

complaint

Mr K complains on behalf of himself, Mr K and Mrs K. They are unhappy that National House-Building Council (NHBC) won't deal with their claim in respect of a defective heating system relating to the boiler and pump, under their building warranty.

background

Mr K reported a claim to the builder in July 2013, the warranty having commenced in March 2013. A number of problems arose, and the builder failed to comply in time with NHBC's resolutions. So NHBC took over dealing with the claim, which resulted in a cash settlement to Mr K for a number of issues. Of particular concern to Mr K was the heating system which it was determined wasn't sufficient. Some of the problems with the system were resolved. In May 2016 Mr K reported a leak to the boiler. He subsequently provided a quotation from the gas board, advising that the boiler hadn't been fitted to gas safety regulations or to the manufacturer's instructions. He had also reported his concerns over the pump, which he said was too noisy and required re-siting in an outhouse.

NHBC said the problem with the boiler hadn't been reported in the first two years of the warranty. It could only accept a claim under section 3 of the warranty (years 3 to 10) but under this section, boilers aren't covered. In respect of the pump it advised that it was working properly and was "within tolerance". Nevertheless it offered a £2,500 ex gratia payment which was accepted by Mr K.

On referral to this service our investigator thought that NHBC should deal with the issue of the boiler. This was because NHBC had commissioned reports on the heating system which should have identified the defective installation. She thought NHBC's response to the pump issue was reasonable. She proposed that NHBC pay £350 compensation.

NHBC objected. It advised that it was for Mr K to report any defect and he didn't do so within the first two years. If this service was asking it to deal with the boiler as a section 2 (the first two years) issue then we were asking it to issue a resolution report, something which was outside our jurisdiction.

Mr K asked for the compensation amount to be reviewed as he didn't think it was sufficient.

The matter has been passed to me for a decision.

my findings

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

As a preliminary point and as it has been raised with NHBC, I would observe that substantial sums have been paid out already for other issues to Mr K. Since those sums were agreed and paid before Mr K raised any complaint with this service, they aren't now in issue so wouldn't be considered as part of the limit of any compensation award I might make. The amount in issue now is less than £30,000.

boiler

NHBC is right in saying that a claim concerning the boiler isn't covered under section 3 of the policy. But it is potentially covered under section 2, if it can be established that a claim was notified within the first two years of the warranty. NHBC commissioned a number of reports on the heating system in 2014 as Mr K had reported various problems with it. Some work was carried out to resolve issues with the pressure, the room thermostats and the pump. Mr K was also paid a cash sum to cover part of the work necessary to increase the size of the gas pipes to the meter.

None of the reports commissioned advised that there was any problem with the boiler or its installation. But as the overall complaint related to the heating system I am surprised that they didn't do so. The report from the Gas Board says that it hadn't been fitted to gas safety regulations or to the manufacturer's instructions. NHBC has said that a problem with the boiler wasn't reported, and Mr K only reported the boiler to be leaking (and obtained a report from the gas board) outside the two years. But although the warranty requires the consumer to report any claim with the boiler within the first two years, they aren't expected to be experts. Bearing in mind that the gas board also advised Mr K that the poor installation may well have contributed to the poor performance of the system, I think the boiler should have been inspected as part of the overall complaint about the heating system.

Further, I think the problem with the installation was recognised by the contractors who advised Mr K that they would check the system for problems in the course of doing other work on it. Because there was a dispute about that work, the contractors didn't look at the system until after the two years had expired. But I don't think Mr K was at fault for that.

Turning to the question of jurisdiction, NHBC had taken over dealing with the claim from the builders, so it's responsible under the warranty for paying to put it right. I don't think either, that this is a new claim under section 2. In my view it's part of a claim reported to and taken over by NHBC in 2014.

I think there is a defect with the boiler as it doesn't appear to meet NHBC's technical requirements which are that "*...all gas services must comply with gas safety (installation and use) regulations...*" So NHBC must deal with Mr K's claim for the boiler.

I would observe that Mr K is also claiming for extra pipework, over and above that already paid for, and also that the meter isn't big enough for the system.. This work would be to accommodate a new boiler. If NHBC deems it necessary to install a new boiler, and because of that, new pipework and a new meter needs to also be installed this work can be dealt with at the same time.

pump

Mr K's complaint concerning the pump is that it is too noisy; he says it's a commercial pump, not designed for a domestic system. He believes it should be resited in a specially built outhouse.

NHBC has investigated the pump – its engineer has found that it is operating properly, has been installed correctly and gives satisfactory water pressure. He has also said that a commercial pump is appropriate for a large domestic system. So the pump is within NHBC's technical requirements. The noise is said to be within tolerance. I agree that whilst it is annoying it isn't a defect within the terms of the warranty. Nevertheless as a goodwill gesture, NHBC has paid £2,500 which I think is reasonable in the circumstances.

compensation

I have to bear in mind that the purpose of the warranty is to cover certain defects in the building of a property. NHBC's liability started when it took over liability from the builder. I can't award compensation for anything done by the builder prior to NHBC taking the matter over. I also can't award compensation for any distress or inconvenience suffered by Mr K, Mr K and Mrs K caused by the actual defects, since this is specifically excluded under the terms of the warranty. I think NHBC's refusal to accept the boiler claim is a matter of judgment, but I think some anxiety and inconvenience has been caused by the delay. I think a payment of £350 is fair and reasonable.

my final decision

I uphold the complaint and require National House-Building Council:

- to settle Mr K's claim for a defective boiler under the remaining terms of the warranty including, if they need to be changed as a result, any extra pipework and the meter.
- pay £350 as compensation for the way the claim was handled.

National House-Building Council must pay the total compensation within 28 days of the date on which we tell it Mr K accepts my final decision. If it pays later than this it must also pay interest* on the compensation from the date of my final decision until the date of payment at 8% per year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K on behalf of himself, Mr K and Mrs K to accept or reject my decision before 15 February 2018.

Ray Lawley
ombudsman

*If National House-Building Council considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.