

complaint

Mr W has complained that National House-Building Council (NHBC) unfairly declined a claim under his building warranty. He's also unhappy that it's refused to carry out further investigations.

background

Mr W bought his property in 1999. It came with a ten year warranty.

In 2008 he contacted NHBC because there were cracks on the external brickwork of the property. NHBC sent an investigator to inspect the damage. The builder didn't attend the inspection. The investigator said the damage could have been caused by thermal movement and was only minor. Based on that NHBC said the damage wasn't covered by the warranty and it didn't accept the claim.

Mr W says he discovered new cracks in 2017 and the existing cracks had become worse. So he contacted NHBC again. It sent another claims investigator to inspect the damage. Following that visit NHBC didn't change its decision to decline the original claim. It said the damage wasn't serious enough to be covered by the warranty and it hadn't been caused by something covered by the warranty.

Mr W referred his complaint to this service. Our investigator didn't uphold it. She didn't think NHBC had done anything wrong. As Mr W didn't agree, the matter has been passed to me.

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 understand that Mr W is concerned about the cracks in his property, particularly since neighbouring properties appear to have suffered from subsidence. But I also have to take into account that his NHBC warranty -in common with other insurance policies- only covers certain things and that exclusions and limits apply. So I've looked at whether NHBC assessed his claim correctly and I think it did.

In years three to ten of the warranty NHBC is only liable to pay the cost of repairing any "Major Damage" which first appears and is reported to it before the end of the ten year warranty period. The "Major Damage" has to have been caused by a defect in the structure or caused by subsidence, settlement or heave affecting the structure.

“Major Damage” is defined as:

*“...damage to the Home necessitating complete or partial rebuilding of the Home or extensive repair work to it.
In the case of walls and floors it is restricted to severe damage of the type described in categories 4 & 5 in Tables 1 & 2 of the Building Research Establishment Digest No 251 (Revised August 1990). In other cases it is restricted to damage of similar severity.”*

The damage to Mr W’s walls was discovered in years three to ten of the warranty. So if the damage isn’t “Major Damage” as defined above, then it isn’t covered by the warranty, regardless of what caused it.

NHBC’s investigator in 2008 reported:

“All elevations of the house and garage were visually inspected and the only crack damage evident at the time of the investigation consisted of hairline vertical cracking between the head of the dining room patio door opening and the underside of the bedroom window over.”

In 2017 NHBC’s claims investigator found various cracks. It said none were more than 1mm wide and there weren’t any corresponding cracks inside the house.

It’s impossible for me to say from looking at the photos provided how wide the cracks are. But I note that category 4 referred to above is extensive damage where sections of wall need to be replaced and typical crack widths would be 15 to 25mm. Category 5 is structural damage which involves partial or complete rebuilding with typical crack widths greater than 25mm. Mr W says several of the cracks are well over 1mm wide. But I haven’t seen any evidence that suggests the width of the cracks is anything like as bad as 15mm.

With regard to what repairs are needed, NHBC’s investigator said suitable repairs to re-point the cracks and replace the cracked bricks would take approximately one day and were considered to be minor and cosmetic. Again I haven’t seen any evidence to contradict this.

Overall I’m not persuaded that the property has suffered “Major Damage” as defined in the warranty. That means I don’t have to look at whether the cracks were caused by a defect in the structure or by subsidence, settlement or heave affecting the structure.

Mr W feels strongly that NHBC should carry out further investigations to establish what’s causing the cracks. But since I think NHBC acted reasonably in saying that the damage wasn’t serious enough to be covered by his warranty, I don’t think it’s under any obligation to find out what’s causing the damage – it would only need to do that if it were liable to repair it.

Mr W also says NHBC’s reports are misleading, contradictory and contain falsified information. The reports were written about nine years apart from each other by different investigators. The first report attributes the cause of the cracking to thermal movement. The second investigator said the cause of cracking was unknown. I agree that’s a difference of opinion. But I don’t think it matters - to my mind the most important point coming out of both reports is the fact that the investigators thought the damage was minor.

I’m not convinced that NHBC intended to mislead Mr W or that it falsified information. Its description of the damage to his property appears to me to be supported by the photos I’ve seen which show a ruler giving a measure of the cracks.

Mr W isn't happy that the original builder hasn't taken part in the investigations or attended site visits with NHBC. But NHBC isn't under any obligation under the warranty to ensure the builder does so.

my final decision

For the reasons given above I do not 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 4 October 2019.

Elizabeth Grant
ombudsman