

complaint

Mr V and Miss S are unhappy that National House-Building Council (NHBC) won't consider a claim under its building warranty policy.

background

Mr V and Miss S contacted NHBC regarding issues within their property. But NHBC said it was unable to help because the ten year warranty – which started when the property was built – had expired.

Mr V and Miss S say they bought the property when it was eight years old. They first noticed internal cracking to their staircase, which has since become more extensive throughout their property.

Mr V and Miss S believe the cracking was simply decorated over prior to their purchase and that the issues occurred within the warranty period. They also say they weren't made aware that there was a warranty in place when they bought the property. They complained to NHBC about this.

In response to their complaint, NHBC explained that in order for a claim to be accepted a number of conditions had to be met, as per the policy terms. One of those conditions was that the claim had to be made within the ten year warranty period. NHBC said the policy began on 16 January 2007 and expired on 15 January 2017. It says it wasn't contacted about the issues until 24 January 2017 – which was too late, so it couldn't look into the claim.

Mr V and Miss S remained unhappy so they referred their complaint to this service where it was considered by one of our investigators. But she didn't think it should be upheld.

Our investigator explained although the issues may've started within the warranty period, the claim also had to be made within that period to be considered. She also didn't think it was NHBC's responsibility to tell the subsequent owners of a property that there was an active building warranty in place. She also concluded that enquiries about a building warranty should form part of the checks carried out during the purchase of a property by the purchaser's solicitor.

Mr V and Miss S didn't accept our investigator's assessment, so the case has been passed to me for a final decision. They said they'd contacted the solicitor that had overseen their purchase, but the solicitor wasn't accepting responsibility because the policy wasn't disclosed or provided during the sale.

my findings

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

I'm sorry to disappoint Mr V and Miss S. But there's not much more I can add to what our investigator has already said.

NHBC says the policy expired on 15 January 2017, and that Mr V and Miss S made their claim on 24 January 2017. The information I've seen supports this, and Mr V and Miss S haven't disputed these dates. So I don't think there is any dispute about the claim being made outside the normal period of the policy.

I sympathise with Mr V and Miss S if they were previously unaware of the warranty and if the defects were present within the warranty period. But the policy terms are quite clear, that a claim needs to be made within the warranty period. And because NHBC was first notified about the issues outside of the ten year warranty period, albeit by only nine days, I can't reasonably decide it's done anything wrong by not considering their claim. To be clear, NHBC has also said that no issues were reported by the previous owners either.

I appreciate this must be very frustrating for Mr V and Miss S if they weren't made aware of the warranty earlier. But I can't reasonably say that NHBC are at fault for this. I don't think NHBC can reasonably know when a property has changed ownership – and in any event, I haven't seen anything to suggest NHBC has a responsibility to proactively contact new owners.

In my experience, when buying a property that's relatively new, the question of a building warranty would usually come up during the sale process. But it's not for this service to comment on the responsibilities of the conveyancing solicitors, or indeed the previous owners.

If Mr V and Miss S are unhappy with the response they've received from their solicitor on this matter, I can only suggest they seek further advice. The legal ombudsman *may* be able to help.

my final decision

For the reasons explained above, I don't uphold this complaint against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Miss S to accept or reject my decision before 7 October 2018.

Vince Martin
ombudsman