

## **The complaint**

Ms A and Mr P complain that National House-Building Council, trading as NHBC, unfairly declined their claim on their building warranty policy.

## **What happened**

Ms A and Mr P moved into their house in September 2016. When they became the owners of the house, they also became the beneficiaries of the ten-year NHBC Buildmark building warranty. This warranty began in January 2007. During years three to ten, the policy covers physical damage caused by a defect – subject to the policy terms and conditions.

Shortly after moving in, Ms A and Mr P renovated the house as it had been empty for several years. During these renovations they noticed a damp patch under a window on the top floor. They thought this could have been caused by the house being empty for a while and painted over the damp as part of the renovation.

A month after moving in, Ms A and Mr P say they were told by their neighbours that all the houses in the development had a build fault and it was suggested Ms A and Mr P should contact NHBC. Ms A did this.

As there was no sign of water damage or any cracking or movement, NHBC declined the claim. They confirmed to Ms A that they can only consider a claim if there is physical damage present. It was also confirmed to Ms A that the warranty was expiring in January 2017.

In February 2020 Ms A contacted NHBC again. She told them that the wall appeared to be crumbling away and they wanted to make a claim on the warranty. NHBC declined the claim. They explained the warranty policy lasted ten years and expired in January 2017. They said Ms A and Mr P had made their claim too late.

Ms A and Mr P weren't happy with this and complained to NHBC. Ms A said that NHBC had told her in October 2016, when she first spoke to them to explain about the damp patch, that she had reported the issue in time and any further issues would be covered. So, she wanted the claim to be dealt with. NHBC didn't change their decision. They said the call from October 2016 couldn't be found, but the notes confirmed what had been said. And they confirmed that only a claim for physical damage could be considered, and it had to be made before January 2017.

Unhappy with this, Ms A and Mr P brought their complaint to our service. Our investigator didn't uphold it. He said that the physical damage had occurred after the warranty had expired. He agreed that NHBC were reasonable in declining the claim for that reason. Ms A remained unhappy and provided photos and additional evidence. But our investigator didn't change his opinion.

As Ms A and Mr P didn't agree, it's been passed to me to decide.

## **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.

Section 3 of Ms A and Mr P's Buildmark warranty policy is the relevant section I need to consider. It applies between years 3 to 10 of the warranty period and it says that it's there to put right any '*actual physical **Damage** caused by a **Defect***'. It goes on to list the parts of the house covered. The policy also confirms the definition of damage as:

*'Physical damage to the **Home** caused by a **Defect**.'*

So, I think it's clear that there has to be actual physical damage for a claim to be accepted under this section of the policy.

When Ms A called NHBC in October 2016 it would appear that she told NHBC the damp patch had been painted over and there wasn't any visible physical damage. Unfortunately, the call can't be provided. And when information is incomplete, I have to base my decision on the balance of probabilities – or what I think is most likely to have happened.

In her complaint submission to our service, Ms A explains there was no visible physical damage when she first spoke to NHBC in October 2016. So, I have no reason to question the information that has been provided by NHBC in respect of the telephone call at that time. The history notes provided by NHBC are consistent with Ms A's complaint submission to our service, and I'm persuaded they're an accurate record of the conversation that took place.

Ms A also explains in her submission to us that, even though the damp patch kept appearing during 2018 and 2019, it dried quickly. And it was only in 2020 that the damage became obvious and the wall appeared to be crumbling away. NHBC had explained to Ms A that the warranty was going to expire in January 2017. So, I'm satisfied that the claim has been declined fairly, as the physical damage has only been notified to them after the warranty period has ended.

I appreciate that Ms A has mentioned that her neighbours had their defects repaired by NHBC – but I'm not considering that. I'm only deciding if NHBC have dealt with Ms A and Mr P's claim fairly, and I've said I'm satisfied they have.

Ms A and Mr P have provided photos of the damage and a testimony from a building surveyor. But the photos and the testimony only confirm the current situation. I have no doubt that there is damage to Ms A and Mr P's house. But I haven't seen anything to persuade me there was physical damage to the house during the period the warranty was in place. And because of this, I won't be asking NHBC to do anything.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Mr P to accept or reject my decision before 30 March 2021.

Kevin Parmenter  
**Ombudsman**