

## **complaint**

Ms W complains that National House-Building Council (NHBC) unfairly declined her building warranty claim after she relocated her boiler to her living room.

## **background**

Ms W's property was built in about 2008, and she held a ten-year NHBC building warranty policy. In November 2016, she was given an 'at risk' gas safety notice by a gas engineer during her annual boiler service. The notice confirmed two issues:

- the lack of inspection hatches for the flue run
- the proximity of the flue's termination to other openings

The developer that built Ms W's property offered to retrospectively fit inspection hatches, but she says because the flue run couldn't be located, the only option was to reposition her boiler. In June 2017, Ms W made a claim under her NHBC building warranty policy for the costs she had incurred, and her estimated losses. She made the following points:

- Ms W had spent six months trying to resolve the problem, liaising with the developer and the management company. The process involved speculatively removing parts of her ceiling to try to locate the flue run, without success.
- The initial resolution was to reposition the boiler to an external facing wall, and part of the ceiling was removed in the living room to accommodate the new flue. Ms W had booked a hotel for the night she would be without water. However, the gas engineer discovered that it wasn't possible to install a flue in the ceiling space due to the ceiling joists the developer had used to fix the ceiling.
- Ms W said they decided to utilise the opened-up ceiling and run an extension to the existing copper pipes to allow the boiler to be sited in her living room, also on an external facing wall. Ms W said the work required a hotel stay for two nights.
- Ms W explained she was unhappy about having to have her boiler sited in her living room, and she was seeking advice from an architect on how to disguise the boiler and reduce the noise levels. She also noted that she was concerned the boiler's location would impact the property's value and future sale.
- Ms W said she had the invoices for the ceiling removal, the boiler installation, and the two hotel stays; and there would be further invoices for the outstanding repairs and decorations, and the solution for sound proofing and disguising the boiler.
- Ms W also suggested that compensation should be paid up to 10% of the original purchase price, due to the property's likely reduction in value.

Section three of the policy terms cover 'defects' to a flue which cause a 'present or imminent danger'. The terms define a defect as a failure to comply with an NHBC requirement in place at the time of the build. Section four also covers repairs to heat producing appliances where there's a 'present or imminent danger' because the home doesn't comply with the building regulations that applied at the time of construction.

NHBC's claim declination relied on there being no failure in the flue, and the flue termination point simply not complying with *current* regulations. However, its complaint response relied on the gas safety notice only being 'at risk' rather than 'immediately dangerous' – with both options available for selection on the form. NHBC also highlighted the repairs had been undertaken before the claim was made and it wasn't given an opportunity to inspect.

Ms W brought a complaint to this service about NHBC's claim decision. It was considered by one of our investigators, but she thought NHBC had applied the policy terms fairly and she noted the requirement for inspection hatches came after the property was built. Because Ms W remained unhappy, her complaint was passed to me to decide.

I contacted NHBC regarding the following:

- Having viewed a photo of the flue termination point, NHBC agreed that the clearing distance to an air vent didn't meet the building regulations at the time of the build.
- Although the appliance wasn't marked 'immediately dangerous' on the safety notice, it was marked 'at risk'. The notice also contains a warning that, for reasons of safety, an appliance 'at risk' shouldn't be used. NHBC accepted the notice was sufficient to consider the boiler a 'present or imminent danger'.
- In view of the above two points, NHBC accepted the requirements of section four were met in respect of the flue's termination. NHBC agreed that it should now consider the reasonable costs of rectifying this non-compliance and offer compensation for the incorrectly declined claim.
- However, NHBC explained that, at the time of construction, inspection hatches were not an NHBC requirement or a building regulation, so neither the requirements of section three or four have been met for this issue.

I issued my provisional decision in June 2020. I explained that I intended to *partly* uphold the complaint and I asked both parties to respond before I made my final decision. In my provisional decision, I said:

*"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.*

*I will set out my provisional findings under the following three headings: 'Inspection hatches', 'flue termination and claim settlement', and 'compensation'.*

#### *inspection hatches*

*When responding to our investigator's assessment, Ms W clarified that her claim isn't about the inspection hatches, it's about the unsafe siting of her boiler and flue. But regardless, her policy only responds if there was a breach of an NHBC requirement contained in its published 'Standards', or a building regulation breach, at the time of construction.*

*NHBC's requirements that were in place when the property was built required gas service installations to comply with gas safety regulations, along with some other requirements contained in the Standards.*

*So, for me to decide NHBC should cover the installation of inspection hatches, or rather, the only viable alternative Ms W says she was left with, I would need to be persuaded there was either a breach of gas safety or building regulations, or a breach of another requirement contained in NHBC's Standards, when the property was built. However, I've not seen or been shown anything which persuades me that's the case here.*

*Ms W accepts inspection hatches weren't a legal requirement at the time of construction. However, she points towards several publications, including NHBC's own newsletters, to show the installation was unsafe.*

*Ms W hasn't provided the publications she has referred to, but I have been able to find some of them. Having done so, I accept the issue of inspecting flue runs in voids was being widely discussed before her property was built. However, I'm sorry to say, that's not enough here. NHBC has explained that the Gas Safety Register didn't require inspection hatches to be fitted for concealed flues until late-2010, some two years after Ms W's property was built. Homeowners then had until January 2013 to retrospectively fit hatches, after which gas safety engineers were to consider a boiler system 'at risk'. I've seen information that supports what NHBC says.*

