

complaint

Ms D complains about the way National House-Building Council has dealt with a claim under a building guarantee policy.

background

There is a protracted and detailed background which the parties are aware of. They've been in dispute for some time now, had a matter looked at by a resolution service (recent report November 2018) under the policy and indeed a previous complaint to us.

The focus and crux of this complaint primarily concerns the mortar used in the construction of Ms D's home. NHBC had accepted there was a defect in the mortar used on the external brickwork and repointing work was carried out under a resolution service report. Subsequent reporting identified the poor standard of the remedial work and poor quality of the mortar. Although NHBC has accepted the 'defect' in the mortar, Ms D says this should go further to question the structural condition of her property.

NHBC had instructed an expert, I'll call H and Ms D instructed a person I'll call T. T said there was insufficient evidence to show the structure *hadn't* been affected by the defective mortar. On the back of this our investigator initially thought NHBC should nominate and then instruct experts to inspect the mortar, the structural integrity of the property and then carry out any recommendations made.

NHBC sent further information and comments, and this led the investigator to change his opinion. He explained that it was reasonable for NHBC to rely on H's report given his expertise in mortar, which in his view was more persuasive than T's. The investigator said the resolution service report from November 2018 questioned the durability of the mortar but not the strength. There were no structural defects raised in the report (or previous ones). He said that it was fair for NHBC to rely on the recommendations of H and left it open for H to consider the report from T.

Ms D disagreed with the investigator's view, and in summary said;

- T is an independent expert in mortar and it's inappropriately biased to favour H, who's always employed by NHBC.
- Crumbling mortar is a sign the mortar isn't strong enough and this was confirmed in H's report as not meeting building regulations.
- Building regulations say the safety of a structure is dependent on several things, particularly the properties of material
- Repointing the outer 25mm of mortar will not correct the presence of mortar throughout the structure
- The extent the mortar defect will have on structural integrity is yet to be determined and a structural engineer should review the case.
- T has said the only way to resolve the matter is either for NHBC to buy the property back or proving the house is structurally sound such that can eliminate any concerns with insurers or mortgage company.

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 crux of this complaint concerns the mortar between the brickwork at Ms D's home. It was noted to be described as 'pointing to external wall of entire building' in a resolution service report in September 2015. The brickwork was repointed but this found to be unsatisfactory and further inspections took place. As things stand further repointing work has been recommended, which is detailed in a resolution report in November 2018. So, there's no dispute that the mortar is defective, the dispute centres on Ms D's belief that her property may be structurally compromised. As such, Ms D wants NHBC to prove the property is structurally sound.

In making a claim under a policy it is for Ms D to show there is a defect. Indeed, that is what happened with the pointing to the external wall of Ms D's entire building. She had apparently reported "dusty appearance of some of the external brickwork", NHBC investigated this and recommended a course of action because of defects in the mortar. I appreciate that this remains unresolved some four or more years later and NHBC has paid compensation to Ms D.

Where things apparently stand now are reflected in the resolution report of 21 November 2018, which sets out what needs to be done and to what specification. I don't know if this work has been carried out. If it hasn't been done, then it's for Ms D to make the necessary arrangements with NHBC.

T's report notes the mortar sampled at several locations on the house has too little cement and as a corollary the mortar is weak. And repointing in line with the resolution report of November "*may therefore not be sufficient for the 60 year design life to be expected for this house.*" T's report also concludes that the structural integrity of the house is questionable.

I appreciate Ms D has concerns over the structural integrity of her home because of the defective mortar, but I'm not persuaded there's enough evidence to show the structural integrity of the house as a 'whole' is compromised because of a defect. Indeed, in the 2015 resolution report it states "*The test results have indicated that the mortar strength is sufficient to maintain the structural integrity of the property...*" And a review by a company I'll call F concluded the mortar was adequate to support the applied vertical and horizontal loadings.

There is a difference between what is a possibility and what's a probability. Ms D objectively demonstrated the mortar used on the external brickwork was, in effect, crumbling and so she'll also need to show the structural integrity is, on the balance of probabilities, compromised. For something like this I'd expect to see a report from a suitably qualified structural engineer who has inspected the property and sampled mortar from areas such as the foundations and wall ties. If the mortar used in these areas is not in compliance with NHBC technical requirements, then it may well indicate there is a defect.

Under section 2 of the policy, which is the basis upon which this matter has been dealt with, there may well be a requirement for NHBC to repair any 'defects' identified by such an expert. However, until this evidence is forthcoming, I'm not persuaded NHBC should be required by me to do anything more than identified in the resolution report dated 21 November 2018.

I'm also aware there are other potential issues regarding Ms D's property that NHBC is aware of and has inspected. While not part of this complaint for me to look at I'd remind NHBC of its duty under ICOBS to handle claims *promptly and fairly*.

my final decision

I don't uphold this complaint against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 2 April 2020.

Sean Hamilton
ombudsman