

The complaint

Mr B complains that National House-Building Council (NHBC) unfairly declined his claim on his building warranty policy.

What happened

Mr B purchased a property which was still covered by a ten-year NHBC building warranty policy. The cover started in 2016.

In 2020, Mr B made a claim for a bulge in an external wall. In years three to ten of the cover, section 3 of the policy applies. Section 3 covers physical damage if it's been caused by the builder not meeting NHBC requirements for certain parts of the property.

NHBC's investigator visited the property and considered a 'section 3' claim. However, NHBC declined the claim on the basis there wasn't any physical damage present.

The investigator noted a minor deviation in the wall's surface in the upper gable, but the wall was found to be free from physical damage. Whilst the investigator observed some cracking, he concluded this had been caused by normal shrinkage and settlement between different types of materials, which is excluded by the policy.

The investigator noted that the wall had an acceptable finish and was reasonably uniform in texture, colour and finish. He said he didn't identify any signs of damage or displacement that would suggest the external wall makeup is failing to support the intended load.

Mr B referred his complaint to our service. It was considered by one of our investigators, but he thought NHBC had fairly declined the claim. Because Mr B disagreed, his complaint has 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.

Mr B points towards a quote from a builder. The builder noted the gable end was built to a poor standard. He said it was bellying in places, to such a degree, the irons couldn't be bedded and fixed to the stone work as required by NHBC guidelines.

Mr B says the deviation in the wall is over 8mm and this contravenes NHBC requirements and building regulations.

For a section 3 claim to succeed, there has to be physical damage. Mr B hasn't provided anything that persuades me the cracks aren't due to shrinkage and settlement. As such, I accept NHBC's conclusions on this point (and such damage is excluded by the policy terms).

I've also considered Mr B's builder's comments, about the wall bellying in places. However, in my view, the builder's observations in his quote don't support physical damage has been caused, only that potentially, the wall hasn't been constructed as it ought to have been in places in respect of the irons. Although I accept the wall has been built with a deviation (which is difficult to see in the photos), this doesn't automatically lead me to conclude physical damage has been, or is being, caused by the potential construction issues.

Having considered the information presented, I'm not persuaded that NHBC unfairly declined the claim. If Mr B was to provide NHBC with more complete expert opinion that supported physical damage is being caused, I would expect NHBC to *consider* his section 3 claim further.

Mr B also considers there to be a risk of the wall collapsing. Section 4 of the policy provides cover if there's an immediate danger to someone's physical health or safety because the builder failed to meet certain building regulations when building the main structure of the property. Section 4 only applies if NHBC provided the building control service for the property.

We haven't been provided with the warranty certificate for Mr B's property, so I don't know if NHBC provided building control. However, even if section 4 does apply to Mr B's property, he hasn't provided any expert opinion which supports the wall presents an immediate danger. So, in any event, at this time I'm not persuaded NHBC needs to consider a 'section 4' claim.

Again, if Mr B was to provide NHBC with expert opinion that supports the wall presents an immediate danger, I would expect NHBC to *consider* a section 4 claim (if indeed, it did provide building control).

Finally, Mr B says NHBC sent a painter and decorator to inspect a serious structural issue. However, I haven't seen anything that leads me to doubt the credibility of NHBC's report, and importantly here, Mr B hasn't provided anything that persuades me a claim should succeed.

My final decision

I'm sorry to disappoint Mr B. 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 B to accept or reject my decision before 21 May 2021.

Vince Martin
Ombudsman