

complaint

Mr C complains that British Gas Services Limited didn't perform an annual boiler service and safety check under his service agreement, which led to his boiler becoming condemned.

background

Mr C is a landlord and holds a "HomeCare One" policy with British Gas, which provides insurance cover for the property he lets out to tenants. Included in this policy is an annual service of the property's boiler. British Gas also carry out a Gas Safety Check and Certificate (referred to as a "CP12"), under a separate agreement.

British Gas sent two letters to Mr C in May 2018, pointing out that the CP12 would expire on 26 June 2018 – so an appointment needed to be arranged for a new safety check. It also wrote to Mr C on 5 June 2018, to remind him that the boiler's annual service was due soon and this needed to be completed. All letters were sent to the address of the property under cover.

British Gas were also in contact with a letting agency that Mr C employs to manage the property on his behalf. Appointments were agreed for British Gas engineers to conduct the annual service in July 2018 and at the same time, complete the CP12 certificate.

Engineers attended the property twice during this month – but were unable to gain access and therefore couldn't go ahead with the service or the CP12. So, British Gas sent a letter to Mr C dated June 2018 to set out that the CP12 certificate had expired. And it also sent letters in July and August 2018 to reschedule the appointment for this to go ahead, at the same time as the annual service. One was then rebooked for 22 September 2018. But again, due to no one being at the property, the engineer was unable to gain access. Because of this, British Gas sent a further letter to Mr C on 7 October 2018, to advise him that this service needed to be completed for safety reasons.

The service eventually went ahead on 16 January 2019 alongside the CP12 certificate. However, the British Gas engineer diagnosed the boiler with faults. For safety reasons, it was suggested that it be "capped" and a quote be generated for a replacement boiler.

Mr C was unhappy with this, because he was unaware of the attempted appointments and lack of entry to the property. He says the letting agent didn't inform him of the problems with gaining access and neither did the tenants. He raised a complaint with British Gas, as he thought it unfair that he now must pay out for a replacement boiler, when he has cover in place to perform checks and a service to keep it in a working condition. He claimed that British Gas ought to have called him directly to ensure this happened. Therefore, Mr C asked British Gas for a contribution to the cost of the replacement.

British Gas investigated the complaint and provided its final response on 24 January 2019. It disagreed that it should make a contribution, because it argued that it made several attempts to attend the property and it wasn't responsible for the fact that access couldn't be arranged. It said that entry to the property was Mr C's responsibility.

Mr C remained unhappy, so he brought the complaint to our service and one of our investigators looked into it. Because of the jurisdiction of our service, he didn't think that the CP12 certificate was an activity we can consider. But he was satisfied that we could consider the annual service agreement and British Gas had acted fairly, by keeping to the policy terms. Therefore, he didn't recommend that British Gas do anything differently for the complaint. British Gas accepted this recommendation.

Mr C didn't agree. He submitted that it's common sense to contact the landlord directly and this could have resolved the issues with entry to the property. The absence of an up to date CP12 and annual service meant the lives of the tenants were put at risk and he was not complying with his legal requirements as a landlord. Overall, Mr C disputed British Gas' submission that it had made reasonable efforts to carry out the work, so it was unfair that he be left in this position – especially after continuing to pay his monthly premiums.

Because Mr C didn't agree, the complaint has been escalated to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've concluded that British Gas has acted fairly. I'll explain why.

As the regulator, The Financial Conduct Authority ("FCA") sets out the jurisdiction of our service in the DISP Rules part of the *FCA Handbook*. One of the requirements of DISP is that our service can only consider a complaint if it relates to an act or omission of a firm carrying out a regulated activity (or some other activity expressly listed in DISP 2.3.1).

It's not in dispute that the CP12 is an additional product to the HomeCare One policy, which isn't automatically included unless opted into. Indeed, in the policy booklet, the CP12 section sets out that *"This can only be purchased with a British Gas product that includes an annual service"*. And the CP12 is clearly separated in a different section of the booklet, with it being included in *"Our service and inspection products"* – in comparison to the HomeCare One policy which is contained in the *"Our insurance features"* section. Therefore, the two are separate agreements. Taking this into account, I first need to determine whether the complainant's agreement with British Gas to provide the CP12 is a regulated activity.

