DRN-5715929

The complaint

A company, which I will refer to as “E” complains about Society of Lloyd’s (“SoL”) handling of their building warranty claim.

Mr R has brought the complaint on behalf of E. But for ease, I will refer to E only below.

All references to “SoL” also include its appointed agents.

What happened

- Following the construction of the property, a building warranty was put in place in 2021. The property was subsequently purchased by E.
- In April 2024, the boiler at the property failed a gas safety inspection. The gas safety record provided to E said defects had been identified, in particular that the flue hadn’t been sealed when passing through the ceiling. The technician noted also noted high levels of Carbon Monoxide and E was told the boiler itself was damaged and required replacing. E subsequently had the boiler replaced.
- E has provided a letter issued by the company that inspected the boiler which set out two of the flue seals were damaged during installation – and this caused the boiler to mix clean air with combustion fumes, resulting in it emitting Carbon Monoxide into the property and damaging the boiler.
- SoL attended the property in May 2024. In its report it noted from its inspection, and from the technician’s notes, the boiler was malfunctioning, and the flue didn’t comply with regulations, requiring its replacement. However, it said the cause of the damage hadn’t been noted.
- SoL declined the claim. It said when the property was completed, the boiler and flue would have been commissioned, and necessary test certificates would have confirmed they met Gas Safety and Building Regulations.
- It also pointed to a Gas Safety Inspection E had carried out in May 2023 which passed and identified no defects.
- SoL said it hadn’t seen evidence to persuade it the developer had not complied with Building Regulations when installing the boiler and therefore declined the claim.
- It has added in correspondence that an exclusion for wear and tear and gradual deterioration would likely be relevant if it had been shown the developer hadn’t complied with building regulations – as it had been noted by the technician that replaced the boiler that the flue seals had deteriorated.
- E disagreed with the decision to decline the claim. They pointed out they had been informed by the technician that the flue seal was defective and had suffered an accelerated deterioration.
- In its final response, SoL maintained its decision to decline the claim. It said the issue with the flue was evidently due to a deteriorated seal and not due to an issue with the developer not complying with Building Regulations.

- E was dissatisfied with this response and so the complaint has been brought to our service.

Our investigator's view

Our investigator recommended the complaint be upheld.

He said SoL acknowledged in its report that the boiler didn't comply with regulations. So wasn't persuaded it was fair to decline the claim. He said the letter provided by the company that inspected the boiler set out two of the flue seals were damaged during installation. He said having reviewed everything he was more persuaded this to be the cause of the damage to the flue and boiler.

To put things right he recommended SoL pay the costs E had incurred for replacing the flue and boiler with 8% interested added from the date the claim was declined. SoL disagreed with our investigator's view. It didn't agree the damage was due to the flue being installed correctly. It reiterated that if this had been the case, it is unlikely that the relevant safety certificates would have been issued to prove it met Gas Safety and Building Regulations.

It also noted in May 2023 the boiler was inspected with no defects identified.

It said the claim was declined on the basis there was no coverable event as there was no evidence that the developer failed to comply with building regulations or that the flue seals had been installed incorrectly. It also again highlighted that an exclusion for wear and tear would likely be relevant if it had been shown the developer hadn't complied with building regulations – as it had been noted by the technician that replaced the boiler that the flue seals had deteriorated.

My provisional decision

I issued a provisional decision on 11 July 2025 informing all parties I intended to uphold the complaint. In my provisional findings, I said:

"The relevant section of the policy says it will cover the cost of

"A condition requiring immediate remedial action to prevent imminent danger to health and safety of the occupants caused by a defect in the design, workmanship, material and/or components of the Structure or (my emphasis) failure of the

Developer to comply with Building Regulations in respect of chimneys and flues; which is discovered and notified to the Underwriter during the Structural Insurance Period."

- *I can see the policy also defines 'the structure' to include chimneys and flues.*
- *Looking at the wording of the above section, I'm not persuaded that for a claim to be successful there needs to be a defect requiring immediate remedial action to prevent danger to health and that building regulations have been breached. The use of the word 'or' clearly sets out these are two different requirements.*
- *While it's in dispute whether the issues were due to incorrect or poor installation. It doesn't appear to be in dispute that the seals failed, and the boiler was consequentially damaged because of it. This was acknowledged by SoL and the technician that inspected the boiler.*
- *While I understand that the Boiler and Flue would have undergone inspection when original safety certificates were issued, and passed an inspection in 2023, the seals haven't stood the test of time and have prematurely failed before the end of its expected useful life.*

- *E has provided a copy of the safety record from someone suitably qualified which sets out the defects with the boiler which includes issues regarding sealing and the flue. I've not seen any information that contradicts this. So, I don't think this is obviously wrong and so, I do think based on the information available the seals to the flue were more likely than not defective. And while the seals have been noted to have 'deteriorated', I don't think it's fair or reasonable to apply this to wear and tear for the reasons I've set out.*
- *Given the Carbon Monoxide levels noted by the Gas Safety Technician, I think it was reasonable for E to take immediate action as there was a clear and imminent health and safety danger.*
- *So in summary, I think SoL were unfair to decline the claim for these reasons and I intend to direct them to do as I've set out below.*

Putting things right

To put things right, I intend to direct Society of Lloyds to:

- *Reimburse E for the costs of replacing the Boiler and Flue. SoL can ask E for suitable invoices should it require it.*
- *8% simple interest per year should be added to this amount from the date of the invoice to the date it makes payment to E."*

Responses to my provisional decision

E didn't provide any further comments following my provisional decision.

In response to my provisional decision, SoL have said:

- The policy only covers structural defects. It said the policy definition of 'chimneys and flues' is clearly meant to refer to chimney flues and not boiler flues. So, boilers and its flues are not a part of the structure – and any claim for the boiler, or a boiler flue, is not covered.
- However, it also said it would have been fair for it to give the claim further consideration had it been established the developer failed to comply with building regulations when installing the boiler flue – and that cover would have potentially been provided.

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've reconsidered all the available information along with SoL's additional comments, but it doesn't change my decision – or my reasoning.

While I acknowledge SoL have said the definition of 'chimneys and flues' is meant to refer to chimney flues, I don't agree. It doesn't set out it is specifically for chimney flues only; it says chimneys *and* flues.

Further to that, I've also set out in my provisional findings that the seals haven't stood the test of time and have prematurely failed before the end of its expected useful life. So, it's more likely than not they were defective, so I think it's fair that SoL proceed to deal with the claim.

Putting things right

To put things right, I direct SoL to:

- Reimburse E for the costs of replacing the Boiler and Flue. SoL can ask E for suitable invoices should it require it.
- 8% simple interest per year should be added to this amount from the date of the invoice to the date it makes payment to E.

My final decision

My final decision is that I uphold E's complaint.

To put things right I direct Society of Lloyd's to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 22 August 2025.

Michael Baronti
Ombudsman