

complaint

Miss M complains about National House-Building Council's decision to decline a claim under her buildings warranty policy.

background

Miss M has a Buildmark warranty with NHBC which covers her flat.

She made a claim for damage which she said was caused by vibration in the building in which her flat sits. She said the vibration was caused by her neighbours' use of their washing machine in the flat above.

Miss M says the amount of vibration and noise in her flat is unacceptable and must indicate a failure to meet appropriate building standards when the flats were constructed. She says she's been advised not to use her gas boiler because the vibrations may cause the pipes to leak.

NHBC declined Miss M's claim. They carried out an inspection but didn't identify any damage caused by any defect in the building. They pointed out that vibration or noise caused by white goods is not covered by the policy.

Miss M made a complaint to NHBC. And when they didn't uphold her complaint, she brought it to us. Our investigator looked into and didn't think NHBC had done anything wrong.

Miss M disagreed and asked for a final decision from an ombudsman. She wants NHBC to carry out a survey to determine whether there is a fault in the construction of the building – particularly in the way the floors are supported at the walls. If there is a defect, she wants NHBC to put it right.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's important to set out what Miss M's policy covers.

The policy is essentially in two parts. The first covers the first two years after the build is completed. During this time, the policyholder is required to refer any problems back to the builder. NHBC only intervene if the builder fails to put things right.

The second part runs from year three to year ten, when the policy ends. Section Three of the policy document says that during this period, NHBC will pay for:

"The full cost of putting right any actual physical Damage caused by a Defect in any of the following parts of the building...."

The list which follows includes walls, foundations, ceilings and the load-bearing parts of floors. So it clearly includes those parts of Miss E's building that she alleges are defective.

The policy defines damage as *"physical damage to the home caused by a defect"*.

There are two things I think are particularly relevant about this section of the policy.

One, the policy covers actual existing damage. It doesn't require NHBC to take action to prevent the possibility of future damage. As I understand it, Miss E's gas boiler isn't currently physically damaged. She's been advised not to use it because it may become damaged.

Two, the policy requires NHBC to pay for repairs to the damage caused by a defect. It doesn't require them to repair the defect itself.

This might appear slightly odd – if not unfair – until you read Section Four of the policy. This makes it clear that NHBC *will* pay for the repair of a defect - where there is a "*present or imminent danger*" because the home doesn't comply with the requirements of the building regulations - *if* NHBC (or its subsidiary) was responsible for the building control during construction.

NHBC wasn't responsible for the building control in this case, so that section of the policy doesn't apply. But that makes it clear why NHBC don't feel they're responsible for repairing any defects in the building caused by failures to meet the requirements of the building regulations at the time.

It's impossible for me to say that NHBC are acting unfairly in this case in refusing to address alleged fundamental failures to meet building regulation requirements when they didn't act as building control for the project. They're entitled to rely on whoever did carry out that task to see that the requirements of the regulations were met.

I can understand Miss M's frustration with her current situation. And I understand she's unhappy with the way building work is regulated. But even if NHBC's stated purpose is to improve standards in construction, they aren't responsible for all building work in the UK – and they can't be expected to answer for all problems with that work.

More importantly, in this case, NHBC *are* responsible for complying with the terms of the warranty – the contract between themselves and Miss M. It's not unfair if they decide not to go above and beyond those terms. Miss M may have a valid cause for complaint about the way her building was constructed, but that complaint needs to be aimed elsewhere.

In summary, Miss M's policy covers actual physical damage *caused by* a defect in the building. It explicitly doesn't cover any defects caused by failure to meet building regulation requirements (under Section Four), because NHBC weren't responsible for building control for the project.

There is no actual physical damage in this case, in my view. Even if I agreed that the boiler was damaged in the sense of being put out of use, there's nothing for NHBC to repair.

There's no evidence that there is a defect. And it's not unfair for NHBC to suggest that others are responsible for any investigations to determine whether there is in fact a defect – and if so, what it is.

Finally, I think it's worth noting that the policy explicitly excludes cover for anything which was – or could have been – reported to the builder within the first two years of the warranty.

As I understand it, Miss M reported this problem towards the end of the 10-year warranty period. If there is a fundamental defect in the way the building is constructed, which is

causing the vibration issues, it's difficult to see how and why this has only come to light relatively recently – and/or why it couldn't have been reported to the builders within the first two years.

I don't doubt Miss M when she describes the problems she's experienced with her flat. And I hope she'll be able to find some satisfactory resolution through other channels. But I can't find any reason to conclude that NHBC have acted unfairly or unreasonably in declining Miss M's claim in line with the terms of her policy.

my final decision

For the reasons set out above, I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 May 2019.

Neil Marshall
ombudsman