*So, although I accept the issue of inspection hatches and safety was being widely discussed before Ms W's property was built, this isn't the same as the gas safety or building regulations in place at the time, or an NHBC requirement contained in its Standards, being breached. Because I've not seen there was such a breach, I'm not persuaded that NHBC needs to consider Ms W's claim for retrospectively fitting inspection hatches or for the issues that arose due to the difficulties with identifying the location of the flue run.*

#### *flue termination and claim settlement*

*NHBC accepts that the flue termination's proximity to another opening breached the building regulations that were in place at the time of construction, and it ought to have considered this aspect of Ms W's claim under section four of the policy terms. So, what's left for me to decide is how NHBC should settle this part of her claim.*

*I acknowledge the policy terms require a claim to be notified to NHBC before any works are carried out, which didn't happen here. But I'm persuaded it would be fair and reasonable for NHBC to take a reasoned approach to determine the remedial works that would have likely been required to rectify the termination breach and settle the claim on that basis.*

*Therefore, I'm persuaded that NHBC should settle Ms W's claim by paying her an amount equal to the likely value of the covered works, less any applicable policy excess.*

*If the boiler and/or flue would have needed to have been relocated in order to rectify the flue termination breach, then it follows that NHBC should consider all the costs and losses Ms W has claimed for to determine which of those are covered by her policy. However, if NHBC considers it would have simply been able to reposition the termination, to comply with regulations, its liability would be limited to these costs.*

*NHBC should determine the remedial works that would have likely been required to rectify the flue termination, and therefore the claim settlement amount, before responding to my provisional decision. Ms W is also free to make submissions about this. I will consider whether the settlement offered is fair.*

*For the avoidance of doubt, I understand Ms W is claiming for:*

- *a new boiler and its installation;*
- *the attempts to locate the flue run and the subsequent ceiling repairs;*
- *two stays in a hotel whilst the works were completed;*
- *sound proofing and concealment of the new boiler; and*
- *the loss of value to her property*

*NHBC should comment on whether it considers any of these costs would fall under the claim settlement for the flue termination remedial works. Again, Ms W is also welcome to comment.*

#### *compensation*

*I'm persuaded NHBC unfairly declined part of Ms W's claim, and some of her upset could have been avoided had the claim been fairly considered and a contribution towards her costs made. I intend to award £250 compensation in recognition of this.*

*I appreciate that Ms W has suffered considerable upset due to what's happened, but at this stage, I've not seen anything to suggest a significant proportion of her claimed costs would have been settled had the flue termination issue been accepted as a claim. Therefore, I'm not persuaded that I can reasonably decide NHBC is responsible for all the upset she's suffered."*

In response to my provisional decision, NHBC provided a scope of works to rectify the flue termination breach, for £1,008. NHBC explained the easiest solution would have been to move the *extract* ventilation terminal to the left, away from the gas appliance flue. NHBC noted that Ms W's apartment has a suitable service void allowing access to the extract ducting, which could have been repositioned further to the left via a small opening in a ceiling. The scope also allowed for the associated internal and external repairs, and scaffolding.

Ms W also responded to my provisional decision. Ms W explained the decisions taken about her boiler would have remained the same whether her claim had been accepted based on the flue termination point, or the inaccessibility of the flue for safety inspections. She said there wasn't any option other than to replace and relocate the boiler, to allow for a flue termination point in a safe position. Ms W said her gas engineer would support her assertions.

Ms W also reiterated her costs and losses, and she provided various photos and invoices to support her complaint.

#### **my findings**

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is inconclusive or incomplete, I have reached my decision on the balance of probabilities – this means I have determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

I thank both parties for responding to my provisional decision. I don't doubt what Ms W says in respect of having to relocate her boiler due to the need to install inspection hatches and the difficulty she had with this. However, as previously explained, for me to decide that NHBC should be responsible for those associated costs or losses, I would need to be persuaded that there was a breach of regulations or NHBC Standards in respect of inspection hatches, or the flue run, at the time of the build – and that's not the case.

Alternatively, I would need to be persuaded that the boiler and/or flue would have needed to have been relocated to rectify the flue termination breach. I acknowledge Ms W believes the same works would have been required to remedy the flue termination breach, however, she hasn't provided anything persuasive to support what she has said here. Whilst on the other hand, NHBC has provided a detailed explanation of the works it would have undertaken to remedy the issue, *i.e.* it would have repositioned the extract ventilation terminal, to move it away from the flue termination. Overall, I'm more persuaded by NHBC's relatively detailed conclusions about the required works than Ms W's unsupported assertions, and I'm not persuaded her costs or losses would have been incurred but for the issues with the inspection hatches – which aren't covered. As such, I'm not persuaded NHBC can reasonably be held responsible for the costs or losses Ms W has claimed for.

For these reasons, and the reasons I outlined in my provisional decision, I'm satisfied it's fair and reasonable for NHBC to simply contribute towards Ms W's costs based on what its liability would have been to address the breach that was covered by the policy, *i.e.* the clearing distance between the flu termination and the air vent / extract ventilation. On balance, I accept its scope of works given its content and supporting explanation.

So, in conclusion, I'm persuaded that a fair and reasonable outcome to Ms W's complaint is for NHBC to settle her claim by paying her £1,008 (less the policy excess, if one applies). It should also compensate Ms W £250 for the upset it caused her by the incorrect claim decision in the first instance.

### **my final decision**

I appreciate Ms W will remain disappointed, but for the reasons I've set out above, I uphold this complaint in part. My final decision is National House-Building Council should:

- settle the claim by paying Ms W £1,008 (less any applicable policy excess)
- compensate Ms W £250 for unfairly declining her claim outright

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 3 September 2020.

Vince Martin  
**ombudsman**