

complaint

Mr and Mrs B complain about National House-Building Council (“NHBC”)’s decision not to cover repairs to the garage at their property under a buildings warranty.

background

Mr and Mrs B purchased a house which had a garage as part of the property. When they did so, there was 2 years remaining on a buildings warranty provided by NHBC. Within a few months of moving in, they reported that there was damage to the house, as cracks had appeared on walls and a floor screed.

NHBC appointed agents to undertake enquiries which included monitoring the property for movement. It established that the property was moving because of drainage issues and this was causing the damage which had been noted. It agreed to cover the damage to the house but said it wouldn’t cover works to the garage.

NHBC said it couldn’t cover works to the garage for two reasons. It said the claim for the garage had been notified after the warranty expired. And in any case, it said the conditions of the warranty were that it would cover for repairs where a defect had caused damage to the property. It said that while it accepted the garage was moving, there hadn’t been any damage caused by this movement.

Mr and Mrs B didn’t accept this. They said the warranty’s terms and conditions said that the garage was included in the definition of a house. And that the monitoring carried out by NHBC had included checking the garage for movement. They also said they hadn’t been given any indication that repairs to the garage might not be covered until after the warranty period had expired.

When NHBC didn’t change its position, Mr and Mrs B brought their complaint to this service. Our investigator didn’t think NHBC had done anything wrong. She thought the important point was that there was no damage to the garage. And the terms and conditions said that works would only be covered when damage had occurred.

Mr and Mrs B have asked for an ombudsman’s decision. They say that the movement noted to the garage does constitute damage. And they also argue that the works to the garage should be considered as part of the same claim as the damage to the house.

my findings

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

The warranty for Mr and Mrs B’s house has a section which provides cover for issues which occur between 3 and 10 years after the property has been built. The terms and conditions say NHBC will pay *“The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect.”*

This means that there are three elements which must all be met in order for a claim under this section of the warranty. There must be damage, which is further defined in the warranty’s terms and conditions as *“physical damage,”* the damage must be caused by a defect and the cost of repairing the damage must be more than £1000 indexed.

There's no dispute from NHBC that damage has been caused to Mr and Mrs B's property by a defect, and that the cost of repairing the damage will exceed £1000. There's damage to the house itself, but what's in dispute is whether there's any damage to the garage.

Mr and Mrs B point to evidence which shows that the garage has moved. Again, NHBC don't dispute this point, but say that movement isn't damage. I've seen nothing to show cracking, or other similar damage to the garage. Such damage is present in the house itself, and is to be repaired by NHBC.

I'm particularly mindful that the warranty's terms and conditions define damage as "*physical damage*." And as this isn't defined further, I have to take the ordinary meaning of this. And I don't think that movement alone, without any evidence of cracking or collapse, can be considered to be within the definition of "*physical damage*." The evidence is that while the garage has moved, the structure of the garage hasn't been damaged or compromised.

This is all in contrast to the house, which does show evidence of cracking to the walls and floor. It's clear this is physical damage. And so NHBC has agreed to cover repairs to rectify this under the warranty. But the warranty doesn't provide cover for preventative work to prevent damage occurring, which is what the suggested works would be in the case of the garage.

Mr and Mrs B also argue that, as works are being carried out to the house, the cover should extend to the garage as the definition of "home" in the terms and conditions includes a garage. I can see this is the case, but I'm not persuaded that that repairs being carried out on the house mean that the works to the garage should be covered on the same claim.

I'm satisfied that the definitions in the warranty extending to cover garages is intended to provide cover for all parts of a property which have been built and covered by the warranty. In other words, it's intended to provide cover where a garage is damaged by a defect but not the house. I don't think it can be interpreted to mean that as soon as a claim is covered for one part of the property, any and all work to the rest of the property is also covered on the same claim. It's a reasonable interpretation to say that the warranty covers works carried out to repair damage caused by a defect, not that all works are covered when damage is caused by a defect.

In order for works to the garage to be covered the conditions of the warranty need to be met. And as I've said, I don't think the evidence shows the garage has been damaged, so works to it aren't covered by the warranty.

my final decision

It's my final decision not to uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 4 April 2020.

Ben Williams
ombudsman