfied it's fair and reasonable for British Gas Services to decline Mr B's claim relying on this section of the policy. Mr B has consistently and persuasively said that the previous repair was completed in line with instructions from council engineers. I'm satisfied it would have been reasonable for Mr B to presume those engineers would have known about the various regulations in place at the time, and that it's unlikely they would have recommended a sub-standard or inappropriate repair. I understand, also, that Mr B is a chartered engineer, so it's unlikely he would, with advice from his council, have completed a sub-standard repair to his property.

British Gas Services says that its engineers are experts on this type of work and that they say the downpipe is unsuitable for underground work. But British Gas Services doesn't appear to dispute that standards in drainage have changed since the initial repair (around 20 years ago). And although British Gas Services says that the pipe used is the wrong pipe under both today's standards and when it was installed, it hasn't provided enough evidence to persuade me that the pipe fairly and reasonably constitutes a fault or design fault, as distinguished from it just not being the type of pipe it would use for the work now.

British Gas Services says that if it tried to remove the blockage, the pipe wouldn't cope with the water pressure needed and it would shatter to pieces. But the policy covers replacement of parts that can't be repaired. British Gas Services says that replacement of the faulty pipe would constitute 'betterment' to the system, which it says isn't covered – it's a chargeable upgrade. And I note that the policy's general exclusions, under the sub-heading "*Making any improvements*", state that the policy "*doesn't include any improvement or upgrades*"; and the policy defines "*upgrade*" as "*improvements that make your boiler, appliance or system safer, or more efficient*".

But I'm not persuaded this would be a fair and reasonable application of the policy terms here. The pipe was designed, as I understand it, to carry water away, and if British Gas Services was to re-pipe the section it would still do that. British Gas Services might say it would do so more efficiently, because the pipe it would use would be better. But as far as I'm aware, the existing pipework didn't regularly block, so it doesn't appear that the pipe previously used was particularly prone to blocking. I also haven't seen any evidence that sufficiently persuades me that any blockage is due to the type of pipe used as opposed

to other factors. So I don't accept that British Gas Services replacing the pipe would constitute a material improvement to the system. British Gas Services would simply be replacing the blocked pipe with another pipe without a blockage, one that might still block in the future, and wouldn't in my opinion, make the system significantly different enough to fairly and reasonably apply these terms.

I'm therefore not satisfied it's fair and reasonable for British Gas Services to decline Mr B's claim for the reasons it's said.

British Gas Services hasn't given any other reasons why the claim would be declined, so it should now accept and settle the claim.

Mr B has asked for a more definitive direction than this. But the complaint brought here for me to decide is about British Gas Services' decision to decline the claim. I've said it's not fair and reasonable for British Gas Services to decline the claim for the reasons it's given, and that, as it hasn't given any other reasons why the claim would be declined, British Gas Services should now accept and settle the claim. But it wouldn't be appropriate here for me to specifically direct the specific nature of the work to be completed to settle the claim. This is for British Gas Services to now implement. If Mr B is subsequently dissatisfied with how British Gas Services has settled the claim, this is something he should raise as a new issue.

my final decision

For the reasons above, I uphold this complaint and I direct British Gas Services Limited to accept and settle the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 November 2019.

Neil Bridge
ombudsman