

## **The complaint**

Mr and Mrs Y complain that National House-Building Council trading as NHBC unfairly declined a claim they've made under their building warranty policy.

## **What happened**

Mrs Y brings this complaint on behalf of her and her husband. So, for ease, any references I make to her actions include those of her husband.

Mrs Y part-owns a property jointly with a housing association. The property has the benefit of an NHBC Buildmark building warranty which provides cover, in some instances, for defects which affect it.

In March 2019, Mrs Y noticed water entering into the property. She contacted the housing association, the developer and eventually NHBC to report the problem. NHBC asked her to provide photos of the issue. Once she did this, it declined the claim.

Mrs Y wasn't happy and complained, saying the housing association thought the issue might relate to the construction of the building. NHBC responded saying that, having looked at the evidence, it thought the windows in the flat hadn't been installed correctly and this was the cause of the problem. And it explained this wasn't covered under the policy.

Mrs Y didn't think this was fair so brought the complaint to this service. Our investigator considered the evidence and decided not to uphold the complaint. But she said if further evidence became available that suggested the claim should be covered, Mrs Y should send this to NHBC for it to consider further.

Unhappy with this answer, Mrs Y asked an ombudsman to make a 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.

And having done so, I'm not upholding this complaint. I'll explain my reasons.

Building warranties aren't designed to cover everything that might go wrong with a property. The terms and conditions of the policy define what is – and isn't – covered and they form the basis of the contract between the insurer and the policyholder. In this case, the relevant terms of the Buildmark cover are detailed in Section 3.

With claims, the onus is on the policyholder to demonstrate that the policy provides cover for the damage.

I'll be mindful of these things when reaching my decision while keeping in mind what I consider to be fair and reasonable.

## *The cause*

Having viewed the photos provided by Mrs Y, NHBC's surveyor concluded the cause of the problem was due to the installation of the windows. The housing association's surveyor seems to be in broad agreement the problem lies with the window area, the relevant comment on the likely cause being:

*"...defective window frame created a gap between glazing and frame causing water ingress"*

I know Mrs Y disagrees and believes the problem may result from an issue relating to the construction of the building. This belief seems to stem from some initial speculative comments made by the housing association, but I've seen nothing to substantiate this.

Overall, I'm persuaded it's more likely than not the problem lies with either the installation of the windows or a defective window frame.

#### *The cover*

So, I've then gone on to consider what the terms of the policy say. The only cover relating to windows in this section of the policy is detailed below. The policy states

*"What NHBC will pay for*

- A. The full cost, if it is more than £1,000 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 outbuildings...double or triple-glazing panes to external windows and doors"*

From this, I think it's clear there's no cover for issues relating to window installation or defective window frames, only for damage caused by a defect in window *panes*. I'm therefore satisfied NHBC has acted fairly in declining this claim.

I note, NHBC says if, after further investigation by Mrs Y or the housing association, there's evidence there *is* a structural defect, it will give this further consideration. I'm satisfied this is fair and reasonable in the circumstances.

#### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y and Mrs Y to accept or reject my decision before 17 September 2020.

Paul Phillips  
**Ombudsman**