

## **The complaint**

Mr T's complaint is about the refusal of a claim Guarantee Protection Insurance policy with Safe World Insurance Group (UK) Ltd.

## **What happened**

In December 2019, Mr T bought a renewable energy heating system with Contractor A. Mr T was unaware at the time that Contractor A had in fact already been dissolved and they ceased trading not long afterwards. The main work was apparently carried out by another contractor (Contractor B). It was Contractor B that registered the installation with the Home Insulation and Energy Systems Contractors' Scheme ("HIES") and arranged the insurance policy with Safe World from HIES. The policy provides an insurance backed guarantee for the work.

In April 2020, Mr T noticed his radiators were constantly hot, even when the heating system was off. He contacted Contractor B who said this was due to the central heating and water pipes being connected the wrong way around. They visited the property and swapped the pipes around, unfortunately, this made matters worse and I understand resulted in Mr T losing a related government grant payment (a Renewable Heat Incentive grant).

Mr T made a claim under the policy, however Safe World declined the claim, as Mr T had purchased the renewable energy heat system with a credit card (and so had recourse to another remedy) and because the contractor named on the insurance certificate (Contractor B) are still trading. Safe World says the policy terms mean there is no cover for both these reasons.

I understand that Contractor B and/or the manufacturer fixed the heating system in August 2020. Mr T had also made a Section 75 claim with his credit card provider and, after initially refusing his claim, it has refunded the cost of the renewable system. Mr T says he intends to replace the heating system using this refund.

However, Mr T is still unhappy with Safe World's response to the claim and the actions of HIES and Contractor B. He says he has suffered considerable inconvenience and additional financial loss, which needs to be considered.

One of our investigators looked into the matter. He explained that the contractors involved in installing the system and HIES are not regulated by the Financial Conduct Authority ("FCA") and so do not fall within our jurisdiction; so, we can only look into a complaint about Safe World and its handling of the insurance claim. The investigator didn't think Safe World had acted unreasonably.

Mr T does not accept the investigator's assessment. He has made a number of submissions in his initial complaint, and in response to the investigator, which I've summarised below:

- He made a contract with Contractor A for an installation package, which included this insurance backed protection.
- HIES and Contractor B fraudulently set up the policy in the name of Contractor B.

There was no contract between him and Contractor B.

- HIES admitted its mistake but the investigator said he can't address that. If a regulated organisation issues a policy in error, that is something the regulator should be able to investigate. The investigator has chosen to only look at one organisation (*i.e.* Safe World) and this is unfair to him.
- In so doing, the investigator is not looking at the issue from his perspective as the consumer, only looking from the businesses terms and conditions and is ignoring how those terms and conditions came to be and the fact that he was not party to them. This is unfair.
- How did HIES, Safe World and Contractor B collectively manage to contract an insurance policy (without his knowledge or agreement, and without any payment from him) that doesn't cover the areas that the Renewable Heat Incentive scheme mandates?
- Safe World may not be at fault for that, but it allowed the policy to be set up fraudulently and it has been paid for the policy.
- The credit card company only met his claim after intervention from his M.P. and this was after Safe World declined his claim. It is not right that it has borne the cost of this when it should have been covered by the insurance policy. This also means there is no sanction on Contractor B.
- The policy states that it is a "*last resort*" and that the normal response will be for HIES to ensure the contractor fixes any faults with the system. This clearly did not happen. The evidence is indisputable.

Mr T wants HIES to implement a proper complaints process for complaints about HIES itself, with an escalation route to an Ombudsman; and HIES and Safe World to implement a process that directly links the insurance product to the installation contract.

Safe World also responded to the investigator's assessment. It says again that Mr T does not have a valid claim and asks us therefore to treat this complaint as "*frivolous and vexatious*".

As the investigator was unable to resolve the complaint, it has been passed to me.

### **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.

#### **Jurisdiction**

As the investigator explained, we aren't able to consider every complaint that's brought to us. We're governed by rules called the DISP Rules, which can be found in the Financial Conduct Authority's (FCA's) Handbook. These rules detail which businesses we can consider a complaint against and they also detail what type of complaints we can look at. In brief, we can only look at complaints against businesses regulated by the FCA and about an activity (which the DISP rules calls a 'regulated activity'). This is not something we have any discretion about. The list of regulated activities includes the sale of insurance policies and effecting and carrying out a contract of insurance. It does not include providing installation services or guarantees.

