

The complaint

Mrs G and Mr W complain about National House-Building Council's (NHBC) decision to decline a claim made under their Buildmark policy.

What happened

Mrs G and Mr W say the grass at the front of their home has been impacted by the ground settling around the drains laid underneath it. They said to prevent the area becoming an eyesore, they laid tarmac over the same area, but this also went on to be impacted by ground settlement. They said their driveway was also impacted. Mrs G and Mr W contacted NHBC who said in order to consider the matter further, they would need to see an independent report which set out any problems with there might be with the drains.

Mrs G and Mr W arranged this, and their report showed two separate areas of cracking in the drains and a buried manhole. They shared the report with NHBC, who then arranged for another inspection to be carried out. Following this inspection, NHBC said the second report didn't identify any defects with the drainage system. But instead concluded the drainage system had become disconnected as a result of the ground settlement following the tarmac being laid. They said there may not have been suitable preparations made to change the area from a garden to a driveway, but this did not appear to be a defect with the property. NHBC declined the claim, saying it wasn't covered by the Buildmark policy.

Unhappy with NHBC's response, Mrs G and Mr W complained. NHBC issued its final response in August 2002 and said their claim remained declined. Mrs G and Mr W referred their complaint to this Service, where it was considered by one of our investigators. She said she didn't think NHBC has acted unfairly. As Mrs G and Mr W didn't agree, this 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.

Having done so, I've reached the same conclusion as the investigator and for the same reasons. I agree NHBC isn't responsible for the damage caused to the driveway as it's not covered by the Buildmark policy. So, I've considered if it should be responsible for the remaining damage to the front of Mrs G and Mr W's home.

I agree the report provided by Mrs G and Mr W identified two areas of cracking in the drainage system. However, the report is silent as to the likely cause of the cracking or the impact of the cracking. In the absence of this information, I don't consider this report contains sufficient information for me to conclude the cracking to the drainage system is a defect covered by this policy.

Whereas the report instructed by NHBC specifically concludes there are no defects to the drainage system. It also made the finding the ground settlement was the cause of the defect around the ground inspection chamber, and the ground settlement was caused by the

alterations to the driveway. The report concludes incorrect inspection chambers were installed in the driveway and they should be changed to take the weight of cars.

My role is to decide what I think is fair and reasonable based on the information provided. Where the information we've been provided with differs (as is the case here with the two reports making different findings on whether the drainage system is damaged), I need to decide what I think is more likely to have happened.

I note neither report contains a finding that enables to me to conclude the ground settlement in front of Mrs G and Mr W's house was more likely than not caused by a defect with the drainage system. On balance, I find myself more persuaded by the report provided by NHBC. This concluded the damage to the drainage system occurred not as a result of a defect, but as a result of the alterations arranged by Mrs G and Mr W.

In summary, I don't consider there is sufficient evidence for me to conclude the damage has been caused by a defect covered by the Buildmark policy. I'm not going to require NHBC to take any further action to put things right for Mrs G and Mr W.

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 G and Mr W to accept or reject my decision before 27 March 2023.

Emma Hawkins

Ombudsman