

The complaint

Mrs and Mr B complain that National House-Building Council (NHBC) declined a claim made under their buildings warranty.

What happened

Mrs and Mr B have a buildings warranty with NHBC which covers their home.

Mrs and Mr B have had the NHBC warranty since 2015. In September 2018, the curtain wall glass panel at the front of their property shattered, so they made a claim to NHBC.

NHBC declined the claim. They acknowledged that there was damage to the panel but said this wasn't caused by a "defect" in the building of the property and so wasn't covered by Mrs and Mr B's policy.

Mrs and Mr B complained to NHBC, but they maintained their position, so Mrs and Mr B brought their complaint to us.

Our investigator looked into it and didn't think NHBC had done anything wrong.

Mrs and Mr B 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.

The NHBC warranty has a number of sections, which provide different types of cover in different periods of time. This claim was made around three years into the life of the warranty, so Section 3 applies. Broadly speaking, during this period, NHBC provide insurance against certain types of damage to the home.

The policy defines damage – and there's no dispute here that Mrs and Mr B's glass panel is damaged.

It also says NHBC will cover any damage to various parts of the home which is caused by a "defect". There's no dispute here that the glass panel is one of the parts of the home that is covered.

The policy also defines what is meant by a "defect", which is:

"The breach of any mandatory NHBC requirement by the builder..."

So, the issue in this case is quite simple. NHBC say the property was built in line with their requirements, so there is no "defect" and hence no cover for the damage. Mrs and Mr B say there was a failure to follow NHBC requirements by the builder – and so cover should be provided.

A summary of the NHBC requirements is set out at pages 22-25 of Mrs and Mr B's policy document. In short, NHBC require builders to comply with five mandatory technical requirements.

One of these, the "Materials requirement", says that when choosing what materials to use, builders should take account of the proposed purpose and location of those materials.

The policy also says:

"Materials, products and building systems will normally be acceptable if they comply with... NHBC standards... or British Standards..."

The policy then refers the reader to very specific technical standards for different parts of buildings which underpin the NHBC requirement. This very detailed guidance is not included in the policy, but it is accessible via the NHBC website.

The requirement relating to curtain walling and cladding (Chapter 6.9 of the NHBC requirements guidance), says that glazing in curtain walling "*should be in accordance with Chapter 6.7*", which is about "*Doors, Windows and Glazing*".

Chapter 6.7 says, amongst other things:

"Glazing and materials should comply with appropriate British Standards.... including... BS EN 12150..."

It's not in dispute that the glass used in Mrs and Mr B's panel complied with BS EN 12150.

Nor is it in dispute that the most likely explanation of the glass shattering is that it contained traces of nickel sulphide. This was the explanation provided by the expert NHBC consulted.

In short, if glass is contaminated in this way – and apparently it's very difficult to ensure that it's not – then the molecular structure of the nickel sulphide when heated and cooled can cause a glass pane to shatter 'spontaneously'.

Mrs and Mr B think the builder should have used glass which conforms to a different British Standard (BS EN 14179). This has been 'heat soaked' so that any fracturing caused by nickel sulphide contamination may occur before the glass is put to use. Although this method itself isn't fool-proof and can't guarantee that spontaneous shattering will not occur at a later time.

I have every sympathy with Mrs and Mr B. Their property is relatively new and one wouldn't expect a major component such as the glass panel to fail so soon.

However, I have to take into account what the NHBC warranty is intended to cover – and what its terms and conditions say. NHBC are, in effect, providing some security so that homeowners are covered if and when damage results from builders not building in accordance with recognised standards.

The warranty isn't intended to cover all damage to the home, no matter how it occurs. It's in effect a safeguard against sub-standard building.

In this case, I'm satisfied the builders used glass in the curtain wall panel which conformed to British Standards – and so met the NHBC technical requirement. According to the British

Standards Institute itself, BS EN 12150 provides, “*Thermally toughened soda lime silicate safety glass for use in buildings*”.

There may be other British Standards which provide a different – and/or higher quality – standard of glass. But I’m satisfied that, in complying with BS EN 12150 – which sets standards for glass *for use in buildings* - the builders of Mrs and Mr B’s home have used materials which comply with the recognised standards.

That being the case, there is no “defect”, as defined in the NHBC policy. And the damage to the glass panel is not covered by the warranty.

I completely understand Mrs and Mr B’s frustration about this. But it’s not for me to enter into any debate about whether the current standards are ‘correct’.

It’s arguable that those standards do allow builders to use a material which may – in a limited number of cases – shatter spontaneously. That may be something Mrs and Mr B want to take up with the British Standards Institute.

But I have to focus on the warranty and what its terms and conditions say NHBC will do (and won’t do). It’s clear to me there is no “defect”, as defined in the policy – because the builders have used materials which comply with the current recognised standards. And so, the damage to Mrs and Mr B’s glass panel isn’t covered.

My final decision

For the reasons set out above, I don’t uphold Mrs and Mr B’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B and Mr B to accept or reject my decision before 23 September 2020.

Neil Marshall
Ombudsman