

## **complaint**

Mr and Mrs A have complained about the length of time it took National House-Building Council ('NHBC') to resolve the issue they reported regarding the chimney at their property.

## **background**

Mr and Mrs A made a claim in December 2009 to NHBC under their *Buildmark* policy about the height of their chimney after being advised by an engineer from the official gas registration body that it was too low. NHBC considered the claim under Section 3 of the *Buildmark* policy, as it was reported during years three to ten of the ten year term of cover.

NHBC requested the report from the engineer who inspected the gas installations. As the report did not state that the problem with the chimney caused it to be "*immediately dangerous*", NHBC declined the claim under the terms of Section 3.

NHBC carried out the Building Control inspection for Mr and Mrs A's property. Therefore, they benefit from some additional cover under Section 4 of *Buildmark* during years three to ten of the warranty. In relation to the chimney, NHBC declined the claim under this section as it did not consider that there was any evidence of a present or imminent danger to Mr and Mrs A's health and safety. However, in view of the problems and difficulties they had experienced in general with their new property, NHBC offered Mr and Mrs A £2,500 as a gesture of goodwill.

Mr and Mrs A sought assistance from the devolved government for the area within which they live. It gained agreement from NHBC to carry out remedial works to the chimney in March 2011.

In bringing their complaint to this service, Mr and Mrs A have asked for compensation to reflect the length of time taken before works were carried out to their chimney. They consider that the structure of the chimney prior to NHBC arranging these works resulted in a significant danger that they would be exposed to carbon monoxide. Mr and Mrs A have also suggested that the value of their home has been reduced, as the work that has been carried out on the chimney might lead to potential purchasers being concerned about the quality of other parts of the property.

Our adjudicator did not uphold this complaint. He concluded that NHBC had appropriately applied the terms and conditions of the *Buildmark* policy when declining the claim in respect of the chimney. Consequently, he did not consider that NHBC should increase its offer of compensation for delays in eventually carrying out the works to rectify the problem with the chimney, or contribute towards any loss in the value of Mr and Mrs A's property.

Mr and Mrs A did not agree with the adjudicator's findings. Whilst they accept that the gas engineer who inspected their chimney did not issue a condemn notice or shut off the gas system, they state that he recommended the defect with the chimney needed to be fixed as soon as possible. In their view, by delaying works on the chimney, NHBC delayed acceptance of a valid claim under the policy.

Mr and Mrs A also state that the compensation sum of £2,500 that they received from NHBC related to previous problems with their property other than those associated with the chimney. Their view is that their property has suffered a loss of value due to NHBC's failure to identify the problem with the chimney during its Building Control inspection.

## **my findings**

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

Under section 3 of the *Buildmark* policy, NHBC will pay for “*the Cost of putting right any Defect in a flue or chimney which causes a present or imminent danger to the physical health and safety of anyone normally living in the Home.*”

Under Section 4, NHBC will pay for “*repairs needed where there is a present or imminent danger to the physical health and safety of the occupants of the Home because the Home does not comply with the requirements of the Building Regulations.*”

Therefore, when considering the cover provided by the policy, the key issue is to establish whether the problem with Mr and Mrs A’s chimney constituted a present or imminent danger to their physical health and safety.

The gas engineer’s report classified the problem with the chimney as “*Not to Current Standards*”. The report defines this as ‘*an installation which is not in accordance with current practices, but does NOT constitute either an ‘Immediately Dangerous’ or ‘At Risk’ situation.*’

I consider it is clear from this definition that the problem with Mr and Mrs A’s chimney did not constitute a present or imminent danger, as required for cover to be applicable under section 3 or 4 of *Buildmark*. As a consequence, my view is that NHBC’s decision to decline the claim was not unreasonable.

Mr and Mrs A have confirmed the concerns they had regarding the chimney, and they have stated that both the gas engineer and the individual who they dealt with at the devolved government impressed upon them the seriousness of the situation with the chimney. However, my view is that the weight of evidence does not demonstrate that there was a present or imminent danger at their property due to the problem identified with the height of the chimney. In a situation that requires technical expertise and concerns gas safety, I believe that the documented opinion of the gas engineer holds significant evidential weight.

In eventually agreeing to carry out the necessary works, I am satisfied that NHBC exceeded its liability under the policy to Mr and Mrs A. Therefore, I do not consider that I can reasonably require NHBC to pay Mr and Mrs A additional compensation for any delays in carrying out these works, or for any potential associated loss in the value of their property.

My consideration of NHBC’s actions is limited to its application of the terms and conditions of the *Buildmark* policy. This service has no jurisdiction to consider NHBC’s inspections for the purpose of Building Control, as these do not form part of the insurance cover. Therefore, I cannot comment on this activity.

## **my final decision**

My final decision is that I do not uphold this complaint, and I make no award.

John Swain  
**ombudsman**