

The complaint

Mrs O has complained that National House-Building Council trading as NHBC unfairly declined a claim she made under her building warranty.

What happened

Mrs O's property was completed in June 2019 and benefited from a ten-year Buildmark building warranty underwritten by NHBC.

During the first two years of cover, Mrs O says she reported a hole in the wall and the builder carried out some superficial repairs which involved sealing the shower. But Mrs O says the damage worsened. She believes the inadequate work carried out by the builder led to ongoing water leakage from the shower into her kitchen.

Mrs O therefore contacted NHBC to make a claim under her warranty. She says it refused to arrange an independent inspection, which she believes was necessary to evaluate the substandard repairs carried out by the builder. Without such an inspection, Mrs O said she was unable to provide sufficient evidence to support her claim, but NHBC still refused. So she made a complaint.

In its response to the complaint, NHBC said there was no evidence Mrs O had reported the leaking shower tray to the builder within the first two years of the policy (the builder warranty period). And that there was evidence to show the leak was only reported outside that period, in December 2021. NHBC said in order to take things further, Mrs O would need to show that the damage she was now experiencing was a direct consequence of the work carried out to the shower in 2021. Otherwise, it would view the issue as a Section 3 claim (an issue that has arisen in years 3-10 of the warranty, for which different policy terms would apply.)

Mrs O didn't accept NHBC's response. She said the hole in the wall directly related to the current problem of water leakage – and that the wall damage was reported within the first two years. She reiterated that she wanted NHBC to carry out an inspection, and she referred her complaint to the Financial Ombudsman Service.

Our Investigator looked at the issues that had led up to this complaint and said NHBC had asked for evidence from Mrs O that the leak had been reported within the first two years of cover, but this hadn't been provided. The Investigator therefore concluded that the leak wasn't covered by Section 2 of the warranty and if Mrs O could provide evidence that it had been, we'd only be able to look into things if certain steps had been taken.

The Investigator also concluded that NHBC didn't unfairly decline the claim under Section 3 of the policy – as internal leaks wouldn't be covered under that section. As Mrs O didn't agree with our Investigator's findings, the complaint was referred to me for an Ombudsman's decision.

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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mrs O and NHBC have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

Mrs O's building warranty is split into different sections. The cover provided under each section varies – and the section under which a claim is considered is dependent on when the damage is first reported.

Mrs O says she reported the issue which she believes was directly linked to the leak during the builder warranty period (the first two years of her policy cover). This part of the warranty requires the builder to resolve any damage or defects (as defined by the policy terms) which are discovered in the first two years after the build has been completed. If the builder fails to do so, then the warranty provider can take over in some circumstances to carry out repairs.

In relation to this part of the policy, it's important to note that we don't have the power to look at every complaint we receive. Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 ('FSMA') and in rules known as the Dispute Resolution (or 'DISP') Rules, written by the Financial Conduct Authority in accordance with the powers it derives from FSMA. These form part of the FCA Handbook. DISP2.3 sets out which complaints this service can and can't look at, and these include complaints about regulated activities, or ancillary activities carried out in connection with something we have the power to consider.

Complaints about builders and developers aren't within our jurisdiction to consider, because those businesses aren't usually regulated by the FCA and the activities they carry out aren't one of the regulated activities we can consider under DISP.

But we can consider complaints about what the warranty provider, in this case NHBC, has done, in some circumstances.

NHBC says the complaint centres around issues dealt with under the resolution service, which wouldn't be a regulated activity and would therefore not be something this service could consider a complaint about. Complaints about claims made in years 0-2 of the warranty (under Section 2 of the warranty) only fall within our jurisdiction once the following has happened:

- A resolution or conciliation report has been completed
- The report has directed the builder to do something by a deadline
- The builder has failed to complete the works by the deadline, or it's insolvent.

If the above steps haven't been taken, even if NHBC decided not to offer the conciliation

service, then the complaint about a claim in the first two years of cover isn't one we can consider.

NHBC also says although Mrs O claims she reported the issue to the builder, the builder advised he didn't complete work on a leaking shower, and there isn't any evidence of that particular issue being reported on time, as the correspondence Mrs O provided at the relevant time didn't describe the same problem.

But Mrs O says NHBC was made aware of the issue regarding the hole in the wall within the first two years, and the builder was copied into communications. She says the fact that the builder carried out superficial repairs to the shower rather than addressing the root cause meant further damage was caused to the kitchen due to the subsequent leak.

Whilst there are conflicting accounts of what happened, I can't see from the communication that any leaks were reported at the time. I appreciate Mrs O says this is because it was a different, but linked issue that was reported, and the substandard repairs carried out caused the further damage. But in any event, the steps that would allow me to consider what happened in the first two years of the warranty haven't been taken. So I can't consider the part of the complaint which relates to the claim under Section 2 of the policy (the builder warranty period).

As NHBC has shown that the claim doesn't reasonably fall under Section 2 of the policy, this means it can only be considered under Section 3, so I've considered whether NHBC's decision to decline the claim under Section 3 of the warranty was fair. Section 3 covers damage caused by the builder failing to meet NHBC's requirements when building certain parts of the home. I've checked the policy carefully and can see that the part of the home Mrs O has claimed in relation to, isn't covered by Section 3 of the policy.

The parts of the property listed under this section are:

- *"Foundations, walls, external cladding, curtain walling, external render, external vertical tile hanging, roofs, ceilings, balconies, load-bearing floors, flues, chimneys and access steps to the main structure.*
- *Staircases, floor decking (for example, floorboards) and screeds (for example, a cement-based top layer applied to the structural floor) to the inside of the main structure, if they fail to support normal loads.*
- *Retaining walls, if they are necessary for the main structure to be stable.*
- *Double- or triple-glazing panes to outside windows and outside doors in the main structure, if these are newly installed at the completion date.*
- *Drainage below the ground, if you are responsible for it."*

As there's no mention of cover for a leaking shower, and no evidence has been provided of a failure to meet NHBC's requirements, I can't safely conclude that the claim should've been accepted as a valid Section 3 claim. It follows therefore, that I'm unable to uphold Mrs O's complaint.

I appreciate Mrs O wants NHBC to carry out an inspection so she can gather evidence to support her claim. But when making a claim on an insurance policy, it is for the insured – so in this case Mrs O – to demonstrate she's suffered a loss covered by the policy. If she can do so, then NHBC will need to accept the claim unless it can show it can fairly rely on a valid

exclusion to decline it. And I'm not satisfied, based on the available information, that Mrs O has shown she has a valid claim yet.

If Mrs O obtains any new evidence to challenge NHBC's findings, however, then she should share this with NHBC in the first instance and I'd expect NHBC to fairly consider it. If Mrs O then disagrees with NHBC's response, she will be able to raise a complaint and refer that complaint to this service – subject to the usual rules and time limits that apply.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 November 2025.

Ifrah Malik
Ombudsman