

## **The complaint**

Mr and Mrs W complain National House-Building Council (NHBC) has unfairly refused a claim they made on under their building warranty for repairs to a wood burning stove.

## **What happened**

Mr and Mrs W bought a new build property with an NHBC building warranty. More than two years into the policy, Mr and Mrs W reported an issue with the wood burning stove. They had a report carried out; it said the stove hadn't been installed correctly and noting issues with ventilation, which were a health and safety concern.

NHBC didn't agree to cover the claim under the policy. It said given the time since the property was built, the claim would be looked at under section 3 of its policy which provides cover for 'physical damage'. It said the issue with the stove wasn't as a result of any of the areas covered under section 3. Whilst it noted the construction of a flue is covered under the policy, it said there wasn't found to be problems with this. NHBC considered the issue to be coming from the installation of the stove itself, which isn't covered under the policy.

NHBC also considered if the claim could be considered under another part of the policy relating to health and safety, given the concerns raised. But because of the way building control is done in the area where Mr and Mrs W live (it isn't carried out by NHBC) it said cover couldn't be provided under this section.

Unhappy with its response Mr and Mrs W brought their complaint to this service. They said they had neighbours who'd found the same issue and had repairs carried out by NHBC, so couldn't understand why their claim had been declined.

Our investigator noted the seriousness of the health and safety concerns but said the installation of the stove isn't something that is covered under section 3 of their policy. So he thought NHBC had acted fairly in declining the claim. He said that whilst some neighbours had had repairs carried out, NHBC had said it had accepted these claims in error.

Mr and Mrs W didn't accept this. They said they'd bought a new-build home that had a serious issue with it, and they shouldn't be expected to pay out to cover the cost of the repairs.

## **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.

I can appreciate the seriousness of Mr and Mrs W's concern given the report they had carried out. But the NHBC building warranty doesn't cover every issue that may arise in their property. I can understand this is frustrating; as a buyer of a new-build home it's not unreasonable to expect a property to be free from issues. But in considering this claim I can only look at whether the issue is covered by section 3 of the policy.

Section 3 of Mr and Mrs W's policy runs from year 3 to year 10 of the policy. It provides cover for physical damage to the home where the builder hasn't complied with certain requirements.

For cover to be provided in this section, there must be physical damage to something listed in the policy as covered. Having reviewed Mr and Mrs W's policy, I can see that 'flues' and 'chimneys' are covered by this section. But stoves aren't. So I've considered the reports provided by both parties to see if the claim should be covered.

Mr and Mrs W's report says the type of adapter used when fitting the stove isn't compliant with the relevant standards and is causing a leak when the stove is in use. It seems to me that the adapter is part of the stove, rather than part of the construction of the flue or chimney. Whilst Mr and Mrs W's report does comment on the flue - saying another lining should be installed - I don't think this report alone is enough to say there is a defect in the flue because it wasn't built to the building requirements.

NHBC's report says the issues with the stove are not due to a failure to comply with mandatory requirements with the flue or chimney. And I haven't seen any evidence to suggest those parts of the building weren't constructed in line with the requirements. So overall, whilst it's clear there is an issue, it isn't one that NHBC covers under this section.

NHBC has also said as there is no physical damage to the home, the issue isn't covered. 'Physical damage' isn't defined any further in the policy. Mr and Mrs W's report says the only current damage is staining to the base of the flue, which would get worse if the stove was used. It's possible this could be considered as physical damage, but even if I were to say it was, the cause of this damage is linked to the stove installation, not the flue. So I still don't think cover under section 3 applies.

I accept that neighbouring properties have had their claim paid. NHBC doesn't deny other claims have been met but says it did so in error. I've no reason to doubt this – given what the policy sets out. But I don't think I could fairly ask it to also cover this claim just because it has mistakenly done so in the past.

NHBC has another section of the policy to provide cover where there is an immediate danger to someone's health or safety because of a failure to meet building regulations. But it will only do so when NHBC has carried out the building control on the property. Unfortunately for Mr and Mrs W, NHBC doesn't carry out this function in the region where they live. NHBC has said this is instead carried out by the local authority.

I can appreciate this is a very frustrating situation Mr and Mrs W find themselves in, through no fault of their own. But as I don't think the issue with the stove is covered under the policy, it wouldn't be reasonable for me to ask NHBC to step in and carry out the repairs. Mr and Mrs W may be able to contact their local authority about this issue, but this isn't something this service can assist with.

## **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 19 July 2021.

Michelle Henderson  
**Ombudsman**