

The complaint

Mr S has complained that British Gas Insurance Limited mis-sold him a home emergency insurance policy.

What happened

Mr S says that he had moved his energy bills to British Gas in February 2021 and when he did so, British Gas added the home emergency insurance policy free for a year. The policy automatically renewed twice since then. Mr S says he did not ask for this policy and was only aware he had been paying for it in November 2023.

Mr S complained to British Gas and asked it to refund all the premiums he had paid. British Gas agreed to cancel the policy with immediate effect but did not agree to pay any refund, as it says it had done nothing wrong. British Gas said the policy was arranged to automatically renew once the free cover period had finished; and this was set out in the documentation sent to Mr S when he set up the energy tariff in February 2021 and in the two sets of renewal documents sent since then (in February 2022 and February 2023). British Gas says the responsibility was therefore on Mr S to let it know if he wanted to cancel the policy.

Mr S remained unhappy with British Gas's response, so brought the complaint to us. He said he had not claimed under the policy and had not had the annual services of his boiler that were included with the policy, as he had not been aware of it. Mr S also said he had another policy with similar cover, so would not have taken the British Gas policy if he had been given the choice.

I issued a provisional decision on this matter on 3 June 2024, in which I determined that the policy had been mis-sold as I did not think that the welcome pack and letter sent to Mr S by British Gas when he took out this tariff satisfied the requirements British Gas was under, to provide clear, fair and not misleading information before the insurance agreement was concluded. Mr S had provided evidence that he already had alternative cover elsewhere so I was also satisfied that he would not have taken this policy if he had known. Having considered everything, given that the fact Mr S had dual insurance was because British Gas mis-sold this policy to him, I considered British Gas should refund all the premiums Mr S has paid for this policy with interest at our usual rate. I also considered that British Gas should pay Mr S £75 compensation for the trouble this matter had caused.

British Gas did not accept my provisional decision. It did not agree that the documentation it provided to Mr S was unclear and says it is unfair that British Gas is being held responsible for Mr S not reading the letters it sent.

Mr S accepted my provisional decision. However, he also informed the Investigator that he had made a claim under the policy with British Gas in January 2024. He said he only made the claim because British Gas had failed to cancel the direct debit instruction for the policy and continued to take his money for the policy after it had agreed to cancel it.

British Gas confirmed that it had attended Mr S's property in January and February 2024 to carry out repairs to Mr S's boiler, which it says cost it around £650, including parts and labour. The complaints-handler had apparently not been aware of this previously.

In light of this new evidence, I issued a second provisional decision. I said that I remained of the opinion that the policy was mis-sold but that I did not think there was any award I could now reasonably make given the new information that had come to light. I have set out my reasoning for this below:

“This policy was mis-sold to Mr S, so I have to consider what impact, if any, this had on Mr S in order to put that right. Essentially, Mr S should be put back in the position he would have been in had the policy not been mis-sold. If this policy had not been mis-sold, Mr S would have the value of the premiums he paid, which was £138 for the year 2022 to 2023 and £157.56 for 2023 to 2024.

However, if the policy had not been mis-sold, Mr S would not have been able to make the claim he did in January 2024, which meant he had work done on his boiler under the policy to the value of approximately £650, which is significantly higher than the premiums he paid.

Therefore, the mis-sale of the policy has not caused Mr S financial loss. Instead, he has financially benefited, as the value of the claim exceeds the premiums he paid for the policy.

Mr S says the fact the policy was still in place after he asked to cancel it, was British Gas's fault and it is this failure that meant he was able to make the claim. British Gas had said it would cancel the policy but the fact remains Mr S has had the benefit of the cover, so it is not reasonable to award a refund of the premiums.

I also consider that the value of the claim means that Mr S has been adequately compensated for any trouble caused by the mis-sale.”

Responses to my second provisional decision

British Gas has confirmed receipt of my second provisional decision and said it has nothing more to add.

Mr S does not accept my second provisional decision. He has made a number of points in response. I have considered everything he has said but have summarised his main points below:

- The policy was still mis-sold and this issue needs to be adequately addressed. He should not be left without redress for the mis-selling.
- When he complained to British Gas in November 2023, it agreed to cancel his policy but failed to do so. By continuing to take the monthly direct debit, the policy was effectively mis-sold again by British Gas. This should be treated as a separate incidence of mis-selling and should not affect the outcome of the initial mis-sale complaint.
- The repair costs should not impact the outcome of the mis-sale complaint. But if they are taken into account then only the payments made after British Gas said it would cancel the policy should be relevant, as its failure to cancel was beyond his control.
- Alternatively only the premiums from the last year of the policy should be affected, as the previous policies which were also mis-sold had ended. A claim in a single year should not affect previous policy years.

