

complaint

Ms B complains that British Gas Insurance Limited ("BGI") failed to find a leak, which caused water damage to a neighbouring property.

background

Ms B said that she'd asked BGI three times to visit her flat to find a leak that was coming from the kitchen area and was causing damage to the flat below. The first plumber who came in May 2017 couldn't find any leak in her property at all. The second one who came in October 2017 found a leak but apparently didn't fix it as it continued to cause damage. The man who lives in the flat below called a private plumber and took a video showing the leak. BGI's third plumber finally found the leak, and fixed it.

Ms B couldn't understand why neither the first nor the second plumber had been able to find the leak. She said her neighbour was asking her to pay for the property damage it caused.

BGI said it had now fixed the leak, but it didn't think it was responsible for the damage. It said that it didn't pay for consequential damage.

BGI told us that the leak was caused by an open ended waste pipe that only leaked when there was a build-up of water in the shared stack. The plumber couldn't find a visible leak in May 2017, and he told Ms B to keep an eye on the problem. BGI said that the next active leak was 5 months later in October 2017. The plumber who went out then did fix a leak, but apparently not the one causing the damage to the flat below.

BGI said that when the leak happened again in April 2018 its plumber investigated further. BGI said this time the plumber was helped by being allowed entry into the flat below. He found an open ended waste pipe, which was causing an intermittent problem when water backed up in the shared soil stack.

BGI said it had told Ms B that it wasn't liable for the damage as it was pre-existing to its original visit, so she should contact her home insurance company about the leak and the property damage.

Our investigator thought this complaint should be upheld. She appreciated that BGI hadn't caused the leak. But its first and second plumbers had both failed to find it. She said that under Ms B's policy, it was the plumbers' job to find the source of the problem and make a repair. So she thought that if the first plumber had found the leak, then it would've been repaired, and that would've stopped the risk of damage to the neighbour's property. For that reason she thought that the business should take responsibility for the fault.

Our investigator said that BGI should pay the cost of damages to the neighbour's property due to the leak, once it received evidence of the cost of repairs.

Ms B sent us details of what her neighbour had paid for repairs. That invoice was for £500, and it says that it is collecting the excess for works to the bathroom and hallway. The neighbour below claimed on his insurance for the repairs, and he was only asking Ms B to pay this excess. Ms B said that she would like BGI to pay that, and she would also like compensation for the stress that all this had caused her.

BGI replied to say that it didn't agree with our investigator. It said that the leak was caused by poor workmanship or poor design, which is excluded under the terms of the policy. And it said that the plumber who attended the second time wasn't called again for six months, so it didn't know that the leak it had fixed wasn't the one causing the damage downstairs.

BGI also said that it would've been nearly impossible for its second plumber to find the leak without access to the flat below. He wasn't given that access, and the third plumber was. Even if the second plumber had turned on every tap in the property, the leak still wouldn't have been visible. It only took place in a very specific situation, that didn't happen regularly, because there was only a leak when the water built up in a shared soil stack, and backed up to the open ended pipe.

Our investigator didn't change her mind. She said even if BGI had decided that it didn't have to do the repairs once it identified what was causing the leak, she still thought the policy required BGI to find the leak. She didn't think that BGI's plumbers had done enough to do that, so she thought that had made the problem worse.

BGI still thought it wasn't responsible, so the 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 in part. This is what I said then:

- Ms B had a home emergency policy with BGI that covered her for repairs to plumbing and drains in her home. BGI said, after our investigator issued her view on this case, it didn't think that repairs to the leak at Ms B's home were covered, because the problem happened as a result of poor workmanship. It didn't seem to have said this previously, and it did do the required repairs.
- Our investigator said, even if this leak wasn't something that BGI was obliged to repair under the policy, it was obliged as a result of the policy to find the source of the leak. I thought that was the practical impact of the policy cover that BGI provided to Ms B. I didn't think it was any answer to the question of whether BGI caused delays in finding the leak, to say that when it did identify the problem, it wasn't liable for the repairs.
- So I needed to think about whether BGI did cause a delay in finding this leak, and if so, what it should do to make up for that.
- BGI said the first plumber who visited couldn't find any leak. He asked Ms B to monitor the problem. I thought this was a reasonable response at this stage.
- The problem was intermittent. And it would take some time for the damp caused by a repaired leak to dry out. So I thought it was reasonable to say it wouldn't have been immediately obvious, after the first or second visit, that the problem was ongoing.
- I also thought, given the nature of this leak, which would only occur when water in a shared waste stack had backed up to the level of Ms B's flat, this was unlikely to be a leak which occurred frequently.
- Ms B called a plumber again some five months later. BGI said this plumber fixed a leak. He thought he'd solved the problem. We now knew that he hadn't.

