

complaint

Mr and Mrs N complain about British Gas Services Limited's ("*British Gas*") handling of their claim made under a HomeCare care agreement.

background

I set out the circumstances leading to the complaint and my initial findings on it in my provisional decision of September 2015. This included the following:

"Mr and Mrs N had a new boiler installed by a third party in July 2010. The new boiler was initially covered by a guarantee which ran from July 2010 until July 2011. When the guarantee ended, Mr and Mrs N took out a HomeCare care agreement with British Gas.

Mr and Mrs N said they got in touch with British Gas in November 2010 to report a problem with their hot water. Mr and Mrs N continued to report the hot water fault to British Gas and it attended several times to try to fix the problem, without success. It wasn't until September 2012, when British Gas carried out a powerflush that the problem was finally fixed.

Mr and Mrs N complained to British Gas about the service they had received. They wanted more than £900 in total, which included refunds for their HomeCare agreement and compensation for the trouble British Gas had put them to.

British Gas didn't agree but offered either 12 months' free HomeCare cover or payment equal to the cover at £194. It also explained it had carried out the powerflush free of charge, which ordinarily would have cost £550.

Mr and Mrs N didn't accept the offer and instead complained to us. Just after that, British Gas increased its offer to £438 in total, which amounted to two years' free HomeCare plus £50. Mr and Mrs N were still unhappy.

Our adjudicator didn't think our service had any powers to consider the complaint because in his opinion the issues arose from the installation of the boiler which was carried out by a third party that wasn't regulated by the Financial Conduct Authority (the "FCA" – references to which include the Financial Services Authority as the FCA was known before).

Mr and Mrs N didn't accept the adjudicator's opinion, so the complaint was passed to me to review afresh.

my provisional findings

Our jurisdiction to consider complaints is set out in the FCA's Dispute Resolution (DISP) Rules. These say, among other things, that we can only consider complaints about "authorised" financial businesses.

Before 1 April 2014, the third party that installed Mr and Mrs N's boiler wasn't regulated, and so wasn't an authorised business. So I can't look at any issues that arose as a result of the installation. But British Gas was regulated at the point the HomeCare care agreement started in 2011.

This means that although I can't look at the events before the HomeCare care agreement started, I can look at what happened afterwards.

Looking at what happened after this date, it seems British Gas could have diagnosed at an earlier stage what needed to be done to fix Mr and Mrs N's hot water problem. Because it didn't diagnose the problem earlier, Mr and Mrs N didn't have a reliable and consistent supply of hot water in to their home. They had a number of unnecessary engineer visits and had to chase British Gas to sort the problem out. Much of this was avoidable.

Although, from the information I've seen, Mr and Mrs N weren't entirely without hot water for that time, I realise the situation must have been very frustrating for them.

Had British Gas carried out the powerflush sooner, it appears Mr and Mrs N wouldn't have been put to a lot of the trouble that they were. But Mr and Mrs N would also have had to pay £550 to have the powerflush carried out.

There's no doubt in my mind that British Gas should pay Mr and Mrs N compensation for their frustration and upset. The question is: how much is fair? I've taken into account that British Gas didn't charge them for the powerflush even though, strictly speaking, it could have. This saved them £550. With that, and the remaining circumstances in mind, I think British Gas' most recent offer of £438 was reasonable."

I asked British Gas and Mr and Mrs N to send me any more comments or evidence they had before I looked into the complaint again.

British Gas had nothing to add other than wanting to check how the complaint would be recorded depending upon the outcome of the final decision.

Mr and Mrs N didn't agree with my provisional decision. They've made a number of points, including that:

- their boiler wasn't installed by a third party as I had said. It was installed by British Gas and the HomeCare agreement started straight after the installation of the new boiler to run alongside the boiler guarantee. Because of this, they believe I should be able to look at the issues that arose shortly after the installation of the new boiler.
- the powerflush didn't resolve the hot water problem with the boiler. It wasn't until August 2012 when the boiler manufacturer replaced a heat exchanger that this problem was fixed.
- compensation of £50 isn't enough to recognise the overall level of trouble and upset British Gas caused them over a 22-month period.
- they understood a powerflush of the entire central heating system had been carried out when actually only a powercleanse had been carried out to the boiler.
- a powerflush wouldn't have resolved the matter sooner because by this point the heat exchanger had already been contaminated with debris from the central heating system. They don't think a powerflush was necessary.
- the boiler manufacturer was able to resolve the problem in less than an hour when British Gas failed to do so over a 22-month period.

