

## **The complaint**

Mr and Mrs M complain that National House-Building Council (“NHBC”) declined their claim on the structural buildings warranty that covers their property.

## **What happened**

In 2012 Mr and Mrs M bought a new flat in a block that came with a ten-year structural warranty provided by NHBC.

During this period the building required updates to its fire safety features and cladding. The problems were rectified and the freeholder of the building made a claim on the warranty for the costs, however this was declined. Therefore the managing agent split the cost of the works amongst the leaseholders.

Mr and Mrs M were unhappy about this and made their own claim under section 4 of the warranty. NHBC declined the claim as it said cover only applied under section 4 where it had carried out building control, but in this case the developer had opted to use the local council to provide this function.

Mr and Mrs M were unhappy with this. They said when they bought the property with the warranty, it hadn't been made clear to them that the section 4 cover wouldn't apply. And they had no say in whether it was opted out of or not as this decision was made by the developer. They also said the paperwork for the warranty wasn't given to them until after they'd exchanged on the property, which meant they didn't have all the information they needed before going ahead with the sale. They said by declining the claim NHBC had breached both the Consumer Rights Act and the Insurance Conduct of Business Sourcebook (ICOBS). They made a complaint but NHBC didn't uphold it, so they brought it to this service.

Our investigator didn't recommend the complaint be upheld. She thought the warranty documentation was clear that section 4 cover only applied where NHBC carried out building control, so didn't think it had acted unreasonably by declining the claim. Further, she said NHBC originally sold the warranty to the developer and it was its responsibility to pass on the relevant documentation when it sold the flats. So she didn't think it was fair to hold NHBC responsible for the documents not being passed on before the sale.

Mr and Mrs M didn't agree with our investigator's outcome and 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.

When a buildings warranty is sold, there are three parties involved in the sale and placement of the policy. NHBC sold the warranty to the developer of the property to provide to buyers once the build is complete. The developer then sells the units and provides the details of the warranty policies to the buyers.

Here, I am considering a complaint against NHBC. This means I can only consider whether it acted fairly and reasonably. I can't take into account the actions of the developer, as NHBC isn't responsible for those.

Mr and Mrs M have raised a number of issues with NHBC's decision to decline the claim, I've addressed those I consider key in turn below. In their complaint Mr and Mrs M have referred to various laws and regulations. When considering complaints, we consider the relevant law, rules and guidance, as well as industry best practice, to decide whether a business acted fairly and reasonably. So while I've not referenced these directly, I have taken them into consideration as part of my decision making process.

### **The significance of the term wasn't brought to their attention before the sale of the property**

When considering a complaint, I can only consider the actions of the business in question when carrying out a regulated activity in relation to its customer that is bringing the complaint.

Here, the sale of the warranty was made by NHBC to the original developer, before the flats were purchased. This means Mr and Mrs M had no involvement in the sale of the policy, so they wouldn't be considered a customer in relation to the regulated activity of NHBC selling the policy. This means I'm unable to consider the sale of the policy as part of their complaint.

If Mr and Mrs M feel the warranty wasn't sold appropriately then this is an issue they'd need to raise directly with the developer that they brought the property from.

However I can consider their complaint about the warranty and the documentation, as this was purchased for their benefit.

### **Decline of the claim**

Mr and Mrs M have made a claim under section 4 of the warranty. In relation to claims under this section, the warranty document states:

*'This section only applies if 'building control' (that is, inspection for Building Regulations purposes) for your home was provided by NHBC Building Control Services Ltd or by another company registered with us.'*

It isn't disputed that NHBC didn't carry out building control. The developer opted to use the local council instead. And the warranty clearly states that where this is the case no cover is provided under section 4, so I don't think NHBC has acted unfairly by declining the claim.

Mr and Mrs M have said that the term is buried in a large policy document and therefore isn't clear. I've considered this but I don't agree. The term is highlighted at the start of the warranty on page 2 and reiterated under section 4 of the policy on page 15. So I think it's made clear enough in the documentation NHBC provides.

### **The significance of the term was not brought to their attention before exchanging and isn't clear in the documentation.**

Mr and Mrs M have said that they had no say in the developer's choice to opt out of section 4 cover, and the significance of this term wasn't brought to their attention before they purchased the property.

As I said previously, I can't consider the actions of the developer when the property was purchased, or the sale of the warranty to the developer. This includes its decision to opt out of the section 4 cover. However I've looked at the documents NHBC provided that were passed on to Mr and Mrs M and considered if these were clear, and allowed Mr and Mrs M to make their own decision about the warranty cover.

The documents provided to the developer to pass to the customer included the full policy document, schedule and acceptance form.

I've looked at the schedule that was attached to the acceptance form and it lays out the brief inclusions of each section. Under section 4 it states:

*'This section is not applicable as NHBC did not carry out Building Control.'*

The schedule also states:

*'For further details of the cover provided by Buildmark, please refer to the policy booklet which you can find on our website if you do not already have a copy.'*

The term I've quoted in the above section is highlighted at the start of the warranty document on page 2 and reiterated under section 4 of the policy on page 15.

So considering this, I think NHBC did enough to make it clear to beneficiaries of the policy that section 4 cover wouldn't apply. And that the term was made suitably clear on the paperwork considering its significance.

I understand Mr and Mrs M are concerned that the documents weren't provided before they exchanged on the flat. However this is the responsibility of the developer and not NHBC. So it isn't something I can hold NHBC accountable for. NHBC has shown it provided the relevant documents to the developer in 2011, some time before the properties were sold. And based on the evidence, I'm satisfied NHBC made the relevant term clear in its documentation that's provided to beneficiaries of the policy.

For these reasons, I think NHBC has acted fairly and reasonably in the circumstances of this complaint. It's provided clear information that meets its obligations under the relevant rules and guidance and it came to a fair decision when declining Mr and Mrs M's claim. I therefore won't ask it to do anything further.

### **My final decision**

For the reasons I've given, I don't uphold Mr and Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 4 April 2023.

Sophie Goodyear  
**Ombudsman**