

## **The complaint**

Mr C and Mrs M complain that National House-Building Council declined a claim under their new property warranty policy.

## **What happened**

Mr C and Mrs M have a 'Buildmark' policy with National House-Building Council (NHBC), which covers the house they bought around two years ago. The house was built in 2014.

The pre-purchase survey Mr C and Mrs M had carried out found no problem with the mortar in their property. But since then they've noticed some crumbling and some small holes appearing in the mortar.

They made a claim to NHBC, who carried out an inspection at the property. NHBC declined the claim. They said the damage wasn't caused by a failure to follow their building standards. And they told Mr C and Mrs M they weren't covered unless the issue with the mortar was causing structural problems or allowing water to enter the property.

Mr C and Mrs M weren't happy with that outcome and made a complaint to NHBC. They thought the claim should be accepted and they didn't believe the inspection had been thorough. When NHBC maintained their position, Mr C and Mrs M brought their complaint to us.

Our investigator looked into it and didn't think NHBC had done anything wrong. Mr C and Mrs M disagreed and asked for a final decision from an ombudsman.

## **What I've decided – and why**

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

First of all, I'm sorry Mr C and Mrs M are experiencing these problems with their home. I can understand their frustration and annoyance that a relatively new property has these issues with the mortar.

And there's no dispute in this case that there are issues with the mortar. NHBC's surveyor noted that there were small holes appearing and that the mortar appeared softer in some areas than others. Mr C has done some research and he's very much aware that mortar shouldn't need extensive repair or attention within such a short space of time.

The decision I have to make now is not about whether there are problems with the mortar. Or whether Mr C and Mrs M should expect to have to deal with these issues so early in the life of their home.

I very simply have to decide whether NHBC specifically have fulfilled their obligations under the policy and whether they've treated Mr C and Mrs M fairly and reasonably in the way

they've handled their claim.

The policy is essentially in three Sections. Any issues within the first two years after the build is completed are to be dealt with by the builder.

In years 3-10, NHBC provide insurance to the policyholder. That's the period in which Mr C and Mrs M have made this claim.

As with all insurance policies, the NHBC Buildmark policy sets out what's covered and what isn't. I don't think anyone would expect that the policy would cover all damage to the property, whatever it is and however it comes about. I suspect that if you could find an insurer to provide a policy to do that, it would be expensive.

The policy covers certain damage caused by "defects" in the build - essentially failures to build the property in accordance with the relevant standards.

But there are some "conditions and limitations" set out in the policy. They are quite clear. And they are given reasonable prominence. They're not buried in the small print or set out in a separate annex that the customer might be tempted not to read. One of those limitations is set out as follows:

*"You cannot claim for..... cracking, spalling or mortar erosion, which does not impair the structural stability or weather tightness of your home..."*

That appears to me to be quite clear. It says in effect that you'll be covered for mortar erosion only if it makes the structure unstable or allows water to enter the inside of the home. I can't see any other reasonable interpretation of those words.

Mr C and Mrs M aren't suggesting that the structural stability or the water tightness of their property has been affected. They're understandably worried that it might be, at some point in future, but they accept that isn't the case now.

So, I can't reasonably conclude that NHBC have done anything wrong in declining this claim. The terms and conditions of the policy set out what action NHBC will take and when. Those terms clearly exclude the damage suffered by Mr C and Mrs M. And I can't say that those terms are either obscure or inherently unfair or unreasonable.

I know Mr C also had some reservations about the way the inspection was conducted by NHBC. I think that's largely irrelevant in this case because, as I say, no-one is suggesting the property is structurally unstable or that it's not watertight. So, however thorough or detailed the inspection was, it was never going to indicate that NHBC should accept Mr C and Mrs M's claim. It was never going to find structural instability or water ingress.

I know Mr C and Mrs M will be disappointed by this outcome. And I know they'll feel - with justification - that it's unfair that they have this problem with their mortar. But I can't conclude that NHBC have caused that unfairness or that they've dealt with Mr C and Mrs M's claim in an unfair or unreasonable way.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs M to accept or reject my decision before 10 July 2020.

Neil Marshall  
**Ombudsman**