

The complaint

Mr and Mrs R have complained that National House-Building Council (“NHBC”) has unfairly declined a claim made under their Buildmark warranty.

What happened

In August 2024, Mr and Mrs R moved into a property which was covered by a NHBC warranty. In October 2024, they noticed their garden was water-logged and noticed water was coming from their neighbour’s property. This was causing damage to their lawn, so they made a claim under their NHBC warranty.

NHBC said the claim wasn’t one it was able to consider under the warranty, so Mr and Mrs R made a complaint. In its response, NHBC said the claim shouldn’t have been dismissed when it was and should’ve been considered further. It apologised for the error and offered Mr and Mrs R £100 for the inconvenience caused.

It then considered the claim but declined it on the basis that, as the claim was made within years 3-10 of the policy, and was therefore considered under Section 3 of the policy, the damage wasn’t covered. This was because Section 3 provided cover for physical damage to the areas of the property listed in the warranty terms, caused by a builder failing to meet NHBC requirements.

NHBC concluded that there hadn’t been a breach of any technical requirements and the issue was consistent with the installation of additional paving in Mr and Mrs R’s garden and alterations to the gardens of adjacent properties. It provided evidence that extensive garden work had been carried out to neighbouring properties, and it added that the warranty didn’t cover anything done to the home or the land after the completion date, except for actions carried out by the builder to meet its responsibilities under the Buildmark policy.

Mr and Mrs R didn’t agree. So they referred their complaint to the Financial Ombudsman Service. Our Investigator considered it, but didn’t think it should be upheld. She said the warranty would only respond to works completed by the builder and there’d been no failure by the builder to meet the NHBC technical requirements.

Mr and Mrs R didn’t accept our Investigator’s conclusions, so the complaint has now been 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 Mr and Mrs R, or 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.

NHBC has consented to this Service considering the claim decline, even though this happened after the date of its final response, so I'm able to consider whether the claim was declined fairly. As the claim was made during years 3-10 of the policy term, I've looked at the cover provided under the relevant section of the warranty (Section 3), which provides insurance after the builder warranty period and says:

"This section protects you if there is physical damage to your home because the builder failed to build the following parts of your home to meet the NHBC requirements:

- *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."*

NHBC declined the claim because it considered the issue to be consistent with additional slabbing that was placed by the previous owner of Mr and Mrs R's property and also to the adjacent garden by their neighbour. This meant NHBC didn't consider the problem to be a result of a technical breach by the builder, as required by Section 3.

I should point out that insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy. The test then is whether the claim falls under one of the agreed areas of cover – which NHBC says Mr and Mrs R's claim does not. This is also highlighted in NHBC's general conditions and exclusions, which NHBC has also referred to, and which say a policyholder can't claim for *"Anything done to your home or the land after the completion date, except for work we or the builder have done to meet the responsibilities we or they have under Buildmark"*.

Mr and Mrs R feel very strongly that NHBC has failed to prove the causal link between the water-logging and the alterations in their garden and neighbouring garden. So I've considered the evidence in support of NHBC's claims. In its Investigation report, it's explained that cover is only provided for physical damage to the home caused by a defect, and a defect is defined as a failure by the builder to meet NHBC's requirements. But it also explained that the builder didn't install the slabs, so any defect isn't covered by the warranty. It's not unusual for additional paving in a garden to cause or contribute to water-logging, as slabs create an impermeable surface preventing rainwater from soaking into the ground naturally. A significant increase in the area covered by slabs could mean less soil available

to absorb water – which forces the excess to run off to permeable areas of the garden. This could overwhelm the absorption capacity of the garden and cause water-logging.

While Mr and Mrs R have said NHBC can't prove what would've happened had the slabs not been installed, I'm not satisfied it needs to do any more to support its position. When making a claim on an insurance policy, it is for the insured – so in this case Mr and Mrs R – to demonstrate they've suffered a loss covered by the policy. If they had been able to do so, then NHBC would've needed to accept the claim unless it could show it could fairly rely on a valid exclusion to decline it.

In this case, I don't think Mr and Mrs R have shown that their claim is a valid one under the terms of the policy. That's because Section 3 of the warranty only provides cover for physical damage caused by the builder failing to build specified parts of the home to meet NHBC requirements. And I've seen no evidence that the water-logging has been caused by the builder failing to build a part of their home to meet NHBC's requirements. This is something that the policyholders would need to demonstrate.

But in fairness to Mr and Mrs R, I've still considered whether NHBC's reasons for declining the claim are fair. NHBC has said that although gardens are not a listed part of the property under Section 3, it considered the claim under Section 3 on the basis that gardens fall within the definition of the home and that waterlogging constituted damage to the home.

I've also seen the applicable NHBC Standards (2018) and in these, the relevant section is 10.2.8 which deals with "*Garden areas within 3m of the home*". Whilst section 10.2.8 states that there should be adequate access to and utility immediately around the home areas, with no waterlogging permitted up to 3m from the habitable areas of the home, NHBC has also confirmed that the statement that waterlogging should be prevented by drainage or other suitable means is guidance and not a specific requirement.

Having looked at the applicable standards document, I agree. The technical requirements that have to be breached in order for there to be a valid claim are shown in red text in the standards and labelled R1, R2, R3, R4 and R5. Performance standards are included below that in a shaded box, to support the technical requirements, but the parts in plain text outside the shaded boxes constitute guidance, not a requirement that must be met by the builder. As the mention of drainage or other suitable means to prevent water-logging is in black text and not within a shaded box, it is guidance and not a technical requirement. So whilst it is unfortunate that Mr and Mrs R's garden is water-logged, I don't consider the lack of drainage to be a breach of any of the technical requirements by the builder.

Mr and Mrs R have referred to section 4.2 of the standards, but this doesn't apply to their claim as this section relates only to building near trees, hedgerows and shrubs, particularly in shrinkable soils. They've also said the burden of proof rests with NHBC if it seeks to rely on the exclusion regarding anything done to the home after the completion date. Whilst this is correct, even if NHBC didn't seek to rely on that exclusion, it'd need to be satisfied that there'd been a breach of one of the technical requirements. And I can't see that Mr and Mrs R have been able to point to a specific technical requirement that's been breached, rather than guidance.

NHBC has said the most relevant part of the home applicable to Mr and Mrs R's claim is drainage below the ground, of which there is none in the garden area. This does not in itself mean the builder failed to meet NHBC requirements, as there's no evidence to demonstrate that a land drain was required. The evidence that would have proven this was required would have been water-logging in the garden in the early years following legal completion of the home. As no claim was made by the previous owners, and the issue arose in year six of the policy cover, I think it's fair for NHBC to conclude that this wasn't an issue previously,

which further supports the argument that the cause of the water-logging was more likely to have been a later alteration, and that the lack of a land drain was not a failure by the builder to meet NHBC's requirements.

I'm sorry to disappoint Mr and Mrs R, but for the reasons I've given, I don't consider NHBC has declined their claim unfairly. If Mr and Mrs R obtain any further evidence to support their view that the issue with their garden should be covered under the warranty, they should contact NHBC in the first instance for it to consider any further information.

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 R and Mr R to accept or reject my decision before 28 January 2026.

Ifrah Malik
Ombudsman