

## **The complaint**

Miss J complains that National House-Building Council (“NHBC”) declined her claim on her building warranty.

## **What happened**

Miss J bought a new home that came with a ten-year building warranty provided by NHBC. In 2021 she made a claim under section 3 of the warranty after noticing a damp patch on the gable end wall of the property.

NHBC inspected the damage but subsequently declined the claim. It said there wasn’t physical damage to the home so it wouldn’t be covered under section 3 of the warranty, as both a defect and physical damage are required for the warranty to respond.

Miss J didn’t agree and instructed her own expert to compile a report. This concluded that the cavity tray behind the wall was defective. And further investigation was required. Miss J provided the report to NHBC and made a complaint. However NHBC didn’t change its position.

Unhappy with this, Miss J brought her complaint to this service.

Our investigator considered the issues but didn’t recommend the complaint be upheld. He said that while there was no dispute over there being a defect, there hadn’t been physical damage to the home so he thought NHBC had acted fairly by declining the claim.

Miss J didn’t agree. She said the warranty doesn’t define what physical damage is considered to be, and NHBC were applying an unfair definition of the term. She said there was damage to the wall, timber frame and the damp insulation so this should be enough for cover to apply. She asked for the complaint to be reviewed by an ombudsman.

## **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.

NHBC has declined Miss J’s claim because it says there needs to be both a defect and physical damage for cover to apply under section 3 of the warranty. And it says there isn’t any physical damage to Miss J’s home. I need to decide if it’s acted fairly when making this decision.

As part of this complaint I’ve been provided with two reports. One from NHBC and one from Miss J who appointed her own expert. When making decisions, this service puts a lot of weight on the opinion of experts. As they have inspected the damage and have the expertise to comment on the causation and impact of the problem. I’ve looked at these reports and they are both in agreement that there is a defect with the cavity tray and that there are no weep holes where there should be. So I’m satisfied that the first part of the warranty requirement is met – that there is a defect.

However in order for there to be cover under section 3 there also needs to be physical damage to the home. The warranty doesn't define the term, 'physical damage' and when this is the case we apply a reasonable understanding of the term.

In this context, after considering a range of dictionary and legal definitions, I think a reasonable definition of physical damage to the home is where there is damage that is tangible and that impairs the usefulness of the home. Essentially damage that is causing further problems to the home, outside of just the defect itself.

I've considered both of the reports and I don't agree there has been damage to the home that would reasonably meet this definition. While both reports mention the damp patch on the external wall and on the timber inside, I've not seen anything that suggests this is having any impact on the usefulness or general functioning of the home.

Further, while both reports conclude the cavity tray needs to be replaced, this relates directly to the defect rather than damage caused by the defect. And in order for there to be cover there needs to be both. So damage to the cavity tray alone isn't enough to say that the warranty would fairly offer cover as this only represents the first part of the requirement - the defect.

I note Miss J says that the insulation has been damaged and no longer functions. However neither of the expert reports make this finding. In fact both comment that there is no further moisture detected in the loft or the rooms below, which would be expected if the damp proofing had been compromised or its usefulness impaired.

Miss J has also said that the damp patch on the wall may impact the value of the property. I've considered this but I don't think this alone means it would meet a reasonable definition of physical damage. From the evidence, the damp patch appears to be a largely aesthetic problem. And I've not seen evidence to suggest it is impacting the usefulness of the wall or affecting other areas of the home.

So from considering all the evidence available, I can see that while there is an identifiable defect, I've not seen any expert evidence to show that this has caused what would meet a reasonable definition of physical damage to the home. I therefore conclude that NHBC has acted fairly by declining the claim on this basis.

### **My final decision**

For the reasons I've given, I don't uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 21 July 2022.

Sophie Goodyear  
**Ombudsman**