

complaint

Mr E and Mr P are unhappy with the way National House Building Council (NHBC) have handled a claim under their NHBC Buildmark policies.

background

Mr E tells us he purchased a new build property in 2010 which was sold with a NHBC Buildmark warranty. He says he noticed problems had developed with a wall on his property which was leaning and had come adrift from a garage it was attached to. So, he contacted the builders who he purchased the property from, and they referred him to NHBC. In 2018 he approached NHBC and asked them to carry out necessary repairs to make the wall good.

NHBC initially declined the claim but agreed they'd not considered if it could be considered as a common part under section 3 of the policy. They apologised to Mr E for this and said they would consider the claim if he could demonstrate he was legally obliged to share responsibility for the cost and upkeep of the wall with neighbours who also had a Buildmark policy. In effect, NHBC wanted Mr E to show the wall was a 'common part'.

Mr E approached his neighbour, Mr P as the wall was adjacent to a driveway Mr P used to access his garage. They were concerned that the wall was in a dangerous condition and could fall and damage Mr P's vehicle parked on the drive or cause injury to their families and visitors. And they brought their complaint to this service.

Our investigator didn't feel NHBC had acted unfairly so Mr P and Mr E have asked that an ombudsman decide the case. Since our investigator gave their view on the case Mr E has provided information which NHBC accepts has demonstrated the wall is a "common part". And NHBC have agreed to consider the claim. Mr E though says NHBC should pay his claim rather than just consider it.

my findings

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

First of all, I'm sorry Mr E and Mr P have experienced problems with the wall, and I can understand their concerns.

In their final response letter (and a subsequent letter in August 2018) NHBC agreed with Mr E that they'd not considered the claim might be covered under section 3 of the policy as "common parts" and apologised for this. And NHBC added that the claims team can consider this further if Mr E could show that he was legally obliged to share responsibility for the cost and upkeep of the wall with other homeowners also covered by Buildmark. It is for the policy holder to show, on balance, that there is a valid claim and I'm satisfied that NHBC acted reasonably in asking Mr E to demonstrate that the wall was a 'common part' before it could consider his claim.

Now Mr E and Mr P have provided this evidence, and NHBC have accepted it they can proceed to investigate the claim. It's reasonable that NHBC has the opportunity to consider the claim and allow their experts to investigate the damage and consider it in line with the terms and conditions and policy limitations. And all parties should cooperate to allow this to happen so that NHBC can investigate the claim and make its decision.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mr P to accept or reject my decision before 31 August 2020.

Martyn Tomkins
Ombudsman