

complaint

Mr N's complaint concerns the decision by National House-Building Council to decline his claim under his Buildmark Building Warranty for water damage to his flat.

background

In 2010 Mr N noticed a damp area on his wall. By autumn the damp patch had deteriorated and he reported it to the managing agent. Investigations were carried out but no claim was made to NHBC until July 2012. As the defect concerned a common part, NHBC rejected it as it was out of time. It pointed out that, although Mr N's apartment itself was completed in 2007 (and therefore his cover runs until 2017), the time limits for common parts ran out in August 2011.

Mr N referred his complaint to this service. He felt it was unfair for NHBC to rely on the technical wording of a policy which meant that some of the flats had little or no cover for common parts.

The adjudicator did not uphold the complaint. He thought it reasonable for NHBC to be able to rely on different time limits for common parts claims where building development was carried out in stages.

Mr N and the management company still felt it was unfair and asked for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The Building Warranty gives cover for the first two years (Section 2) during which the builder is liable to repair any defect or damage and in the next 8 years (years 3 to 10 – Section 3) NHBC will cover the repairs needed to put right damage caused by a defect. Cover starts to run from the date of the insurance certificate, usually from the date of completion of the sale to the first owner.

In this case it appears likely that there is a defect causing actual physical damage so that the claim would have been accepted had it been made in time.

However the policy does set out that there are special provisions for common parts:

“Section 2

The cover in Section 2 starts on the date of the earliest Insurance Certificate for a Home which shares the relevant Common Parts. It ends 3 years from that date, or 2 years from the date of the last Insurance Certificate for a Home which shares those Common Parts, whichever is the earlier.

Section 3

The cover.....starts from the date cover under Section 2 expires. It ends 8 years from that date”.

In this case the common parts cover started in August 2000 and expired in August 2011. Mr N's warranty started in August 2007 and feels that is unfair that his right to claim under the common parts has been cut short. He points out that his property was not registered with NHBC until several years after completion of the first property, that three properties hadn't been completed after the common parts cover expired and that elements of the common parts cover had not yet commenced.

I have to decide whether it is fair and reasonable for NHBC to restrict common parts cover in this way and in particular that it was right to apply it to these circumstances.

The essential nature of a building warranty is to cover the building. For the individual property itself, that cover lasts for 10 years. For the common parts I think it reasonable for NHBC to set a time limit where different parts of the building (sharing those parts) are completed at different times. This would otherwise lead to a situation where common parts cover recommences every time a new property is completed. It does seem reasonable to me to expect any defect to arise within 10 or 11 years of the construction of the property.

In Mr N's case, he first became aware of the damp problem in spring 2010 and reported the matter to the managing agent in October 2010. He was aware that he may have had a potential claim to NHBC but it appears that the managing agent did not feel it appropriate to refer it to NHBC. There was also a delay whilst a new managing agent was appointed. The claim was reported in July 2012 but it is clear to me that it could have been reported in time. The warranty itself under Section 3 Cover in years 3 to 10 says "*...you must tell NHBC of your claim as soon as possible within this period of cover.*"

Mr N felt that the cover was not adequately explained when he purchased his property. However it is clearly explained in the policy booklet and his conveyancing solicitor should have advised him of this at the time.

I understand Mr N's point about common parts being built after the certificate expired. I don't think that the policy intends to exclude those from cover (it says *relevant* common parts). However, I cannot speculate as what might happen in those circumstances.

In this case I am persuaded that, overall the term in the policy detailing when the cover for common parts begins and ends, and the application of it to this case, is fair and reasonable.

my final decision

My final decision is that I do not uphold the complaint. I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 29 January 2015.

Ray Lawley
ombudsman