HIES is not regulated by the FCA (though it might be subject to regulation by another body) and was not carrying out a regulated activity. It purchased the insurance policy from Safe World on behalf of Contractor B but did not sell the insurance itself.

Contractors A and B are also not regulated by the FCA and were not carrying out a regulated activity. This means we do not have the power to consider Mr T's complaint about HIES or Contractor B.

Safe World is however, in our jurisdiction, as an insurance provider regulated by the FCA and it was effecting and carrying out a contract of insurance. We can therefore look at the activities of Safe World – whether it should have set the policy up in the way it did and whether it should have covered the claim or not.

#### Frivolous and Vexatious Complaint?

While I have no discretion about our jurisdiction (*i.e.* whether we can consider a complaint), I do have some discretion about whether it is appropriate to look into a complaint that is in our jurisdiction.

DISP 3.3.4A (for complaints received after 9 July 2015) provides grounds on which we may dismiss a complaint without looking at the merits first. I've included the relevant section of DISP below:

*“The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that: (1) the complaint is frivolous or vexatious”.*

Safe World has asked me to dismiss this complaint using this discretion.

For a complaint to be considered to be “*frivolous and vexatious*” it would generally need to be obviously lacking in any merit. I am not persuaded that is the case here. Mr T has cause for complaint against Safe World. He thinks it should have covered his claim and it disagrees. Even if it is determined that Safe World is correct, that would not render the complaint itself frivolous and vexatious. I do not intend to dismiss the complaint.

#### Is Mr T's claim covered?

This policy provides cover in the event the contractor named in the policy goes out of business and is unable to fulfil any obligations it has under any guarantee it issued to the purchaser.

The policy, like all other insurance policies, also contains some exclusions to that cover, including: “*Any loss where your supplier has not ceased to trade.*” This is because if the contractor is still trading, they can meet the obligations under any guarantee themselves. The contractor named in the policy is Contractor B and they appear to be still trading. I do not therefore think Safe World was unreasonable in applying this exclusion.

Mr T says he had difficulty getting Contractor B to rectify the fault and suggests Safe World should have done more. I understand Safe World did talk to HIES and when it was found Contractor B should not have registered the policy, arranged for it to agree to take responsibility for the guarantee Contractor A had provided. I understand the defects with heating system were put right in the end. While this may have taken some time, I do not consider this was due to anything Safe World did wrong. In addition, the policy also states that it excludes cover for:

*“Any loss which is recoverable under any other insurance or any other source whatsoever, for example the Consumer Credit Act 1974, which for example, provides protection for payments made via a finance agreement or Credit Card”.*

Safe World told Mr T that it would reconsider the claim, if his credit card provider didn't provide him with cover. I do not think this was unreasonable and I understand he has now had a refund of the cost of the installation from his credit card provider, so there is no other loss that would be covered under the policy. Mr T says this was only resolved after his MP intervened and at the time he made the claim to Safe World, his claim with the credit card provider had been declined. However, it has since been met and as there was also another valid reason to turn down the claim, I do not think Safe World acted unreasonably.

### Policy Set Up

Mr T says the policy was sold to him as part of the installation package by Contractor A but it is not a regulated insurance seller. Although the policy was taken out for Mr T's benefit, it was not sold to him directly. Instead it was taken out by HIES, following registration of its work by Contractor B. So effectively HIES purchased the policy.

HIES is also not a regulated insurance intermediary. And even if it, or the contractors were acting as such, we can still not look at the complaint about their part in how the insurance was set up, as they are not regulated by the FCA. Mr T says HIES is responsible for issuing the policy and it is unfair to exclude it from our consideration but as stated above, this is not something I have any discretion over.

The policy was set up by Safe World with the information provided to it by HIES. I think Safe World was entitled to rely on that information and I do not think it had any obligation to make further enquiries about the original contract for the installation works. I therefore do not think it was at fault for Contractor B being named on the policy.

In addition, as mentioned, it was agreed Contractor B would take responsibility for the installation guarantee anyway, so Mr T's position was not ultimately prejudiced by the policy not being in Contractor A's name. And it seems to me, the claim still wouldn't have been covered (even if it had been set up in Contractor A's name) as the exclusion relating to any potential remedy under the Consumer Credit Act 1974 would still have applied.

### **My final decision**

Despite my natural sympathy for Mr T's situation, I do not intend to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 September 2021.

Harriet McCarthy  
**Ombudsman**