

complaint

Mrs K complains that British Gas Services Limited ("*British Gas*") mis-sold her home emergency cover.

background

I set out the circumstances leading to the complaint and my initial findings on it in my recent provisional decision. This included the following:

"Mrs K took out the following agreements with British Gas:

- *Central Heating Care in July 2009*
- *Kitchen Appliance Care for several appliances in July 2009. More appliances were added to this agreement in September 2009*
- *Gas Appliance Care for two gas fires in August 2009*
- *Plumbing and Drains Care in July 2010*
- *Home Electrical Care in July 2010*

All of Mrs K's Care agreements later renewed on to Cover agreement insurance policies.

Mrs K contacted British Gas in July 2012 to complain that her agreements – apart from most of her Kitchen Appliance Care – had been mis-sold to her. That was because, as a tenant, she couldn't benefit from the cover.

British Gas didn't uphold the complaint. Although it couldn't retrieve recordings of the original sales calls, it said the products were universal and tenants as well as homeowners could benefit from them. Mrs K complained to us.

Our adjudicator ultimately recommended the complaint be upheld in part. With the exception of the Kitchen Appliance agreement (where Mrs K owned five of the six appliances covered), he didn't think Mrs K could have benefitted from the agreements. As such he felt the agreements weren't suitable for Mrs K.

The adjudicator recommended British Gas offer a refund of premiums for all the agreements except Kitchen Appliance Care/Cover. He recognised Mrs K had received some benefit from the agreements since Mrs K had had annual services carried out and two claims paid. In the light of this, the adjudicator suggested British Gas deduct the cost of the annual services and claims from the premium refund.

British Gas didn't agree with the adjudicator's findings, and so the complaint was passed to me to review afresh.

my provisional findings

Our jurisdiction to consider complaints is set out in the Financial Conduct Authority's Dispute Resolution (DISP) Rules. These say, among other things, that we can only consider complaints about "authorised" financial businesses.

Before 6 August 2009, neither British Gas nor the insurer were regulated and so they weren't authorised. This means we have no power to consider any part of Miss G's complaint about events that happened before 6 August 2009.

But I can look the events that took place from that date onwards.

Although Mrs K's Central Heating Care agreement was sold before 6 August 2009, I can look at whether Mrs K, as a tenant, could have continued to benefit from the cover after that date.

Typically under a tenancy agreement, the landlord would be responsible for maintaining the operation of the central heating system. So if there was a breakdown the landlord would be liable to pay to fix the problem. It could be said that, in that situation, the tenant is covered through the landlord.

There may have been benefits to the Central Heating Care agreement that Mrs K, as a tenant, could have received above and beyond what would reasonably be expected to be provided by the landlord. For example, a quicker response after a breakdown. Mrs K also would have been eligible to receive the cover in the event of a claim. But I don't think these points show Mrs K had an insurable interest in the boiler. By that I mean she didn't stand to lose out financially from the breakdown of the boiler, for example through the cost of repairing it.

I can see how Mrs K's landlord could have avoided their responsibility to ensure the central heating system was working if, say, Mrs K had intentionally damaged the boiler herself or should have reported a fault and didn't, resulting in more damage being caused. But in both of these circumstances it's just likely British Gas would also have reasonably been able to turn down a relevant claim under the policy terms.

In the circumstances, I don't think Mrs K had an insurable interest in the central heating system. It seems Mrs K was paying, to a large extent, for protection from financial risk to which she wasn't exposed. It's likely it would have been her landlord's responsibility to pay for any repairs needed to restore the central heating system if it broke down.

I think the same arguments regarding the lack of insurable interest also apply to the Gas Appliance, Plumbing and Drains and Home Electrical Care/Cover agreements.

Having said that, the Kitchen Appliance Care/Cover agreement was taken out to cover kitchen appliances that Mrs K owned, apart from a fire that was her landlord's. So she had an insurable interest in most them. I've no reason to believe that, if there was a claim for the kitchen appliances apart from the fire, anyone but Mrs K would have stood to lose out financially. That being the case, I think Mrs K could have benefitted from the cover provided by the Kitchen Appliance Care/Cover agreement, with the exception of the fire.

my provisional decision

For the reasons given, my provisional decision is that I intend to uphold this complaint in part. I propose to require British Gas Services Limited to:

- *refund the premiums Mrs K paid for cover from 6 August 2009 for the Central Heating Care/Cover agreement; and*
- *refund the proportion of premiums Mrs K paid for her landlord's fire to be covered under the Kitchen Appliance Care/Cover agreement; and*
- *refund the premiums Mrs K paid from the start for the Gas Appliance, Plumbing and Drains and Home Electrical Care/Cover agreements; plus*

- *add interest to the refunds at the rate of 8% a year, worked out from the date Mrs K paid each relevant premium until the date of settlement.”*

I asked British Gas and Mrs K to send me any more comments or evidence they had before I looked in to the complaint again.

British Gas said it had nothing more to add. Mrs K said she accepted my provisional decision.

my findings

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

British Gas hasn't added anything in reply to my provisional decision, so there's nothing from it to change my mind about the outcome of the complaint.

Similarly, Mrs K hasn't added anything, other than confirming she accepts my provisional decision. So overall, I see no reason to change my mind about the outcome of the complaint, or about how British Gas should put things right for Mrs K.

my final decision

For the reasons given, I've decided to uphold this complaint in part. I require British Gas Services Limited to:

- refund the premiums Mrs K paid for cover from 6 August 2009 for the Central Heating Care/Cover agreement; and
- refund the proportion of premiums Mrs K paid for her landlord's fire to be covered under the Kitchen Appliance Care/Cover agreement; and
- refund the premiums Mrs K paid from the start for the Gas Appliance, Plumbing and Drains and Home Electrical Care/Cover agreements; plus
- add interest to the refunds at the rate of 8% a year, worked out from the date Mrs K paid each relevant premium until the date of settlement.

It's open for British Gas to deduct from the settlement the cost of any claims it has paid for annual services it has carried out under the agreements.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 16 October 2015.

Nimish Patel
ombudsman