

The complaint

Mr and Mrs D complain that National House-Building Council (NHBC) unfairly turned down a claim on their building warranty policy.

What happened

Mr and Mrs D's property has a central heating and hot water system which runs on oil. Because of this their property has an oil tank which is in the garden and sits on a concrete slab. At the back of their garden the ground falls away and a retaining wall has been built to support the back of the garden and the concrete slab the oil tank sits on.

Mr and Mrs D noticed the wall next to the oil tank was leaning and so was the fence next to it. They inspected it further and noticed the concrete slab the oil tank sits on is slipping away and therefore likely to collapse. They also had an engineer inspect it who said it hadn't been built to the required standard and this was likely to result in it collapsing and leaking oil into the wildlife behind their house.

Mr and Mrs D claimed on their policy with NHBC to fix the issue with the retaining wall and concrete slab. NHBC reviewed the claim but turned it down. They said the policy only provided cover if the issue related to the main structure and as the concrete slab and retaining wall weren't part of the main structure then the policy didn't provide cover. Mr and Mrs D didn't agree and referred their complaint here. They said as the oil tank was to provide the heating and hot water, they thought it should be included as part of the main structure.

Our investigator looked into the complaint but didn't recommend it be upheld. He found the policy defined main structure as the house, garage or permanent outbuildings. And as the concrete slab and retaining wall weren't either of these, they didn't think it was covered.

Mr and Mrs D didn't agree so the complaint has come 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.

NHBC has assessed the claim under section 3 and section 4 of the policy, which covers issue with the property after the first 2 years. As this issue hasn't been reported by Mr and Mrs D within the first 2 years since the property was built, I'm satisfied these are the correct sections for NHBC to assess the claim under.

Section 3 says it will provide cover if there is physical damage to Mr and Mrs D's home if the builder failed to build certain parts to NHBC's standards. The parts covered include foundations, walls, load bearing floors and retaining walls if they're part of or necessary to the main structure.

The policy defines main structure as:

"The Following parts of your home:

- *Your house, flat or maisonette*
- *In the case of a flat or maisonette, the structure of the building your home is in.*
- *The garages and permanent outbuildings”*

I've considered this when looking at the issue Mr and Mrs D have with the retaining wall and concrete slab. The reports on this area show it hasn't been built to the required standard. I've also reviewed the pictures to understand the severity of the issue and can understand Mr and Mrs D's concern and worry about the impact this will have. But I'm not able to uphold their complaint.

I say this because the issue is with the retaining wall behind their property. The policy says retaining walls will only be covered if they're necessary to the stability of the main structure. And while part of the heating system sits on a concrete slab, supported by the retaining wall, the fault is with the retaining wall which isn't necessary for the stability of the main structure. I've also not been provided with anything to show the issue with this wall will affect the main structure either. It's also for the same reason I'm satisfied section 4 of the policy doesn't provide cover either. This is because any issue needs to relate to the main structure as defined in the policy.

And for the reasons explained above I'm satisfied the issue with their property doesn't meet the policy definition and so their claim isn't one which is covered by the policy. I'm therefore not able to tell NHBC to do anything else.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 10 February 2023.

Alex Newman
Ombudsman