An activity is a regulated activity if it's specified in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). Part II of the RAO specifies "effecting" and "carrying out" a contract of insurance as regulated activities. The FCA's Perimeter Guidance Manual indicates that the best description of what constitutes a contract of insurance comes from the authority of the Court of Appeal, in its decision in the case of *Prudential Insurance Co v Inland Revenue Commissioners [1904] 2 K.B. 658*. This case, amongst other things, decided the essentials of an insurance contract.

In summary, it considered this to be that an insurer, in return for prior payment (often referred to as a "premium"), provides the insured with the service it agreed to undertake when the contract was concluded – in the event of the materialisation of a risk it agreed to cover. And this risk is a defined event in the contract and has an occurrence which is uncertain or sudden.

Having considered the terms of agreement for the CP12 product, I'm not satisfied that it qualifies as covering an uncertain event. I say this because the terms set out that "*When your safety check is due we'll send you an email, letter, or text message or call you to arrange it.*" Normally the check is booked in at a mutually agreed time, once a year. So, it offers a benefit to cover an *expected* event that is scheduled on an annual basis. With this in mind, I must conclude that it's not a contract of insurance and, therefore, isn't a regulated activity that is within our service's jurisdiction. In light of this, I'm unable to consider the CP12 and the complainant's claims that British Gas ought to have performed this check on the boiler sooner than it did.

The annual service is included as part of the HomeCare One policy. That is to say it forms part of the same contract that binds British Gas and Mr C to the respective terms and conditions. This policy undoubtedly has all the key features of a contract of insurance, such as the fortuitous occurrence of a peril that is wholly contrary to the interests of the insured. Indeed, within the information booklet provided by British Gas, the policy is included in the section labelled "*Our insurance products*". Therefore, when determining this complaint, I can only consider whether the acts or omissions of British Gas led to the condemning of the boiler, in respect of the HomeCare One policy that it provides.

British Gas set out what Mr C could expect in relation to the annual service in the policy terms. Included in these, it says that: "*We'll send you or your authorised contact an email, letter, text message or call you to arrange your annual service. We'll try to contact you up to three times. If we don't hear back from you after the third time, we won't try again and won't refund the cost of the missed annual service. You can still contact us at any time to book it.*"

British Gas sent more than three letters to the address of the property on risk. And it's not in dispute that Mr C selected this address for it to send such correspondence. Indeed, it's Mr C's responsibility to keep British Gas informed of any changes to such contact details. British Gas wrote out to advise of each missed appointment and requested further appointments be rescheduled. So, I'm satisfied that it made reasonable efforts to arrange the annual service, using the correct contact details. Therefore, it's acted fairly and in line with the terms of the policy.

I understand Mr C provided British Gas with the letting agent's details and therefore had them in place as an authorised contact. In light of the aforementioned term, British Gas has also acted fairly by contacting this agent. The agreement holds British Gas responsible for corresponding with authorised contacts in respect of the annual service – it doesn't hold it responsible for these contacts to communicate between themselves. Rather, this would generally be contained in the obligations of a tenancy agreement – which is entirely separate to Mr C's complaint with British Gas.

So, it strikes me that there's been a potential failing by the letting agency or tenant rather than British Gas. It follows that any such dispute regarding entry to the property is for Mr C to resolve outside of this complaint. In any event, it's my judgment that British Gas could not be expected to do any more to make Mr C aware of the intention to arrange the annual service. I can appreciate Mr C may not have been aware of the difficulties British Gas encountered with gaining access to the property. Nevertheless, the general conditions of the policy state that "*Our engineers will only work on your property if there's someone 18 years old or older there at all times during the visit. It's your responsibility to give us access to your property.*" So, once an appointment is arranged, it's the responsibility of either the tenant, letting agency or landlord to ensure that someone is available at the property.

Therefore, I can't hold British Gas responsible if the tenant, or a representative from the letting agency, didn't make themselves available at the time of the appointments. And Mr C has provided no compelling argument or evidence that persuades me that entry was in fact given. So, for the avoidance of doubt, I see no reason to question the version of events that the engineers of British Gas have given.

In all of the circumstances, I conclude that British Gas is not required to do any more for the complaint. Therefore, I'm not holding it responsible for the current condition of the boiler. It follows that, I don't require it to contribute to the cost of a replacement.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 March 2020.

Matthew Belcher
ombudsman