- Or the date he submitted his complaint to this service should be the critical date and my decision should be based on the situation at that time.
- The extended time to process his complaint and British Gas's failure to cancel the policy resulted in continued payments and the boiler repair issue.
- He disputes the cost of the repair in any event. The engineer worked on the repair for around two hours and £650 for the work done is excessive. He wants this reviewed.
- The repair was done on 7 February 2024 and the policy in consideration ended on 4 February 2024.
- The policy included an annual service of the boiler and if British Gas had serviced his boiler, it would have broken down.
- He has spent over 80 hours on this complaint which has been extremely stressful and has impacted his health. He says I should be considering awarding the following: a refund of the total policy payments of £295.56; compensation for distress and inconvenience of £800; and additional compensation for the impact on his health of £800.
- He is prepared to take the matter to court.

What I've decided – and why

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

Mr S has made a number of points to support his argument that the fact he claimed under the policy is irrelevant to the outcome of the mis-sale complaint and would be unfair if there is no redress for the mis-sale. However, I have no power to fine or punish British Gas for anything it has done wrong, as we do not regulate the insurance industry. Instead my role is to determine what I consider the fair and reasonable outcome of individual complaints. As set out in my second provisional decision, in this case that means considering how the mis-sale has impacted Mr S and trying as far as possible to put him back in the position he would have been in had the policy not been mis-sold in 2021 and at each renewal since.

I consider that Mr S is unlikely to have taken the policy if he had known about it in 2021 and that he would likely have cancelled it when it became chargeable in 2022. So if the policy had not been mis-sold, he would not have paid the premiums he did of £295.56.

But as set out in my second provisional decision, if the policy had not been put in place in 2021 and in the following years, Mr S would also not have been able to claim under the policy and would likely have had to pay for the boiler repairs that were carried out under the policy himself.

I remain satisfied therefore that it is appropriate to take account of the fact Mr S benefited from this claim. I do not agree that it is right to treat it as only relevant to the last policy year, as the policy was only in place in 2023 because of the initial mis-sale and then at each renewal afterwards. I also do not think it makes any difference that the last part of the repair was on 7 February 2024.

Mr S also again says it was British Gas's fault that it did not cancel the policy, which meant he was able to make this claim. I am not able to make any finding about why the policy was not cancelled as discussed between Mr S and British Gas in the context of this decision, as that was not part of this complaint. However, it is relevant to the determination of the appropriate outcome of this complaint about the mis-sale of the policy that Mr S has benefited from the cover. So whatever the reason for the policy still being in force, Mr S

claimed on it and so has benefited from the policy being in place. It is therefore relevant to take that into account when assessing whether any award is warranted.

British Gas said the repairs cost approximately £650, for labour and parts. Mr S says this is excessive and asked for a review of these costs. However, I have no reason to doubt the cost of the claim British Gas has provided and there is nothing on the face of it to suggest this is an unreasonable amount for the repairs in question.

The cost of the claim was significantly higher than the premiums Mr S paid for this policy since 2021. I remain of the opinion that the mis-sale of the policy has not therefore caused Mr S financial loss and that instead he has financially benefited. I therefore also remain of the opinion that it is not reasonable to make any award for the refund of the premiums.

Mr S also says he should be awarded significant compensation for the impact this complaint has had on him and his health. I acknowledge that bringing a complaint such as this is often time-consuming and can be stressful. However, I do not agree that the sums Mr S suggests are reasonable in the circumstances of this case.

I had previously considered that compensation of £75 was appropriate to reflect the trouble caused by a mis-sale Mr S became aware of in November 2023. Given the amount by which the cost of the claim exceeds the premiums paid, I therefore also remain of the opinion that the value of the claim means that Mr S has also been adequately compensated for any trouble caused by the mis-sale.

Finally, Mr S has also said the repair was only necessary because British Gas had not serviced his boiler in accordance with the policy. I cannot address this in this decision as it has not been raised with British Gas and would have to be considered as new complaint.

My final decision

I do not make any award against British Gas Insurance Limited.

For the avoidance of doubt, if Mr S rejects my decision it is not binding on him and his legal rights against British Gas Insurance Limited, if any, remain intact.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 July 2024.

Harriet McCarthy
Ombudsman