

complaint

Mr S is bringing this complaint on behalf of the estate of his late mother, Mrs S, about a boiler and heating insurance policy provided by British Gas Insurance Limited.

The parties will see that I've changed the 'respondent' from British Gas Services Limited to British Gas Insurance Limited. This is because we have no jurisdiction over British Gas Services Limited for a complaint about the handling of the insurance policy; it's only an insurance intermediary, not an insurer.

This is an important legal technicality but it does not affect the outcome of the case and as British Gas Services Limited responded to the complaint on behalf of British Gas Insurance Limited, there's no need for it to review the matter again or issue a further final response.

background

Mrs S held the policy a British Gas for some time in her sole name. She passed away on 22 April 2017 but the direct debits were still taken from her account and the policy automatically renewed in August 2017 and also in August 2018.

Mr S says he wasn't aware of the policy, or the payments until November 2018. Mr S contacted British Gas then to ask that the policy be cancelled and the premiums paid since his mother died to be refunded.

British Gas said it would cancel the policy and told Mr S it would refund the premiums. However, the policy wasn't cancelled and I understand another three direct debit payments were taken. Mr S complained about this in January 2019. The policy was then cancelled and British Gas refunded the premiums taken after November 2018 but told Mr S it would not refund any premiums paid before it was made aware that Mrs S had passed away.

After Mr S complained, British Gas agreed to refund the premiums taken since the most recent renewal date (*i.e.* August 2018) as a goodwill gesture but no more. It also offered £60 compensation for the error made in not cancelling the policy in November 2018 and added interest (around £11) to the refund.

One of our investigators looked into the matter and considered that British Gas should refund the premiums taken since Mrs S's death in April 2017. The investigator said the property was unoccupied since then and no claims had been made on the policy.

British Gas doesn't accept the investigator's assessment. It says that it is only obliged to refund payments made after it is notified of a policyholder's death or in "*extreme circumstances*" which would not apply in this case (such as where the property is no longer owned). It says it sent out annual service reminders and renewal notices to the property over this period of time, which would have made Mr S aware that the policy was in force.

British Gas also says that although the property was unoccupied, it would have attended to any claim. And a claim was possible as home insurers insist on the central heating being left on a minimum temperature to avoid pipes bursting and had the heating failed, it would have attended.

Mr S has accepted the investigator's assessment although he thinks that some additional compensation should be paid to him for the distress and inconvenience caused to him by British Gas.

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

my findings

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

Mrs S had contracted with British Gas to provide a year's cover in August 2016. The policy was then automatically renewed in 2017 and 2018. British Gas wasn't aware at the time that Mrs S had passed away and so I do not criticise it for doing so. However, each of these annual policies was a new and separate contract and a contract cannot be formed with a deceased party. In my opinion, no valid contract existed from August 2017 onwards and therefore the premiums from then onwards need to be refunded to Mrs S's estate.

Even if this isn't correct and there were a valid contract, I consider it would be fair and reasonable to refund those premiums, and the premiums from Mrs S's death in April 2017.

I have no reason to doubt what Mr S has said – that he wasn't aware of the policy until November 2018. If he had been he probably would have arranged the annual service of the boiler but this wasn't done since April 2016. British Gas says the property would still have been covered and it would have responded to any claim made in that period. No claim was made and it would have been entitled to refuse a claim, unless the policy was transferred into Mr S's name. I accept that documents relating to the policy were sent to Mrs S's property but for whatever reason these were overlooked by Mr S, as were the direct debits. Mr S says his mother's death was unexpected and there was a lot to sort out and post may have gone missing. I don't therefore criticise British Gas for taking the premiums as normal but I do think it is plausible that this went unnoticed by Mr S.

Overall therefore I consider that it would be fair and reasonable for all the premiums taken since Mrs S death in April 2017 to be refunded.

I accept that Mr S was caused unnecessary and avoidable distress and inconvenience by British Gas's stance on this matter. However, as he is not the policyholder and therefore does not have a direct contractual relationship with British Gas, I am unable to award him compensation for his distress and inconvenience. He is eligible to bring this complaint only as a representative of his mother's estate. As such, I can only make an award in relation to any loss to his mother's estate. I can understand his dissatisfaction with this but I simply don't have the power to make an award for any additional compensation to him. I also don't have the power to make British Gas change its practices or the way it deals with such matters in the future but we do publish our decisions and hope that businesses learn from them.

my final decision

I uphold this complaint against British Gas Insurance Limited and require it to refund the premiums paid since Mrs S's death in April 2017 (and which have not already been refunded) together with interest at 8% simple per annum from the date of each payment to the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S on behalf of the estate to accept or reject my decision before 6 April 2020.

Harriet McCarthy
ombudsman