

The complaint

Mr and Mrs D complain that National House-Building Council (NHBC) has unfairly declined their claim under the Buildmark Policy.

What happened

- The Buildmark cover for Mr and Mrs D's property started in July 2011.
- In November 2020, Mr D contacted NHBC to say rodents had chewed through the plastic airbricks and toilet fittings causing damage to his property.
- He said the materials used in building his home were not fit for purpose and caused him to have a rodent problem.
- NHBC considered Mr and Mrs D's claim under section 3 of the buildmark policy.
- It said the airbricks were suitable because they were performing their intended purpose – *"to support and load and provide ventilation"* to Mr and Mrs D's home.
- It also said the soil pipes were carrying out their intended function.
- It concluded the claim wasn't valid because the damage wasn't caused by a build defect, but instead by rodents.
- Our investigator said there hadn't been a breach of the NHBC technical requirements and she agreed the airbricks and soil pipes were performing as intended. So, she was satisfied NHBC had fairly declined the claim.
- Mr D disagreed and so, the 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.

Having done so, I'm not upholding this complaint and I'll explain why.

Section 3 of the buildmark policy provides cover against damage caused by defects in specific parts of the property during the three to ten-year period after purchasing the property.

Under the policy, 'damage' is defined as *"physical damage to a home"*, and 'defect' as *"the breach of any mandatory NHBC Requirement by the Builder [...]"*.

I don't dispute there's been damage to Mr and Mrs D's home, but for there to be valid claim, the damage must be in a specified part of the property *and* attributable to a defect. I'll address each issue in turn.

Airbricks

NHBC's technical requirement R3 states that where there isn't a NHBC standard – materials, products and buildings systems, will be deemed acceptable if they comply with the relevant British Standard (BS). Here, the relevant BS is 493, clause 4 - which sets out the specification for airbricks and grating for wall ventilation." It says: "*The following materials may be used for the manufacture of airbricks [...] c) Thermoplastics.* It goes on to say that "*Airbricks for external use shall be manufactured in any of the materials specified in clause 4, except plaster.*"

Considering this, I can't agree Mr and Mrs D's airbricks are defective simply because they're made from plastic - as it's clear from the British standards that this is an acceptable material from which to construct airbricks. So, it follows that there isn't damage by a defect and NHBC has therefore, acted fairly in declining this part of Mr and Mrs D's claim.

Internal plumbing - fixtures and fittings

Page 14 of the Buildmark policy sets out the specific parts of the home covered by the policy in years 3-10. Because internal plumbing isn't one of these, Mr and Mrs D don't have recourse to NHBC for damage that's occurred in respect of the internal plumbing during this time. So, I'm satisfied NHBC has acted fairly in declining this part of their claim.

Below-ground drainage

Below-ground drainage is a specified part under the Buildmark policy – but cover is only provided if there's *damage* as a result of a *defect*.

I've looked at the photographs provided by Mr and Mrs D which show damage to parts of their home. Mr and Mrs D have however, acknowledged they can't provide evidence of damage to the soil pipe below ground level due to not having access to it. Mr D has explained how the rodents were able to travel alongside the soil pipe (below-ground level) having chewed through the sealant where the soil pipe goes below ground.

I've thought about this, but I'm not persuaded NHBC needs to take any action and I'll explain why. The policy requires the damage to be *'in'* the below ground drainage which I interpret to mean, for example, damage to the pipework itself, or a blockage within it. But I don't have evidence of this. I've thought about whether the photographs showing the sealant having been chewed is enough, but I'm not satisfied it is, for two reasons.

1. the sealant isn't below ground level – so it doesn't fulfil the 'specified part' criterion, and
2. the sealant is separate to the drainage – there's nothing to suggest the sealant is required for the drainage to function, so it's not part of the underground drainage system.

But even if I was satisfied damage had occurred *in* the soil pipe below ground, I'm not persuaded there would have been a breach of the technical requirement.

Technical requirement R3 states that "*all materials, products and building systems shall be suitable for their intended purpose.*" I've looked at the relevant performance standards – which outline how the technical requirement must be met for the relevant part of the building. I note plastic piping is cited as a material which can be used for the purpose of soil and waste drainage and British Standards refer to the accepted use of polypropylene for this. So, I'm not persuaded the technical requirement hasn't been met because plastic piping has been used for soil and waste in Mr and Mrs D's home. And from what I've seen, the pipes are functioning as intended.

I appreciate Mr and Mrs D will be disappointed by my decision but the Buildmark policy is not designed to apply to all parts of the property, nor all eventualities.

For the reasons set out above, I'm not upholding this complaint.

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 Mrs D and Mr D to accept or reject my decision before 16 August 2021.

Nicola Beakhust
Ombudsman