

complaint

Mr and Mrs D are unhappy that National House-Building Council (NHBC) isn't willing to pay for the cost of new boilers and flues under their buildings warranty policies for two properties. Mr and Mrs D are also unhappy about the time taken and the delays.

background

Mr and Mrs D made a claim for the costs of replacing their boilers and flues because they said that the original items weren't accessible and weren't fitted in line with the appropriate gas regulations.

Our adjudicator didn't uphold the complaint. He said there wasn't a valid claim under Section three of the warranty policy. He said there was no danger to "*physical health and safety*" as required by the warranty. He accepted that there was no failure of any technical requirements and there was no "*Defect*" – as required under the warranty.

my findings

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

I note that some of the correspondence on this complaint has been about legislation and regulations that may or may not have applied and the interpretation of the details. Mr and Mrs D said the gas regulations were in place when the property was built, should've been followed and now should be put right. They said the point of the regulations was the accessibility to the flue that their systems didn't have.

NHBC said that although Mr and Mrs D didn't think regulations had been followed the warranty was clear. NHBC would pay "*the Cost of putting right any Defect in a flue or chimney which causes a present or imminent danger to the health and safety of anyone normally living in the Home*". NHBC said there was no evidence to show this was the case. As the claim costs were about the new boilers and there was no imminent danger it didn't pay.

NHBC said the requirement for all concealed flues to have an inspection hatch fitted was introduced in 2010 and there was two years allowed for completion. It also noted that if an engineer found such a situation where there was no hatch they would class the system as "*at risk*" and turn the boiler off. However, unless the flue was causing a problem there's no cover for the cost of retrospectively fitting the inspection hatches under the warranty. I think this is reasonable. NHBC said if after installation a "*Defect*" was identified as a "*present or imminent danger*" to health and safety it would meet the cost of replacing the flue. I think that's fair and in line with the warranty. I haven't seen any evidence to show this.

The evidence in this case suggests that although Mr and Mrs D were unhappy about being left with such a large expense for their boilers there was no valid claim under the policy Section three. It's clear that there's no record of any danger or health concern to make NHBC take on the costs. I think NHBC acted reasonably in the way it handled this claim.

Mr and Mrs D also raised concerns about their original dealings with the builder. This service can only look at any complaint regarding Section three of the NHBC warranty. Any issues

about the builder of the property which occurred within the first two years isn't something this service can automatically look into.

I do think there were delays and a lack of service provided to Mr and Mrs D in dealing with their claim. I think when Mr and Mrs D were asking clear questions NHBC could've dealt with these more quickly and clearly. I can see that following discussions with Mr and Mrs D our adjudicator asked NHBC to pay £300 as compensation for the lack of service and delay – NHBC agreed to do this. I think that's reasonable in this case.

my final decision

I uphold this complaint in part.

I require National House-Building Council to:

- pay £300 for the distress and inconvenience caused by the lack of service and delays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 8 August 2016.

John Quinlan
ombudsman