

The complaint

Mr A has complained that National House-Building Council (NHBC) declined a claim he made under his NHBC Buildmark warranty and insurance cover.

What happened

Mr A experienced issues with some external steps causing a leak into his property within the first two years of his warranty cover. The issues were initially reported to the builder, and repairs were carried out. But when the issues reoccurred Mr A contacted NHBC – within years 3 to 10 of his warranty cover.

NHBC liaised with the builder and it agreed to carry out further remedial works. This didn't involve NHBC issuing a resolution report. The issues then reoccurred again in 2018. NHBC communicated with both sides about the issues, but ultimately advised Mr A that the issues he was reporting wouldn't be covered by his warranty.

Mr A is unhappy because he continues to experience issues. He feels NHBC should cover the damage under section 3 of his Buildmark cover. He says NHBC has given several different reasons for not covering his claim, rather than just helping him.

NHBC says the issue was first reported during the builder's liability period. It says the builder agreed to carry out repairs, so there was no resolution report issued – which means it can't now be held responsible for further issues. It says section 3 of the warranty specifically excludes anything which was, or could have been, reported to the builder during the first two years of cover.

One of our investigators looked into Mr A's complaint. She explained that our service doesn't have the power to consider NHBC's decision not to offer its resolution service because the first two years of cover doesn't amount to a contract of insurance. But she felt by attempting to facilitate communication between Mr A and the builder in 2018, that NHBC had done more than it was required to do under the warranty.

Our investigator did consider whether the issues Mr A reported should be covered under section 3 of the warranty. But she didn't think they should, because section 3 specifically excludes any issues reported to the builder within the first two years – which these issues were.

Mr A accepts that our service doesn't have the power to consider NHBC's decision not to issue a resolution report. But he remains of the opinion that the issues should be covered under section 3 of his warranty. So, because no agreement has been reached the complaint has been passed to me for a final decision.

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.

While Mr A has highlighted several concerns, my decision focuses only on the issues I consider to be material to the outcome of his complaint.

Mr A has accepted that our service doesn't have the power to consider NHBC's decision not to offer its resolution service during the first two years of the warranty. So, my decision will focus only on whether NHBC should cover the claim under section 3 (years 3 to 10).

In basic terms, NHBC's Buildmark warranty provides cover for major problems with newly built or converted properties where there has been a breach of its technical requirements. The warranty is bought by the builder and passed on to the consumer when they purchase the property. The cover provided by the warranty is split into three sections, which I'll summarise very broadly below:

- Section 1 – cover before completion – typically protects the deposit paid by the consumer in the event of the builder being made insolvent before completion
- Section 2 – years 0 to 2 (Builder's warranty) – the builder is required to put right any issues, with the home or common parts, which amount to a breach of NHBC's technical requirements.
- Section 3 – years 3 to 10 (Defects insurance period) – NHBC is required to put right any issues, with the home or common parts, which amount to a breach of NHBC's technical requirements

Section 3 of the warranty is the relevant section in this complaint. This section states that NHBC will pay for:

“The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuilding, or its Common Parts”

However, as with any insurance policy/new home warranty, there are specific exclusions applicable to the cover. Page 13 of Mr A's warranty booklet explains what is and isn't covered under section 3. Under the heading, *“What NHBC will not pay for”* it says:

“Anything which was or could have been reported to the Builder under section 2”

Mr A did report the issues to the builder under section 2 of his warranty during the first two years of cover. So, in this case, I don't think it's unfair or unreasonable for NHBC to rely on this clearly worded exclusion.

Mr A has also complained that NHBC has given him several different reasons for not covering his claim. I can see that in 2018 NHBC did tell Mr A that he would be out of time for raising a claim under section 3, which wasn't correct. But this was quickly rectified. And it appears that NHBC was clear from the outset that the builder was responsible for the issues because they were first reported within the first two years of the warranty.

Ultimately, Mr A reported the issues to the builder during the first two years of the warranty, which means they are specifically excluded under section 3. So, taking into account the specific exclusion, it wouldn't be fair or reasonable to expect NHBC to cover Mr A's claim under section 3 of his warranty.

It follows that I don't require NHBC to take any further action

My final decision

For the reasons I've explained, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 August 2020.

Adam Golding
Ombudsman