

The complaint

Mrs C and Mr W have complained about the way National House-Building Council (“NHBC”) has handled a claim made under their Buildmark policy.

What happened

Mrs C and Mr W noticed some cracks in the internal corners of their newly built home in 2017. They initially asked the builder to rectify the issue, which it did by filling and painting the affected areas, but the cracks continued to grow.

A claim was made under section 3 of the Buildmark policy, but NHBC declined the claim saying it had identified the cause to be thermal expansion which wasn’t covered.

Mrs C and Mr W disagreed with NHBC’s assessment of their claim and raised a complaint. They got an independent structural engineer to look at the problem in their home and produce a report. They’ve said that report shows the movement was greater than it should have been and that although the cause was thermal expansion, there was also a structural concern. Mrs C and Mr W referred their complaint to this service.

Our investigator considered the complaint and didn’t think it should be upheld. He said that the available evidence all showed the likely cause of the movement was thermal expansion, which Mrs C and Mr W’s Buildmark policy didn’t cover, and that NHBC wasn’t therefore being unreasonable by applying the exclusion and declining the claim.

As Mrs C and Mr W didn’t agree with our investigator’s assessment, the complaint has now come 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.

I can appreciate how frustrating these issues must be for Mrs C and Mr W. They purchased a new build property in part due to the peace of mind of an NHBC policy. But having considered all the information, I’m afraid I won’t be upholding this complaint. I’ll explain why.

When a claim is made under a Buildmark policy, it’s for NHBC to either accept the claim, or show that one of the exclusions in the policy applies. In this case NHBC has relied on the exclusion in section 3 of the policy, under “What NHBC will not pay for”. This states that damage caused by shrinkage, thermal movement or movement between different types of materials isn’t covered.

Building warranties aren’t designed to cover every defect with or all types of damage to a new build home. Rather, they only provide cover for damage or defects as defined within a policy.

As I'm satisfied that the policy doesn't provide cover for damage caused by thermal movement, I now need to consider what the experts say caused the cracks in Mrs C and Mr W's home.

The investigation report NHBC has provided says:

"The cause of the cracking to the internal blockwork wall corners is due to shrinkage of the blockwork combined with the cyclic effects of thermal expansion." It further states that shrinkage is not a progressive structural issue and no construction defects were observed by the Engineer."

As thermal expansion means that building materials expand and contract over the seasons of the year when the property is exposed to hot and cold weather, and these temperature changes can lead to cracking of internal walls, I don't find it unreasonable for NHBC to have concluded that this wasn't a structural concern.

However, I've also considered the report from the independent engineer who visited the property, which states:

"whilst the vertical cracking within the external corners of the property has likely been a result of thermal and moisture movements, which are greater than normally anticipated movements likely due to the type of blockwork used and poor onsite storage resulting in saturation...The movements have resulted in a disconnection, which should not occur if sufficient movement joints had been installed during construction...The disconnection is a structural concern".

There are therefore two differing expert opinions here. And I have to determine which is more reliable and whether, on balance, I think the shrinkage has been caused by a defect as defined within the policy or not. Because under the terms of Mrs C and Mr W's policy, NHBC's liability is only in respect of physical damage caused by one of the defects listed in the policy booklet.

Having considered all the investigation reports and photographs of the cracking, I'm not persuaded that the damage is as a result of a defect defined within the policy. I say this because, although the report from the independent engineer says this is likely, it doesn't give any supporting evidence for reaching that conclusion. A follow up email from the engineer also doesn't explain why he has concluded that the cracking has reached excess levels due to a lack of movement joints. He again says he thinks this is likely, but I don't think I can safely rely on those findings due to a lack of evidence to support them.

NHBC has also given suggestions as to why the cracks may be in excess of the usual size for thermal movement, such as expansion often being greatest on south westerly facing masonry walls, but this being unlikely to continue beyond small levels of cyclic movement and therefore not being related to any structural defect. So I don't think there's enough information for me to safely conclude that there's a defect here as defined in the policy, which would mean NHBC hadn't been fair in applying the policy exclusion.

It follows, therefore, that I don't think NHBC has acted unreasonably in applying the policy exclusion – and while I appreciate why Mrs C and Mr W will be unhappy with this decision, I'm afraid I won't be requiring NHBC to do anything further.

My final decision

I'm sorry to disappoint Mrs C and Mr W, but my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr W to accept or reject my decision before 10 January 2021.

Ifrah Malik
Ombudsman