

Complaint

Mr and Mrs B complain that National House-Building Council (NHBC) has unfairly declined a claim they've made on their Buildmark policy.

Background

Mr B brings this complaint on behalf of himself and his wife so I'll refer to him throughout. References to his actions also include those of his wife.

Mr B purchased a property in July 2015. The property was built in 2008 and had the benefit of a ten-year Buildmark building warranty.

In April 2017, Mr B noticed water stains on the ceiling in the upstairs of the property so he reported this to NHBC. It arranged an inspection which recommended increasing the ventilation in the roof space so Mr B contacted a roofing contractor to undertake the work.

The contractor didn't agree with the course of action recommended by NHBC so Mr B arranged for a second inspection by a chartered surveyor. This report said there was a construction fault that caused condensation to run down the underside of the roof underlay and on to the top of the ceiling plasterboard resulting in staining.

NHBC declined to cover the claim so Mr B complained. NHBC responded to say Mr B's policy only covered defects in the load bearing parts of the roof or the roof covering. And because the problem had been caused by the underlay, which it said didn't perform either of these functions, the defect wasn't covered by the policy.

Mr B remained unhappy and brought his complaint to this service. Our investigator considered the evidence and concluded the policy didn't cover the damage as the cause didn't relate to load bearing parts of the roof.

She also said the consumer had raised some new points relating to the claim being covered under a different part of the policy and NHBC needed to be given the opportunity to respond to these new comments. She therefore didn't think it was appropriate to consider these under this complaint.

Mr B asked an ombudsman to make a decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I'm not going to be upholding this complaint. I'll explain my reasoning.

Building warranties aren't designed to cover every type of damage or eventuality that may occur to a house. The terms and conditions set out what is – and isn't – covered so it's clear to consumers what to expect from the warranty.

It's the policyholder's responsibility to demonstrate that a claim is covered by the warranty. It's not enough for the consumer just to show there's a defect with the property. It must be shown that the defect is covered by the warranty. I'll look at the terms and conditions of the warranty to decide if it is, while keeping in mind what I consider to be fair and reasonable.

In short, I would only expect an insurer to cover a claim if it's been demonstrated that the specific defect is covered by the warranty.

This warranty has different sections of cover depending on how long ago the property was built. In this case, it was built in 2008 and so the relevant cover, when the claim was made in 2017, is Section three of the policy.

In this case, it's not in dispute there's a defect with the property – the NHBC and chartered surveyor's reports broadly agree on this. The question though, is whether this defect is one covered under Section three of the policy.

The terms and conditions of Section three explain what NHBC will pay for:

“The full cost, if it is more than £1,000 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*
- *Load-bearing parts of the roof*
- *Roof coverings”*

The inspection by NHBC concluded there was a lack of ventilation in the roof space and Mr B's surveyor concluded the underlay had been installed incorrectly. So, I've considered whether these issues are covered under the two terms above I think might be relevant in this case.

The load-bearing parts of the roof are the parts which, if removed, would cause part of the roof to collapse. I don't think either of the causes identified in the reports would lead to this happening. So, I'm satisfied they're not covered by this part of the policy.

Mr B says the problem relating to the underlay should be covered under the “roof coverings” part of the policy. In his submissions, Mr B has provided copies of relevant sections of British Standards codes of practice relating to condensation in roof spaces. Within these there are a number of diagrams identifying key areas of various types of roof construction. In these, it's clear that roof coverings and underlay are generally considered to be two different and distinct parts of the roof structure. And because of this I'm satisfied the problem with the underlay isn't covered by this part of the policy either.

Following the investigator's initial view on the matter, Mr B responded and said he thought the claim should be covered under Section four of the warranty, the part relating to NHBC's role as an inspector of homes in the course of construction. The points he's made in relation to this were new ones not previously made to, or considered by, NHBC. So, I won't comment on these any further.

In summary, I'm not persuaded NHBC has acted unreasonably in declining this claim and so I won't be asking it to do any more.

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 and Mrs B to accept or reject my decision before 8 July 2020.

Paul Phillips
ombudsman