

complaint

Mrs N is unhappy that National House-Building Council (NHBC) won't cover damage to her home under her building warranty.

background

Mrs N bought her home in April 2017 from a previous owner. At the time the property was four years old with the benefit of a warranty with NHBC. Soon after moving in, Mrs N discovered that rain was pooling on her balcony and coming off the edge, saturating the wall of a storeroom beneath it. She made a claim to NHBC under the part 3 (years 3 to 10) coverage of her warranty. NHBC came out and inspected but ultimately concluded that any damage was caused by a defect in a part of the property not covered by the warranty ie the balcony. It also pointed out that guttering and above ground drainage are also not covered under the warranty.

Mrs N felt that NHBC should be responsible – it carried out the inspections on the property and for building control. She advised that a builder had told her that the work required to repair the damage would be to put in a new downpipe and guttering which would be costly because of the design of the building. Mrs N feels that the lack of such drainage should have been noticed by the NHBC inspectors.

NHBC clarified that it carried out key stage inspections but that the builder was ultimately responsible for the design and build and for complying with building regulations.

On referral to this service our investigator thought that NHBC had acted reasonably – the defect wasn't to a part of the building that was covered under the warranty.

The matter has been passed to me for my consideration.

my findings

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

NHBC doesn't warrant that any property with the benefit of its warranty is free from defects. Instead, in years 3 to 10 of the warranty it will cover defects to certain parts of the property as listed in the warranty where they are causing physical damage to the building and where the minimum cost of repairs is above a certain sum (here £1,472). There is no doubt here the cost of the repairs would be over £1,472 - Mrs N has quotes for over £4,000. And there is damage to the building – the walls of the storeroom are soaked and there is some water coming through the front door. Mrs N says she has been advised that there may be water coming in below floor level in the hall, although so far there is no evidence of this.

The defect here is to the balcony (which one of the builders Mrs N consulted described as poorly built) and/or the guttering/drainage. The major issue here is whether there is a defect to a part of the building that is covered under the warranty. As I've said, the parts covered under the warranty are listed in the building warranty and defects to balconies and above ground drainage aren't covered. To be clear the *defect* must be to a part that's covered. So whilst any defect to the load bearing walls of the property may be covered they weren't defective themselves even though they may have been damaged.

I understand Mrs N's point that she feels that NHBC having carried out inspections of the property should have noticed that the drainage didn't comply with the plans of the building. NHBC did carry out inspections here – they are done at key stages to ensure the home is fit for habitation and also here for building control purposes. But as it has explained it's not responsible to the purchaser/ warranty holder for any failure in design by the builder, nor does it warrant that the property is free from defects.

Further, in assessing whether we can look at a complaint against NHBC I have to be satisfied that it's a part of a regulated activity – here the carrying out of a contract of insurance. The assessing of the defect/damage comes within that contract. But NHBC also carries out a number of activities that aren't part of carrying out a contract of insurance and that includes its inspections for the builder. The actual inspections by NHBC aren't covered under our jurisdiction and I have no power to look them.

I realise that my findings will be disappointing news to Mrs N, as the cost of repair is expensive. And the seller really should have told her about the defect to the guttering/balcony and/or sorted out the problem with the builder who could have been liable in years 1 and 2 of the warranty. But I can't say that in this case NHBC has any liability to Mrs N for the damage or repairs to her home.

my final decision

I do not uphold this complaint.

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

Ray Lawley
ombudsman.