

complaint

Mr W is unhappy that National House-Building Council (NHBC) won't pay his claim for replacing his boiler under his building warranty policy.

background

Mr W purchased the property, a flat, in 2007. He let the property out and in 2015 had a gas safety inspection carried out. He was advised that the boiler had been checked but that the certificate couldn't be issued because there was a safety issue. This was that there was "no access to flue". I understand that the flue couldn't be inspected because of the lack of inspection hatches. Mr W says he was advised that the flue was too long when the boiler was installed. He couldn't get the boiler replaced with a similar one because the cost of doing so with the correct pipe and flue system was prohibitive. He opted to have an electric boiler installed.

NHBC wouldn't pay the claim as it said there was no technical requirement to install inspection hatches at the time the property was built. It wasn't satisfied that there was a defect in the flue causing "a present or imminent danger to the physical health or safety of anyone living in the home." Mr W pointed out that other owners in the block had had their claims for the same issue paid by NHBC.

On referral to this service our investigator thought NHBC had acted reasonably.

Mr W didn't agree and the matter has been passed to me for consideration.

my findings

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

The claim was dealt with by NHBC under the cover for years 3-10 of the warranty. This means that in this instance, NHBC will pay:

"The cost of putting right any defect in a flue or chimney which causes a present or imminent danger to the physical health or safety on anyone living in the home."

The "defect" identified by the Gas Safe contractor was essentially that the flue couldn't be inspected because of the lack of inspection hatches. They deemed the boiler to be "at risk" and said it didn't comply with current safety regulations. For NHBC to be liable to pay the cost of installing a new boiler first of all has to be a defect which is a "breach of any mandatory NHBC Requirement by the Builder or anyone employed by him or acting for him."

According to the NHBC's technical standards at the time of installing the boiler there was no requirement for there to be inspection hatches. So on the information supplied by the Gas Safe contractor there couldn't be said to be any defect.

Mr W has told us and NHBC that the flue was too long and has sent in a copy of the installation guide. But I haven't seen any expert evidence that the flue in question was defective or that it was a present or imminent danger to physical health and safety. And I don't think I can infer that from a technical manual.

Mr W makes the fair point that other owners in the block have had their claims paid. He has produced evidence that NHBC accepted a claim from another owner in respect of a boiler. But I don't know what the defect was in that case or how the case was decided. Each case has to be looked at on its own merits.

Overall I'm not satisfied that a defect has been shown to Mr W's boiler or that there was a present or imminent danger to the physical health or safety on anyone living in the home.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 March 2018

Ray Lawley
ombudsman