

complaint

Mr D, via his representative Ms T, has complained about the provider of the building warranty that was issued for his home, National House-Building Council (NHBC). His home, a ground floor flat, is suffering condensation and mould and NHBC won't fix it.

background

NHBC issued a warranty for Mr D's flat in February 2013. Ms T says that in mid-2015 they noticed mould growth in the property. They contacted the developer and, later, NHBC. When they contacted NHBC they described the damp and mould issues they were seeing and said they were worried about their health.

NHBC said that Mr D hadn't contacted it until April 2016. It said his claim, regarding condensation and mould was being considered under section 3 of the cover for damage caused by a defect found in years three to ten of the cover.

Mr D provided a report from a surveyor which found that condensation and mould was present in the area of cold spots in the wall, indicative, the surveyor said, of defective insulation. NHBC said the condensation was likely being caused by lack of heating and ventilation. It said a defect had to be a breach of an NHBC technical requirement and that the damage had to be more than just cosmetic. It said the mould could be wiped away but, in any event, it was being caused by the condensation which isn't a defect or within a part of the home covered by section 3 of the warranty.

Mr D complained to us. Our investigator wasn't minded to uphold the complaint. She noted particularly that section 3 only gives cover for damage caused by defects present in certain parts of the property. She noted the cavity of walls wasn't one of the parts listed.

Ms T argued that the cavity is an integral part of the wall, and load bearing walls are covered, so if there is a defect with the insulation within the cavity part of the wall, there is a defect with the wall. She also pointed out that her health has been affected and (if section 3 doesn't apply) NHBC should be covering this under section 4 of the policy.

Our investigator asked NHBC for its view on cover being available under section 4. Section 4 offers cover where there is an imminent or present danger to the health of occupants because the home doesn't meet certain specified building regulations. NHBC initially said that insulation is covered by Part L of the building regulations, and that part isn't one of the specified regulations covered by the warranty. Our investigator pointed out that Part C is a specified regulation covered and that Part C does discuss walls, cavities, insulation, condensation and mould. She felt this along with the surveyor's report, and the details provided about health risks presented by mould, were sufficient to say NHBC should consider a claim under this section of cover. She said it should also pay £250 compensation.

Ms T welcomed the finding but felt £250 wasn't sufficient compensation. She also asked about replacement of belongings damaged by mould. Our investigator explained that the warranty doesn't cover belongings.

NHBC felt it wasn't clear that a building regulation had been breached. It said the developer had confirmed to it what material had been used for insulation and it had provided a certificate showing this material allowed building regulations to be complied with. NHBC also maintained its view that the condensation was being caused by 'lifestyle choices' rather than

any proven defect. It said the surveyor's report was based on thermal imaging and this is a technique it generally doesn't favour as it can produce flawed results. It also noted that whilst Ms T had been under investigation regarding her health and its link to the mould, no confirmation from a medical professional had shown a link between the two. NHBC said that in the past we have said a link has to be proven.

Our investigator considered NHBC's response but wasn't minded to change her view. She told it that as the surveyor's report had been key to our finding in favour of Mr D, NHBC should reimburse the cost of it.

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

The warranty offers different cover at different times. So if a defect is notified to the developer and/or NHBC in the first two years of cover, the warranty offers cover for rectifying that defect. In years three to ten only *damage caused by defects* (defects which are present in certain specified parts of the property) is covered. There is no cover for rectifying the defects themselves.

But, where NHBC carries out the role of the building inspector, section 4 of the warranty can apply. Section 4 offers cover for repairs where the property doesn't comply with building regulations and this is causing an imminent or present danger to the health of the occupants.

section 2

The issue with mould and condensation wasn't noticed by Mr D until more than two years after the warranty was issued. Therefore, I'm satisfied that NHBC's view that there is no cover for any "*defect*" under section 2 is fair and reasonable.

section 3

Taking this from Mr D's point of view, the damage is perhaps both condensation and mould, both of which have resulted from a "*defect*" with the insulation. However, just because Mr D's surveyor refers to the insulation likely being defective, doesn't mean the issue falls for cover under section 3. That's because the policy defines a defect as being a breach of NHBC's technical requirements. Plus any defect has to be within a part of the property specified in section 3. I know Ms T has disputed that the latter of these two does apply (as the cavity/insulation within it, is part and parcel of the wall) but I'm not persuaded she's correct in this argument. And I haven't seen that any issue with the insulation most likely equates to a breach of NHBC's technical requirements – and is, therefore, a defect. And whilst I know Ms T speculates that the weather might be causing this issue (meaning there might be a defect with a part of the building that is covered and which is causing this damage), I've seen no evidence to make me think this is likely the case.

section 4

Ms T didn't specifically mention section 4 until after our investigator issued her view. However, the issue has always been about whether defective insulation, condensation and

mould are covered under the policy. NHBC chose to answer this in respect of whether section 2 or 3 applied. It was always open to it to look at the other section of the policy. In any event, when Ms T raised it specifically NHBC was given chance to consider the issue.

