

## **The complaint**

Mr and Mrs N complain that National House-Building Council (NHBC) unfairly declined their claim on their building warranty policy. They also complain the policy was mis-sold.

## **What happened**

Mr and Mrs N purchased a new build property in 2013. Their property is covered by a ten-year NHBC building warranty policy. During years three to ten, the policy covers physical damage caused by a 'defect' – subject to the policy terms and conditions.

In 2020, Mr and Mrs N made a claim for cracking to the plasterboard above the stairs; for cracking between the wall and stairs; and for a loose bannister at the top of the stairs.

NHBC considered photos of the damage provided by Mr and Mrs N, but it declined the claim. It says the cracking is consistent with shrinkage between different materials, and this is excluded by the policy; and whilst it accepts the loose bannister has been caused by a defect, it says the repair costs wouldn't reach the minimum claim value.

Mr and Mrs N complained about the claim decision. They also complained the policy was mis-sold to them, and they asked how much they had paid for the cover and about the commission the seller received. NHBC reiterated its claim decision; and it explained it doesn't sell policies to homeowners, but rather, they are taken out by the builder.

Mr and Mrs N contacted our service. They said when buying their property, the price of the NHBC policy wasn't discussed, and they weren't told about the commission NHBC paid to the builder. Mr and Mrs N referred to a Supreme Court judgement about the disclosure of commission during the sale of payment protection insurance. They also said they weren't given details about the policy exclusions or the minimum claim value at the point of sale.

Mr and Mrs N also explained they didn't consider the cracking to be from the settlement of materials; and in terms of the loose bannister, they thought that basing the minimum claim value on NHBC's estimated repair costs was unfair. This was because they didn't believe they could get the work done for the rates available to NHBC.

One of our investigators considered Mr and Mrs N's complaint, but he thought the claim had been fairly declined. He also explained why the principles established by the Supreme Court judgement weren't relevant to a complaint against NHBC. Because Mr and Mrs N remained unhappy with the outcome, their 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.

In respect of the cracking, the policy excludes: shrinkage, thermal movement or movement between different types of materials, and cosmetic damage such as minor cracking. NHBC says the cracking is consistent with shrinkage, and although Mr and Mrs N disagree, they haven't provided anything that contradicts NHBC's conclusions. NHBC has explained to Mr and Mrs N that if they provide information which shows the cause of the cracking is something which isn't excluded, it will give the matter further consideration.

I haven't seen anything that leads me to believe NHBC's assessment was wrong, and it's for Mr and Mrs N to show the damage is covered by their policy. So far, they have only provided photos. So, I can't reasonably decide NHBC has unfairly declined this aspect of their claim.

In respect of the loose bannister, the policy terms explain the repair cost needs to meet the minimum claim value of £1,200 plus inflation. NHBC says this equated to £1,629 when the claim was made. The terms also explain the repair cost is the amount NHBC would be charged if it arranged the work.

NHBC has produced a schedule of works for the loose bannister using its agreed contractor network rates. This comes to £358. Whilst I appreciate the point Mr and Mrs N make about them not being able to get the repairs done themselves for that amount, NHBC has calculated the minimum claim value in accordance with the policy terms.

NHBC has provided its schedule of works. I haven't seen anything that leads me to believe its schedule doesn't account for all the necessary repairs, and Mr and Mrs N haven't provided any quotes themselves to contradict NHBC's schedule. Therefore, I can't reasonably decide NHBC has treated Mr and Mrs N unfairly here.

In respect of the policy sale, the policy wasn't sold to Mr and Mrs N. The policy was bought by the builder, and the builder provided it to Mr and Mrs N when they bought their property. Although the builder may have passed on the cost of the policy through the property's sale price, Mr and Mrs N weren't sold the policy in the conventional sense. Builders often buy building warranty policies to pass to their customers, to offer peace of mind about the standards the property has been built to and the support available if issues arise.

So, given Mr and Mrs N weren't sold the policy, there isn't anything about the sale for me to consider – commission or otherwise. If Mr and Mrs N are unhappy with the information they were given about the policy when they bought their property, that's a matter between them and the builder. I can't reasonably decide NHBC is responsible for how the builder positioned the cover to Mr and Mrs N.

### **My final decision**

I'm sorry to disappoint Mr and Mrs N. But for the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 15 February 2021.

Vince Martin  
**Ombudsman**