

## **The complaint**

Mr and Mrs M's complaint is about National House-Building Council (NHBC)'s decision to turn down a claim made under their building warranty.

Mr and Mrs M are being represented by J in this complaint.

## **What happened**

Mr and Mrs M live in a property covered by a ten-year Buildmark policy provided by NHBC. The start and end dates of the policy fall between 2015 and 2025.

In November 2019, Mr and Mrs M notified NHBC of some issues surrounding the installation and operation of a stove. NHBC investigated the issue and in January 2020 it turned down the claim. NHBC said that the stove didn't fall under a part of the property covered by the warranty. And it said it couldn't see any evidence of any physical damage caused by a defect of one of the listed parts covered.

J complained to NHBC on behalf of Mr and Mrs M about its decision to turn down the claim. It said that NHBC had paid out on similar claims in neighbouring properties. In June 2020 NHBC provided its final response. It maintained its position and reasons for turning down the claim and said that in any event, the repairs it felt were necessary would have most likely be less than the Minimum Claim Value (MCV) of the policy.

J didn't agree and referred the complaint to our service.

Our investigator looked at everything and recommended the complaint shouldn't be upheld. They concluded that NHBC had turned down the claim fairly and that it couldn't be covered under any other sections of the policy.

J doesn't agree. They say that there is no material difference between the claims which have been accepted in neighbouring properties and Mr and Mrs M's claim.

The complaint has now been passed to me to decide.

## **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.

Mr and Mrs M's claim falls under Section 3 of the Buildmark policy. The policy covers problems with a newly constructed home that can be linked to a breach by the builder of one or more of NHBC's technical requirements. And the value of a claim needs to exceed the MCV of the policy.

Under the section titled “*When this section applies*” is states:

***“This section applies if there is physical damage to **your home** because the **builder** failed to **build** the following parts of **your home** to comply with the **NHBC requirements**:***

- *...flues, chimneys and access steps, to the **main structure**.”*

The policy goes on to define the *main structure* as:

***“The following parts of **your home**:***

- a. The dwelling.*
- b. In the case of a flat or maisonette, the structure of the building containing it.*
- c. The garages and permanent outbuildings.”*

I think the main structure is clearly defined in the policy and the terms of Section 3 set out that the physical damage needs to have occurred to the flue of the main structure in order to be covered.

Mr and Mrs M provided a report from a chimney specialist, who I’ll refer to as C. C’s report states that the issue concerns “*5kw m/f stove installation. We have concluded and deem the installation to be unsafe and that insufficient steps have not [sic] been taken to install this stove*”.

Having considered this report, the photos and video evidence provided, I’m not persuaded that it shows any physical damage to the flue of the main structure. And any damage that is apparent is clearly linked to the faulty installation of the stove. I’m satisfied that the stove isn’t a listed item under Section 3 of the policy. So I find NHBC’s decision to turn down the claim reasonable in the circumstances.

I acknowledge J’s argument that NHBC has paid for other similar claims in neighbouring properties, and I can certainly understand why this would feel unfair to Mr and Mrs M. So I’ve considered whether there are any grounds to pay this claim on a fair and reasonable basis.

NHBC was asked about wider circumstances concerning the similar claims. It confirmed that it provided different levels of cover for a number of properties in this development; some policies were worded differently; there were a number of similar claims made; and some may have been paid in error.

I’m satisfied that NHBC has clearly shown examples of the different policies that may be in force here and acknowledged the possibility of a genuine mistake. But I don’t think it would be either fair or reasonable for me to require NHBC to pay this claim as a result of a mistake it may or may not have made on a similar claim.

My role here is to look at the individual circumstances of this complaint and see if the policy terms have been applied fairly. And having done so I can’t see that NHBC has done anything wrong in how it dealt with Mr and Mrs M’s claim. It was consistent in its reasons for turning it down and dealt with the matter in a timely manner upon notification of the damage.

So for these reasons, I don’t uphold Mr and Mrs M’s complaint.

## **My final decision**

My final decision is that I do not uphold this complaint about National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 11 October 2021.

Dan Preveet  
**Ombudsman**