It isn't currently clear to me if Mr D has a claim under section 4 that will likely succeed. But I do think there is sufficient information available to suggest NHBC reasonably needs to consider a claim more fully under this section. And I say that in part not least because NHBC, whilst having had the opportunity to do so, hasn't provided sufficient evidence to satisfy me that considering a claim under this section would likely be inherently unreasonable because, for example, there is clearly no breach of a relevant building regulation.

I am satisfied there is likely a defect (using the common parlance of the word, rather than a "defect" as required by other parts of the warranty) with the insulation. The surveyor's report isn't conclusive, but it doesn't have to be. It only has to satisfy that a defect is "*most likely*". And whilst NHBC may not like the technique the surveyor used – it hasn't persuaded me *his* findings were likely flawed.

I'm also satisfied that Part C of the building regulations refers to walls meeting certain specifications to prevent or reduce condensation and/or mould. The surveyor's report says a defect with the insulation is causing the condensation. Therefore, it seems likely to me, on the face of it, that the building regulations can't have been complied with.

In its defence NHBC has said the developer confirmed a certain material was used and this has been certified to conform with the relevant building regulations. It provided a certificate to show this. Whilst I understand that NHBC thinks the regulations have been complied with – telling me that the developer confirms it has used a particular material doesn't satisfy me that is what was used. Furthermore, the certificate contains a caveat – that the material always has to be used appropriately and applied correctly. I've seen no evidence of that.

Therefore, I'm satisfied that, on the face of it, it's likely the building regulations haven't been complied with, and NHBC hasn't provided any persuasive evidence to make me think that conclusion is likely wrong or unreasonable.

Ms T is an occupant of the property. She has been under investigation for mould related illnesses. Her doctor confirms that she hadn't previously suffered with respiratory issues. Ms T also supplied various detail about the likely effects on health from mould. The warranty only requires an imminent or present danger to health for the occupants – I'm satisfied that Ms T has shown, on the face of it, the problem at the property is causing that.

Having reviewed everything, I think NHBC fairly and reasonably needs to consider a claim under section 4 of the warranty. As I said above I can't say at this stage whether that claim should fairly and reasonably succeed. But I do think NHBC should have considered a claim in this respect before now. I think it should also reimburse the cost of the surveyor's report, and the doctor's letter, plus interest* from the date they were paid for until settlement is made.

compensation

Mr D has clearly been caused distress and inconvenience by NHBC's refusal to accept a claim under the warranty. In some respects I think it made some valid points about cover. But I do think it should have considered the claim under section 4 previously – even though

Ms T didn't specifically mention this section until later, NHBC as the warranty provider and insurance expert should have noted their claim might fall for cover in this respect. NHBC's refusal to assist has clearly been upsetting for Mr D, I'm satisfied that £250 compensation is fairly and reasonably due.

belongings

I know that Ms T would like belongings to be replaced by NHBC, but the warranty doesn't offer cover for that. Whilst NHBC should have considered the claim under section 4 earlier, I can't reasonably make it replace items the warranty doesn't cover just because of that delay. Even had NHBC acted earlier to consider the claim under section 4, it seems unlikely the damage to the belongings would have been prevented. Ms T only notified NHBC of the issue in April 2016, but the developer had been informed and refused to act in 2015. Even in April 2016 Ms T said there was mould under the sofa and significant damp and mould in the bedroom including in the cupboards and on the mattress.

my final decision

I uphold this complaint. I require National House-Building Council to:

- consider Mr D's claim regarding condensation and mould under section 4 of the warranty taking into account my comments above as well as the terms and conditions of the warranty.
- reimburse Mr D the cost for the surveyor's report and doctor's letter, upon sight of proof of payment, plus interest* from the date they were paid for until settlement is made.
- pay Mr D £250 compensation for the distress and inconvenience it's caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 April 2020.

Fiona Robinson
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If National House-Building Council considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr D, it should tell him how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.