

complaint

Miss W and Mr S complain about National House-Building Council's handling of a claim under their building warranty.

background

Miss W and Mr S have a 'Buildmark' warranty with NHBC which covers their home.

Six years after buying their home, Miss W and Mr S reported a problem with their false chimney to NHBC and asked them to pay for repair or replacement of the chimney under the warranty.

NHBC carried out an inspection and told Miss W and Mr S that the problem with the chimney wasn't covered under the warranty because the issue was "cosmetic".

Miss W and Mr S complained about that decision, but NHBC maintained their position saying there was no evidence of any damage to the property which was covered under the warranty.

Miss W and Mr S weren't happy with this outcome and complained to us. Our investigator looked into it and thought NHBC hadn't done anything wrong.

Miss W and Mr S disagreed and asked for a final decision from an ombudsman. They think the issue with the chimney is more than cosmetic.

They also believe NHBC are discriminating against them because they've repaired or replaced similar chimneys on their neighbours' homes having carried out different types of inspection.

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'm not going to comment on decisions NHBC may have made on other claims made by Miss W and Mr S's neighbours.

I'll simply say that I don't believe NHBC are discriminating against Miss W and Mr S. The circumstances are particular to Miss W and Mr S's property. For example, the builder of the property carried out repairs to the false chimney after Miss W and Mr S bought their home.

And it was reasonable for the inspector to take account of all those particular circumstances when he decided what he needed to do to complete the inspection effectively.

What's happened with other claims isn't important for my decision here. What *is* important is the detail of the specific issues with *this* false chimney – and the terms of the NHBC warranty.

As is usual with this kind of warranty, any problems with the property within the first two years are to be dealt with by the builder. After that, NHBC are expected to deal with any problems that are covered. In this case, the problems were reported six years after purchase.

NHBC's responsibilities during years 3-10 (when the warranty expires) are set out in Section Three of the warranty.

Section Three says NHBC will put right damage to the home caused by a defect (a failure to meet the NHBCs mandatory building requirements) in certain parts of the building.

Those parts are listed. They include "*external render*". The false chimney is essentially made up of render applied to a framework. I don't think there's any dispute that the false chimney is a part of the property covered by the warranty.

However, Section Three of the warranty goes on to set out a clear and specific exclusion which says NHBC will not be liable for:

"... anything relating to... cosmetic damage such as minor cracking, spalling or mortar erosion to brickwork, which does not impair the structural stability or weather-tightness of your home."

Miss W and Mr S commissioned an independent inspection carried out by qualified surveyors which very persuasively set out the issues with the way the false chimney was built and the problems this caused.

I don't have any reason to doubt the content of that report. Nor do I doubt that the false chimney was constructed badly and was very likely to fall into disrepair at some point.

And of course, I can understand Miss W and Mr S's frustration and anger. They had every right to expect that the house had been built in such a way that they wouldn't encounter problems like these so soon.

I do though have to come back to the policy and what it's intended to cover. It's NHBC's argument that whilst the chimney is undeniably cracked, this amounts to "*cosmetic damage*" not covered by the policy (see the exclusion quoted above) because it hasn't impaired the structural stability or weather-tightness of the home.

The relevant exclusion in the policy is set out very clearly and is in my view given reasonable prominence. It's not buried in the small print and it's not ambiguous.

So, the decision for me comes down to whether the problems with the false chimney have *in fact* impaired the structural stability *or* the weather-tightness of the property. If not, NHBC are entitled to say they're not liable to pay for repair or replacement.

I know Miss W and Mr S don't think the key issue is weather-tightness. However, I think it's worth my saying what I think about that issue.

The independent surveyor's report says the problems with the false chimney mean that water ingress into the home is inevitable. I don't think NHBC agree, but they've rightly acknowledged that they will be liable to pay for repair or replacement if it does happen during the lifetime of the warranty.

I can only say that the warranty doesn't say NHBC have to carry out work to guard against potential future damage. And both inspection reports appear to agree that no water ingress has occurred as yet.

So, it's not unfair or unreasonable for NHBC to say they'll deal with any water ingress if and when it occurs.

Miss W and Mr S have said they think the more relevant factor here is structural stability. However, whilst the independent surveyor's report is fairly damning about the way the chimney was constructed, I don't think it goes so far as to suggest that the structural stability of the home is affected.

The home certainly isn't about to collapse – or lean – or have anything else so profound affect it. So I think it might be pushing it to say the structural stability of the property is impaired by the issues with the false chimney.

In summary, I think NHBC are right when they say the issues with the false chimney haven't (at least as yet) impaired either the structural stability of the property or its weather-tightness.

And so I'm satisfied that the exclusion quoted above has been applied fairly and reasonably.

As I say, I think most people would fully understand why Miss W and Mr S are disappointed, to say the least, about the issues with the false chimney.

I hope they can understand though that NHBC aren't responsible for everything that's wrong with their home. They can only reasonably be asked to rectify issues which are covered by the warranty.

And in my view the current problems with the false chimney aren't covered by the warranty.

my final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W and Mr S to accept or reject my decision before 28 July 2019.

Neil Marshall
ombudsman