

## **complaint**

Mr S complains about National House-Building Council's ("NHBC") decision to decline cover for a claim he made on a new house warranty.

## **background**

Mr S purchased a property which was part way through a 10 year building warranty provided by NHBC when he bought it.

Mr S made a claim to NHBC for damage caused by condensation in the loft space of the property. It declined to cover the claim. It said the warranty didn't cover this type of damage after the first two years of the warranty.

Mr S complained to NHBC and, when it didn't change its decision, to this service. Our investigator reviewed his complaint but didn't think NHBC had done anything wrong. She said the warranty was clear that it didn't cover this type of damage after the second year.

Mr S remained dissatisfied. He accepted that a claim for new issues occurring after the second year wouldn't be successful. But he said the condensation issue had been causing damage within the first two years of the warranty period and the damage he was claiming for was a continuation of the problem which hadn't been fixed. He's asked for an ombudsman's 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.

I've looked at the warranty and it appears there are two separate sections which could apply here. The first I'll consider is a claim under a section which provides cover for issues which occur between 3 and 10 years after the property has been built. Specifically, it says NHBC will pay:

*"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*
- *Tile and slate coverings to pitched roofs*
- *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”*

There's no dispute that the damage to Mr S' flat has been caused by condensation in the loft space of the property. It's argued that this is because of a defect in the construction of the property in that the material used when constructing the roof is inappropriate. But, in the list of parts of the property which are covered under this section of the warranty, there's no mention of the roof itself. It's a well established principle that in order to make a successful claim, a policyholder needs to prove that their loss has occurred because of an insured reason. A defect to the roof isn't listed as being covered by the warranty. So there's no cover for this claim under this section.

The other relevant section of the policy is the one Mr S argues his claim should be covered under. This section says that in the first two years after construction, the builder of the property is liable "*Within a reasonable time and at his own expense, to put right any Defect or Damage to your Home or its Common Parts which is notified to him within this period of the cover.*" The builder of Mr S' property went into liquidation within this period. The warranty says NHBC will pay the costs of a claim under this section if the builder is insolvent.

Repairs to Mr S' property were carried out under this section before Mr S purchased the property in 2017. And as the builder was no longer trading, NHBC covered those costs. Mr S says his claim should be covered under this section as it is a reoccurrence of the previous problem which hasn't been properly rectified, and the problem hasn't been rectified. NHBC says this isn't the case. It argues the damage being caused by moisture was to a different part of the property to where the damage it had previously covered repairs to. Its opinion is that the damage isn't being caused by the same problem.

I can see from the evidence available to me that NHBC has previously covered claims for damage to the property caused by moisture, the claims it's covered have been for damage to other parts of the property. The layout of the property is significant here. The current damage is in a room directly below the loft space in which the condensation has occurred. The previous damage was in a different room on the floor below.

I haven't seen any evidence to indicate the previous damage, on the floor below, was caused by the same condensation issue in the loft space which is directly above the room which has now been damaged. And so I'm not persuaded the damage now being claimed is a continuation of the problem NHBC has previously covered. As this claim has been made more than two years after the property was constructed, a new claim under this section wouldn't be successful.

**my final decision**

It's my final decision not to uphold this complaint.

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

Ben Williams  
**ombudsman**