

complaint

Mr W complains about National House-Building Council's ("NHBC") decision not to accept the claim he made under his *Buildmark* building warranty for a cracked floor.

background

In October 2012 Mr W contacted NHBC to report that his floor had 'dropped'. NHBC carried out an inspection but didn't accept the claim because it said the damage wasn't covered by the policy terms. Mr W asked for a further inspection (and accepted £100 compensation for the delays in this occurring). NHBC maintained that the damage wasn't covered.

Mr W instructed his own structural engineer to survey and report on the damage his floor was experiencing. He concluded that the damage was being caused by thermal movement, which would not have been an issue if movement joints had been incorporated into the floor screed.

Mr W sent his structural engineer's report to NHBC but it still maintained that the damage wasn't covered under Section 3 of the *Buildmark* policy.

Mr W complained to this service. Our adjudicator investigated his complaint but didn't recommend that it be upheld. Mr W asked for his complaint to be referred for an ombudsman's decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr W's claim was submitted under Section 3 of his *Buildmark* building warranty. The warranty sets out what damage is covered by the terms and conditions.

It says:

"What NHBC will pay for
*A The full **Cost**... of putting right any actual physical **Damage** caused by a **Defect** in any of the following parts of the house...:*

- *Load-bearing parts of floors*
- *Floor decking, screeds and staircases, where these fail to support normal loads"*

The warranty defines "Damage" as: "*Physical damage to the **Home** by a **Defect**".*

The warranty defines "Defect" as: "*A breach of any mandatory **NHBC Requirement** by the **Builder**....**Failure to follow the guidance supporting the **NHBC Requirements** does not in itself amount to a **Defect**, as there may be other ways that the required performance can be achieved.***"

I have to decide whether or not NHBC has unreasonably refused to accept Mr W's claim. I don't think that it has. I'll explain why.

It is clear that Mr W's home has suffered unenviable damage. I have to decide whether NHBC has unreasonably refused the claim because it thinks that the damage isn't covered under the terms and conditions of the *Buildmark* warranty. I accept that the home has suffered physical damage. There is a significant crack to the floor and the floor has dropped. I don't think though that the physical damage has been caused by a *defect* (as set out in the definition above).

Mr W and his structural engineer have argued that the lack of any movement joints in the floor screed have caused it to crack and drop. I think that they are correct. Thermal movement has occurred and the lack of movement joints in the floor when it did, led to the damage. Unfortunately, the use of movement joints isn't a 'mandatory NHBC requirement'. Movement joints are recommended within NHBC's 'guidance' (and so, aren't mandatory).

The definition of '*Defect*' I've cited above, says that failure to follow the guidance doesn't, in itself, amount to a *defect* because there may be other ways to achieve the required performance. Mr W has said that unless another way is employed to achieve the '*required performance*' of the floor, then the damage must be a '*Defect*' (and so, be covered by the warranty).

Mr W has mentioned that NHBC's guidance says that bay sizes shouldn't exceed 40sqM without the use of expansion/movement joints. He points out his bay measures 80sqM and includes no movement joints. So, Mr W says the builder didn't use '*another way*' of achieving the '*required performance*'. This meant the floor failed to bear its normal loads. Use of expansion joints would have ensured '*performance*' was achieved.

I'm unable to agree with Mr W. The '*required performance*' of the floor screed is that it adequately supports normal loads. The floor does support normal loads. The part of the definition of *Defect* on which Mr W is relying, and which is discussed in the previous two paragraphs, would apply where the lack of movement joints caused the floor to fail structurally. There is no suggestion that the structure of the floor (the block and beam construction) has failed. It is the screed that is damaged (but not to the extent it can't bear a normal load).

That part of the definition applies to situations where NHBC's *mandatory requirements* have been followed (and so the building should do what it is meant to do) but despite this, the building hasn't performed as it should have because NHBC's *guidance* hasn't been followed as well. In this scenario, the failure to follow the guidance would be the cause of the failure of a part of the building covered by NHBC's mandatory requirements. Then we would expect NHBC to consider it to be a defect.

However, this isn't what has happened to Mr W's screed. The floor is fit for the purpose of bearing a normal load. Consequently, Mr W's claim falls at the first hurdle. The crack has arisen because of poor workmanship, something which isn't covered by the warranty. In effect, Mr W's floor has produced its own movement joint.

Mr W hasn't, in my view, been able to show that the physical damage to his floor was caused by a *defect* in either the load bearing part of the floor (the block and beam structure – which Mr W's own engineer agrees is undamaged) or the screed's failure to support a normal load. The screed has been damaged by thermal movement exacerbated by the lack of movement joints. This has caused the screed to crack and, consequently, it no longer provides a level surface for the floor covering to sit on. However, it is still able to bear a normal load. The fact that there is NHBC guidance issued on the use of movement joints

that appears to have gone unheeded is not, in itself, a *defect* because the floor hasn't failed to do what it should.

I think that NHBC hasn't unreasonably declined Mr W's claim for not being covered under the warranty.

my final decision

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 W to accept or reject my decision before 30 October 2015.

Claire Woollerson
ombudsman