

The complaint

Mr Z has complained about National House-Building Council's (NHBC's) handling of a claim he made under his Buildmark warranty.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, there have been several claims and complaints made to NHBC about issues with Mr Z's building. Our service has dealt with some of the complaints and separated them into different cases. This case relates solely to issues with Mr Z's property, and what he is entitled to under his individual warranty.

Mr Z had a claim for water damage caused by defective cavity trays accepted by NHBC in 2018. NHBC arranged for repairs, which included the removal of the windows and brickwork to fix the cavity trays. NHBC also appointed a window specialist to establish whether there was a defect, with the windows themselves, which was contributing to the damage in Mr Z's property.

NHBC's window specialist identified some issues with the windows, but said these issues weren't contributing to the damage covered by the cavity tray claim. So, following repairs to the cavity tray issue, the existing windows were reinstalled, rather than being replaced. Mr Z wasn't happy with this and complained to NHBC.

NHBC said the window issues couldn't be covered under the cavity tray claim, as it wasn't as a result of the same defect. Instead, it said the window issues were as a result of a defect with the window frames themselves. NHBC said the defect with the window frames wouldn't be covered under a separate claim either, due to the terms of the applicable section of the warranty (section 3).

Our investigator considered this complaint, but she didn't think it should be upheld. She didn't feel that NHBC was required to replace the windows as part of the cavity tray claim and she said the defect with the window frames isn't something that is covered under section 3 of the warranty.

Mr Z didn't accept our investigator's opinion. So as no agreement has been reached, the 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.

Having done so, I agree with the conclusions reached by our investigator for the following reasons:

- NHBC's Buildmark warranty is split into various sections of cover, some of which are based on the length of time since completion of the housing unit. In Mr Z's case, section 3 of the warranty (in force between 3 and 10 years after completion) is the relevant section of cover.
- Section 3 covers damage caused by a defect in specific parts of the building only. A defect in isolation is not sufficient for cover to engage, it must be shown to be causing damage. And the defect causing the damage must be shown to be in one (or more) of the specified parts of the building which are set out in the policy document.
- Mr Z's initial claim was accepted as there was damage, in the form of water ingress, being caused by a defect with the cavity trays. These form part of the load-bearing walls, which are a specified part of the building covered under section 3.
- It's not in dispute that there is a defect with the windows. Various specialists and NHBC claims investigators have inspected Mr Z's windows and it seems to be accepted that that the window sashes are oversized. Due to this the frames are being pulled out of alignment and the hinges on the windows are failing.
- As the defect with the windows is separate to the defect with the cavity trays, I don't consider that NHBC acted unreasonably in not putting right the window issues as part of the cavity tray claim.
- Under section 3 there is only limited cover for damage caused by a defect with windows. The policy terms set out that only damage caused by a defect with double or triple glazing panes to external windows or doors would be covered.
- As the defect with the windows isn't a defect with the double or triple glazing panes, but rather with the window frames, I think NHBC's decision not to cover the issues as part of a separate claim is in line with the terms and conditions of the warranty.
- Mr Z doesn't agree that the damage caused is solely as a result of the window frames. He says issues with the windows themselves alongside structural issues with the building are all contributing.
- Aside from the cavity tray issue, which was repaired by NHBC under the initial claim, the expert reports I've seen do mention possible deflection of the lintel above one of Mr Z's windows. However, the report obtained by Mr Z's property management company concluded that this was minor, and probably within acceptable parameters. None of the expert reports have linked the lintel issue to the reported water ingress. And crucially, none of the reports have linked any damage to a defect with the windowpanes – which they would need to for the window issues to be covered.
- I appreciate Mr Z's comments that it doesn't make sense for NHBC to cover windowpanes and not window frames. But insurers/warranty providers are entitled to decide which risks they wish to cover and which they don't – providing this is clearly set out. And in my view, section 3 of the warranty is clear that only damage caused by a defect with the windowpanes would be covered.
- Ultimately, I'm satisfied NHBC's decision not to cover a claim for the defective windows is in line with the terms of the warranty. And I'm not aware of any circumstances which would lead me to conclude it would be unfair or unreasonable to allow NHBC to rely on the terms of the warranty in this case. So, it follows that I don't think NHBC needs to replace Mr Z's windows.

My final decision

For the reasons set out above, I've decided not to uphold Mr Z's complaint against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 14 September 2022.

Adam Golding
Ombudsman