

## complaint

Mr W complains about the decision made by National House-Building Council (NHBC) to turn down his building warranty claim.

## background

Mr W bought a flat that was covered by a building warranty. In 2017 he made a claim under the policy as rainwater was entering his balcony.

NHBC turned down the claim. It said the balcony wasn't intended to be watertight, and therefore water ingress was likely to occur. It also said the balcony had drainage which allowed for water to be removed. It thought there could be an issue with the drainage from the balcony, but said this wasn't covered under the policy. Unhappy with this, Mr W brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. He agreed with NHBC that Mr W's claim wasn't covered, as the policy only provided cover for below-ground drainage.

Mr W didn't accept our investigator's findings. He said the policy covered a defect to its common parts, which included any drainage system. He therefore thought the issue with the balcony's drainage was covered.

Our investigator then accepted this point, but he thought that Mr W would need to make a complaint to NHBC in the first instance (with the other flat owners), before we could consider it. Mr W didn't agree that this was reasonable, so the matter has been passed to me to consider.

I issued a provisional decision on 5 May 2020. My provisional findings were:

*"Mr W has explained that a large amount of rainwater enters his balcony whenever it rains. He says the drainage is poor and so the water sits there for days. Mr W explains this is causing damage to the balcony floor. He's helpfully explained that the balcony is described as a 'winter garden', and is fully covered by ceilings and glass walls on all sides.*

*The claim was made in years three to ten after the policy started. The policy explains that means NHBC would pay for:*

*"A The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuilding, or its Common Parts:*

- *Foundations*
- *Load-bearing walls*
- *Non load-bearing partition walls*
- *Wet-applied wall plaster*
- *External render and external vertical tile hanging*
- *Load-bearing parts of the roof*
- *Roof coverings*
- *Ceilings*
- *Load-bearing parts of the floors*

- *Staircases and internal floor decking and screeds where these fail to support normal loads*
- *Retaining walls necessary for the structural stability of the house, bungalow, flat or maisonette, its garage or other permanent outbuilding*
- *Double- or triple-glazing panes to external windows and doors*
- *Below-ground drainage for which you are responsible.”*

*‘Damage’ is defined as:*

*“Physical damage to the Home caused by a Defect.”*

*‘Defect’ is defined as:*

*“A breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting the NHBC Requirements does not in itself amount to a Defect, as there may be other ways that the required performance can be achieved.”*

*There’s been no investigation into the problem, but Mr W believes the drainage system must be defective.*

*In order for Mr W’s claim to be paid, it’s not enough for there to be damage to his home caused by a defect (though we don’t actually know at present whether there is a defect). The damage caused by a defect would need to be in one of the parts listed. As Mr W is aware, below-ground drainage is one of the listed parts, but not above-ground drainage. That means any defect to above-ground drainage isn’t covered.*

*I don’t agree with Mr W that anything not specifically excluded by the policy must be covered. The policy makes it clear there is only cover for the parts listed. The policy includes a list of exclusions under the same section of the policy which provides further clarification on what is not covered (as well as general exclusions that apply to the whole policy), but that doesn’t mean NHBC needs to set out every part of the property that it’s not willing to cover.*

*Mr W also argues that the policy says it will cover the cost of putting right any physical damage caused by a defect in its common parts. He makes the point that the policy definition of common parts includes ‘any drainage system serving your home’. As he thinks the problem is with the drainage system serving his balcony, he believes his claim ought to succeed. Our investigator agreed with Mr W that a claim made for common parts would seem to be covered, and referred him back to NHBC.*

*I’m afraid I disagree with our investigator on this point. And whilst I can understand Mr W’s argument, I disagree with his interpretation of the policy terms. I’ll explain why.*

*First of all, I don’t know if Mr W is legally obliged to share responsibility for the cost and upkeep of his balcony’s drainage system with the other flat owners. If he is, then this would be considered a common part. As the investigator has explained, in order for us to consider a complaint about NHBC’s rejection of a claim relating to a common part, we would require the other flat owners to be joined into a complaint.*

*However, NHBC hasn’t treated this as a common parts claim. I’ve already explained above that the policy will only cover any physical damage caused by a defect in certain “parts of the...flat...or its Common Parts”. The policy then lists those parts. This needs to be read as*

*a whole. And as I've explained above, drainage is only covered if it's below-ground drainage. As the balcony's drainage is above-ground, that means it isn't covered under this section."*

I invited both parties to provide me with any further comments they wished to make, however neither party did so.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. However, as neither party had any further comments they wished to make, I see no reason to change my provisional findings.

I therefore remain satisfied that damage to above-ground drainage isn't covered by the policy, for the reasons set out above.

### **my final decision**

My final decision is that I don't 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 8 July 2020.

Chantelle Hurn-Ryan  
**ombudsman**