

The complaint

Ms B has complained that National House-Building Council (NHBC) unfairly declined a claim under her building warranty.

What happened

Ms B owns a house that was built in 2013. It came with a ten year NHBC warranty.

In 2017 she contacted NHBC because paint was flaking on her window frames and two windows couldn't be opened because they were jammed. Ms B provided evidence that this issue affected a number of other properties on her estate and that the damage was due to the timber not having been primed before painting. She said ten neighbours who'd complained within the first two years of the warranty had been compensated and NHBC had admitted in writing that it was a "*site wide issue*".

NHBC said the damage wasn't covered by the relevant part of the warranty and it didn't accept the claim. It said the problem should have been reported to the builder within the first two years of the warranty.

Ms B referred her complaint to this service. Our investigator didn't uphold it. He thought NHBC had interpreted the warranty correctly. As Ms B didn't agree, the matter has been passed to me.

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 understand that Ms B is concerned about the cost of replacing all her windows and external doors, particularly when the owners of neighbouring properties appear to have been compensated for the similar problems. But I also have to take into account that her NHBC warranty -in common with other insurance policies- only covers certain things and that exclusions and limits apply. So I've looked at whether NHBC assessed his claim correctly and I think it did.

In years three to ten of the warranty section 3 of the warranty applies. Under that NHBC is only liable for certain parts of the building such as foundations, load-bearing walls and "*double-glazing or triple-glazing panes to external windows and doors*". It doesn't cover the timber frames.

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Unfortunately because she bought the property in years three to ten of the warranty, Ms B wasn't able to notify the builder or NHBC of this damage sooner. But regardless of that, the fact remains that the damage isn't covered by this part of the warranty.

I've also checked whether Ms B might be covered under any other section of the warranty. Section 4 covers damage if a property doesn't comply with certain building regulations and because of that there's a health and safety risk. Unfortunately for Ms B this section only

covers “*Glazing - safety in relation to impact, opening and cleaning*” as opposed to window and door frames. That means the damage to Ms B’s timber frames isn’t covered by this part of the warranty either.

Ms B feels strongly that NHBC should be liable because all the windows and doors on her estate came from the same supplier and suffered from the same defects. In addition NHBC has previously admitted that there is a systemic fault across the estate and other house holders have been compensated for the same issues. I don’t doubt that’s the case. But I can only look at whether NHBC acted reasonably under the terms of Ms B’s warranty rather than in terms of moral responsibility. Having done so, as explained above, I don’t think it’s under any obligation to repair the damage in question.

Ms B thinks the reference in the warranty to “*panes*” should be interpreted as including window and door frames. I disagree. I think the usual meaning of “*pane*” is the glass within a window or door. If NHBC had intended to cover these parts of the windows and doors, it would have said so or just referred more broadly to “*windows and doors*”.

Ms B also says that section 3 covers defects that affect the structural integrity of the property. If window frames are crumbling, that affects the structural integrity of the window. I don’t doubt her logic. But NHBC has only chosen to offer cover for the structural integrity of certain parts of the building and for the reasons explained above, those parts don’t include window and door frames.

I’m sorry to learn of the problems Ms B has experienced with her property. But because of the nature of the defect with her property, I don’t think it’s covered by her warranty and so I can’t require NHBC to deal with her claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 10 August 2021.

Elizabeth Grant
Ombudsman