- Ms B called a plumber for a third time, six months later. This plumber was able to find the problem. BGI said that was because he was allowed access to the downstairs flat, and it said that if the second plumber had also been allowed into the downstairs flat, then he would've found the leak then.
- But Ms B said her neighbour waited in, at the time of the second visit, ready to show the plumber the problem. Ms B also said she told the plumber this, and that he could double-check it was all fixed by going into the flat below, but he said he didn't need to do that.
- I thought this was a mistake by that plumber, which meant that the actual leak causing the damage wasn't found on this second visit. I thought if he had entered the flat below, then, as BGI suggested, he'd have found the leak that was causing damage to that flat, at that time. Whether BGI fixed it then or not, the leak wouldn't have continued past then.
- I did think the leak should've been fixed before it was. So I had to think about what, if anything, BGI needed to do about that.
- I knew the leak caused considerable damage to the flat below Ms B's. It must have spread to two rooms, as the invoice I saw mentioned work to the kitchen and bathroom. But I was also aware that the leak had happened a number of times before. So I thought some of this damage had probably been done before BGI was even aware of the leak.
- I didn't think it would be fair to ask BGI to pay for all the repairs done to the flat below Ms B's. Fortunately, in this case, Ms B's neighbour hadn't had to pay for all of the damage himself. He claimed on his insurance. He asked Ms B to pay the excess, of £500.
- But I thought that there was a problem with asking BGI to pay this money to Ms B. This was Ms B's policy, and her complaint. When I looked at what BGI had done, I needed to consider the impact this has had on her.
- Ms B hadn't paid her neighbour this money. So she hadn't actually lost this £500. And she may not have to make that payment.
- Ms B told us her neighbour expects her to pay him this money. But we didn't know if her neighbour was planning to take legal action against Ms B to recover this money, or if any such action might be successful. So I didn't think, on the evidence I'd seen then, that I could ask BGI to pay this money to Ms B, so she could repay her neighbour.
- If Ms B's neighbour did take further action to recover this money, then the position might be different, and our service could then consider a fresh complaint from Ms B about that, on the basis of different facts.
- Ms B also said she wanted BGI to pay some compensation for what went wrong. She said she had sleepless nights, believing that the leak into her neighbour's property had come from her flat, and she would have to pay for this. I thought that this issue was likely to have significantly damaged the relations between the neighbours.
- Ms B also told us that her neighbour expects her to pay him £500. And she said she couldn't afford that without a payment from BGI, which I'd said that it didn't currently have to make. So this situation was unlikely to improve for Ms B in the short term.

- Because I thought BGI should've found this leak quite a while before it did, I also thought it was reasonable to ask BGI to pay Ms B £300 in compensation, to make up for the stress that she was caused after this leak ought to have been fixed.

I invited the parties to make any final points, if they wanted. Both sides responded.

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.

Ms B said that she accepted my provisional decision, but was concerned that she might now face court action. Unfortunately, our service can't help her with that. If she does face such action, and has to pay her neighbour, I've said she can ask us to consider a new complaint.

BGI said it was disappointed with the outcome, as there had been such a long time between visits. It had repaired a leak on the second visit, and it had then carried out repairs on its third visit that shouldn't have been covered under the policy. I took these points into account in reaching my provisional decision. I've reconsidered, but I still think the same, for the reasons set out in that provisional decision.

BGI also said it doesn't think it's responsible for the excess paid by Ms B's neighbour. It said that damage was consequential, not caused by its engineer, and the leak would've caused damage before its first visit to the property. That isn't part of this complaint, so I won't comment on that here.

BGI has agreed to pay £300 to bring this complaint to a close, and Ms B has accepted that amount for this complaint, so I'll now make the award I originally proposed.

my final decision

My final decision is that British Gas Insurance Limited must pay Ms B £300 in compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 30 August 2019.

Esther Absalom-Gough
ombudsman