

The complaint

Mr H is unhappy with how National House-Building Council (NHBC) handled the claims he made under his building warranty.

What happened

Mr H's ten-year Buildmark policy started in May 2014. During the first two years of cover, he made a number of claims.

During the first two years, section 2 of the policy applies. The builder remains liable for any issues identified during the first two years, but NHBC may provide its resolution service in the event of a dispute between the homeowner and builder.

Mr H raised a number of concerns about NHBC's handling of his claims. NHBC issued two final response letters in 2017. In summary, they rescinded their resolution service.

There was further correspondence in 2018 in which NHBC set out what Mr H would need to do in order for them to now progress his claims under their resolution service, but nothing more happened at this point.

On 28 March 2023, Mr H raised concerns with NHBC about what he considered to be eight further faults and outstanding actions. These included concerns about:

1. Micro-cracking affecting the ceiling and floors.
2. Soil vent pipe boxing.
3. Guttering.
4. Cold internal walls and promised cavity wall inspections.
5. Unpainted internal doors.
6. Gapping around a window jamb.
7. Wall and silicone sealant pulling away from the walls.
8. Gas and electric safety issues.
9. Outstanding actions from a previous inspection report, carried out under NHBC's resolution service.

NHBC said it could only consider the micro-cracking under the policy (item one). They said items two to eight weren't covered under the applicable section of the policy, section 3, which covers years 3-10. With regards to item 9, the outstanding actions, NHBC pointed towards its correspondence from 2018, which set out what Mr H needed to do to move matters forward.

An inspection was carried out in relation to the micro-cracking in July 2023. But the claims inspector said the warranty couldn't provide cover as there wasn't any damage (as defined by the policy) identified within the property. The floors were found to be supporting normal loads and no significant structural cracking was noted.

Unhappy with NHBC's handling of his claims, Mr H referred his complaint to the

Financial Ombudsman Service. He said to put things right he wanted the eight faults recently identified to be rectified and for NHBC to accept the 2013 standards applied to his home as he'd previously been given incorrect information about this. Mr H also said he was unhappy with the conditions NHBC said would need to be put in place if further assistance under the resolution service would be offered.

Mr H's concerns were considered by our investigator who said the concerns Mr H had raised about what needed to happen to progress his claims under the resolution service weren't something we could consider. This was because the resolution service is provided under section 2 of the policy, when NHBC's role is that of a mediator. As NHBC wasn't undertaking a regulated activity, we couldn't consider this part of Mr H's complaint.

And in respect of the remaining issues, our investigator didn't think NHBC had acted unfairly when concluding the faults weren't covered by the policy.

As Mr H didn't agree with our investigator, this case has been passed to me to decide. I've already issued a jurisdiction decision setting out what issues we can and can't consider. So, this final decision will focus solely on the issues I can consider, which are those items numbered one to eight.

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.

I'd like to reassure Mr H that while I've summarised the background to this complaint and his submissions to us, I've carefully considered all that's been said and sent. A separate jurisdiction decision has been issued, setting out those issues I can and can't consider. This decision focuses on those issues I can consider. I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I consider are the key issues.

Technical standards

I've started by reflecting on Mr H's concerns about the standards that apply to his property. As part of his complaint submission to this Service, Mr H enclosed a copy of the NHBC standards dated 2013. He said he wanted confirmation that these standards applied to his policy as he'd previously been given the wrong information. The concerns Mr H has raised about his property have been long running and, whilst I can't comment on them all, I understand Mr H wants to ensure he's referencing the correct technical standards. NHBC have told me that the 2013 standards (the ones submitted as part of Mr H's complaint) are the correct ones.

Policy wording

Items one to eight are being considered under Section 3 of the 10-year policy, as they were raised in year nine. I've started by considering which parts of the property are covered under section 3. The relevant section says:

"What NHBC will do

- 1) We will pay you the full Cost, if it is more than £1,200 Indexed, of putting right any physical damage to your Home which is caused by a Defect in respect of any of the following parts of your house...*

- a) foundations;
- b) load-bearing walls;
- c) non load-bearing partition walls;
- d) wet-applied wall plaster;
- e) external cladding, curtain walling, external render and external vertical tile hanging
- e) load-bearing part of the roof;
- f) roof coverings;
- g) ceilings;
- h) load bearing part of the floors;
- i) staircases and internal floor decking and screed where these fail to support normal loads;
- j) retaining walls, necessary for the structural stability of the house, bungalow, flat or maisonette, its garage or other permanent outbuilding;
- k) double-glazing or triple-glazing panes to external windows and doors;
- l) below-ground drainage for which you are responsible.”

The policy defines damage as *“Physical damage to a Home caused by a Defect”*. And defect is defined as *“The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means.”*

Therefore, for a claim to be considered under the policy, there must be damage caused by a defect (as defined) in a specific area of the property. NHBC also sets out minimum claim values in order for a claim to be considered but first, as I’ve noted, it must be shown there is damage caused by a defect in certain areas.

Item one

NHBC accepted item one might be covered under the policy. They arranged an inspection which took place in early July 2023. The report produced after the inspection noted some “slight” cracking but said the floors were supporting “normal” loads. The claims inspector said they didn’t identify any significant structural cracking.

I’ve considered the policy terms which set out what the policy won’t cover:

“What NHBC will not do or be liable for

3) Anything relating to:

b) cosmetic damage such as minor cracking, spalling or mortar erosion to brickwork, which does not impair the structural stability or weather tightness of your Home or which only affects decorations;”

On this basis the claims inspector only identified “slight” cracking and the floors were found to be supporting normal loads, I consider NHBC were entitled to decline liability for item one. I don’t consider it’s been shown there’s damage as defined by the policy.

Items two to eight

The soil vent pipe boxing (item 2), guttering (item 3), insulation (item 4), internal doors (item 5), sealant (item 7) and gas and electric (item 8) aren’t listed under section 3 as per the policy wording that I’ve quoted above. So, I’m satisfied these items were fairly declined.

And even though internal walls, in relation to item 4, are listed under section 3, cold walls aren't physical damage. So, I'm satisfied item 4 isn't covered irrespective of whether the lack of effective insulation meets the policy definition of a defect.

In relation to item 6, even if the gaps around a window can reasonably be said to be an issue with an external wall or glazing (items listed under section 3), and the issue is a defect (as defined by the policy), there needs to be physical damage being caused, such as water ingress. I haven't seen any evidence showing water is entering the property via the window jamb, or that other physical damage is being caused.

In conclusion, whilst it's clear Mr H feels strongly his home is not free from defects (and that may be the case) I can't reasonably decide NHBC unfairly declined items one to eight given the policy definitions of damage, defect and the areas of the building that are covered under section 3. It follows that I won't be requiring NHBC to take any further action in respect of these issues raised by Mr H.

My final decision

My final decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 December 2024.

Emma Hawkins
Ombudsman