- Mr and Mrs N have also provided a copy of a letter sent to them by British Gas in 2005 which is an offer for British Gas to carry out a quality assurance inspection.

my findings

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

Mr and Mrs N's complaint presents some challenges in terms of which parts of the complaint our service has the power to look in to, and which parts we don't. I discussed these issues in my provisional decision, but I'll try to clarify them here.

I previously said that Mr and Mrs N's boiler was installed by a third party in July 2010. And that, because this third party didn't become regulated until 1 April 2014, we couldn't look into any of the issues surrounding the boiler installation.

Mr and Mrs N say British Gas installed the boiler and that their HomeCare agreement started when the boiler was installed and ran alongside the boiler guarantee.

Their boiler was installed by a British Gas company. But the boiler was installed by a different British Gas company than British Gas Services Limited – which was the British Gas business responsible for providing Mr and Mrs N's HomeCare care agreement from July 2011. I'll explain how this affects Mr and Mrs N's complaint.

The FCA sets out the circumstances surrounding the complaints our service can look in to within its Dispute Resolution Rules (DISP).

The relevant considerations within these rules for Mr and Mrs N's complaint are whether the business complained about was an 'authorised person' at the time of the events complained about, and whether or not the complaint is about a 'regulated activity'.

British Gas Services Limited was regulated by the Financial Services Authority (the predecessor of the FCA) at the time Mr and Mrs N's boiler was installed in July 2010. As such, British Gas Services Limited was an authorised person at the time the boiler was installed.

But the boiler was installed by a different British Gas business to British Gas Services Limited and the British Gas business who installed the boiler didn't become regulated until 1 April 2014 – meaning it wasn't an authorised person at the time the boiler was installed.

Mr and Mrs N say they held a HomeCare agreement alongside the boiler guarantee between July 2010 and July 2011. I can see that in Mr and Mrs N's response to my provisional decision they've provided a document which shows a HomeCare 200 arrangement was in place between those dates.

The question here is whether this document shows there was a guarantee, or is evidence of an altogether separate arrangement to the guarantee, which Mr and Mrs N were paying separately for.

This is an important distinction because a guarantee provided with a new appliance wouldn't typically be regulated and accordingly wouldn't be something this service could look in to complaints about. But a separate agreement which provided some benefit in exchange for

the payment of a premium may come under our jurisdiction as regulated activities include 'effecting' or 'carrying out' a contract of insurance.

In this case, I don't think the evidence shows Mr and Mrs N held anything other than a guarantee between July 2010 and July 2011. It may have been given the same 'HomeCare 200' name as the insurance agreement that immediately followed it, but I think the provided document shows there was a guarantee. For example, it says "*Guarantee end date... July 2011*". It also doesn't show any separate price paid or premium, and I haven't seen any other evidence suggesting Mr and Mrs N paid separately for any cover between July 2010 and July 2011.

That being the case, I don't think British Gas carried out any regulated activities between those dates in terms of this complaint. And because of this, I remain of the view we can only look at the events that happened after the HomeCare care agreement provided by British Gas Services Limited came into effect in July 2011.

Looking at the events I can consider, it may be the replacement of the heat exchanger was the main factor in resolving the problems rather than the powerflush. But I see no reason to change my provisional findings that it's likely British Gas could have correctly diagnosed the problem sooner. And that this would have spared Mr and Mrs N much of the trouble they were caused.

Mr and Mrs N don't think £50 was reasonable compensation. But I have to look at what British Gas offered to do as a whole to resolve the complaint. It offered substantially more than just a payment of £50. For the reasons given above, I also can't take into account anything that happened before July 2011. So while I can appreciate Mr and Mrs N may not feel that what British Gas has offered is fair compensation for *everything* that happened, I can only assess whether British Gas' offer was fair compensation for the events from July 2011.

As well as £50, British Gas offered to pay Mr and Mrs N a further £388, which was equivalent to two years' premiums. Although I think the problem could have been resolved sooner, ultimately it was fixed meaning that Mr and Mrs N benefited from their policy. In the circumstances, they wouldn't ordinarily also be entitled to receive a refund of premiums.

Because of this, I think the offer of a further £388 went some way in recognising the poor service Mr and Mrs N received and the trouble they were caused.

British Gas also waived the £550 fee for the powerflush. Although this may not have been what resolved the fault in the end, I can't say the powerflush provided no benefit whatsoever.

Overall, I think British Gas' response to Mr and Mrs N's complaint was fair in the circumstances.

my final decision

My final decision is that I don't uphold this complaint. I say that because I think British Gas Services Limited's offer to Mr and Mrs N – made before we converted the complaint to a case – was fair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 4 December 2015.

Nimish Patel
ombudsman