

summary of complaint

Mr T complains about British Gas Insurance Limited's decision to decline his claim for accidental damage under his insurance policy.

background to complaint

Mr T holds a HomeCare 400 insurance policy, underwritten by British Gas, which provides cover for accidental damage to the central heating system.

In early September 2011, a British Gas engineer attended Mr T's property in response to a claim for a leak. Mr T said he had moved a radiator a few millimetres in order to paint behind it, when he accidentally damaged one of the connecting pipes.

British Gas capped the pipe in order to resolve the leak but said that a permanent repair was not covered under Mr T's policy because he had moved the radiator himself. British Gas provided Mr T with a quote of £300 to re-pipe the radiator.

Unhappy, Mr T complained to British Gas and a second engineer inspected the damage in mid September 2011. However, British Gas maintained its stance and wrote to Mr T stating that his claim was not covered because his policy contains an exclusion relating to intentional risk taking.

Mr T remained dissatisfied and therefore brought his complaint to the attention of this service for consideration.

Our adjudicator recommended that Mr T's complaint should be upheld. British Gas did not accept our adjudicator's findings.

Mr T subsequently cancelled his policy with British Gas and informed this service that he would be willing to have the radiator repaired privately if British Gas would agree to cancel any outstanding premiums due under the policy.

British Gas did not accept Mr T's proposal and said a cancellation charge of £74 was due from Mr T, which it intended to pursue.

Mr T's complaint has now been referred to me for a final determination.

my findings

As our adjudicator has highlighted, the policy terms and conditions which British Gas has sent to us and the policy terms and conditions which Mr T has provided differ slightly. British Gas has not confirmed on what date the updated terms and conditions came into effect. However, I do not consider the difference in the policy wording affects the outcome of this complaint.

Both policy documents contain the same wording in respect of the following cover:

"Accidental damage – repairs to your boiler and controls/central heating system in the event of accidental damage by you which affects its functioning".

British Gas has relied upon the following exclusion in declining Mr T's claim, the wording of which is very similar in both versions of the policy terms and conditions:

"Accidental damage/third-party damage/damage from intentional risk taking

....Where work is undertaken on your system or appliance by a third party, whether or not following our advice, which results in damage to that or another part of your system, the repair of any such damage will be excluded from your Agreement".

It is a well-established principle of insurance that where an insurer is seeking to rely upon a policy exclusion in order to decline a claim, it is for the insurer to demonstrate that the particular exclusion applies.

The policy exclusion which British Gas is seeking to rely upon in this case refers only to work undertaken by a third party. The policy exclusion makes no mention of work which has been carried out by the policyholder himself.

British Gas has said Mr T did not accidentally damage the radiator, as he intentionally removed it from the wall. However, the policy terms and conditions do not define what is meant by *"intentional risk taking"* and it is not stated that intentional risk taking by the policyholder (as well as by a third party) is excluded from cover.

For these reasons, I do not consider British Gas is entitled to decline Mr T's claim under the exclusion set out above.

In relation to the issue of the policy cancellation charge which Mr T has now raised, the policy terms and conditions which have been submitted to this service vary slightly.

The policy terms and conditions which Mr T has provided state:

"If your agreement is cancelled after the Cooling-Off Period, we may charge you an amount to bring any payments you have made, in the last 12 months, up to the amount set out in the table overleaf. This will depend on the date of cancellation. The "Charge" covers the costs we have had to pay but which we have not yet reclaimed at the point of cancellation. It includes things such as our costs of carrying out services, dealing with repairs, our organisational costs or the costs of dealing with your agreement with us (or all of the above)".

The terms and conditions sent to us by British Gas set out the following provisions in relation to policy cancellation:

"If you cancel any Agreement you have with us part way through your Period of that Agreement and you have had a repair completed in respect to that Agreement, we may charge you a contribution towards the costs we have incurred but not yet recovered".

British Gas has said that work was completed under Mr T's policy prior to the claim for the repair of the radiator.

British Gas is therefore entitled to apply a cancellation charge under the terms and conditions of both policies.

my final decision

My final decision is that I uphold this complaint.

British Gas Insurance Limited must accept Mr T's claim in line with the remaining policy terms and conditions. If Mr T has already arranged for a repair to be carried out privately, British Gas must add interest at 8% simple per annum to the cost of the repair from the date of payment to the date of the settlement.

British Gas is entitled to charge Mr T a cancellation fee.

Christopher Tilson
ombudsman