

complaint

Mr and Mrs B are unhappy that National House-Building Council declined to deal with their claim for damage to their retaining wall under their buildings warranty.

background

The property was completed in 2005 and the claim was made in 2014 under section three of the buildmark warranty which operates between year's three to ten. Mr and Mrs B made a claim for the damage and after a review of photographic evidence NHBC declined the claim. It said the wall was supporting the land to the side of the property rather than the structural stability of the house. Mr and Mrs B didn't accept this and brought their complaint to this service.

Our investigator didn't uphold the complaint. She said there wasn't any evidence to indicate the structural stability of the house relied on the retaining wall so NHBC acted reasonably when it declined the claim. She said NHBC had agreed that it would reconsider the claim if Mr and Mrs B got evidence to show the retaining wall is a common part and she felt this was fair. Mr and Mrs B didn't accept this and asked for their complaint to be passed to an ombudsman for a final 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.

Section three of the NHBC warranty states under the definition of home that "*Home does not include any fence*". But it also says it includes "*Retaining walls necessary for the structural stability of the house, bungalow, flat or maisonette, its garage or other permanent outbuilding*".

So I've considered the expert evidence provided in the form of a building inspection. Within the report it says

"Again there is no significant evidence/cracking or distortion to indicate any failure of support at the present stage.

I have researched on an electronic library database to confirm if there are any British Standards available for this type of design and I cannot find any appropriate design guidance under the British Standard or Building Research Establishment for this type of application.

I have also examined the NHBC website and reviewed the NHBC manual to establish what guidance may be available for them on the assumption the building was constructed under the auspices of an NHBC warranty and inspection"

There was no guidance but the engineer did find in a later NHBC newsletter details around the issues with such retaining walls. I noted within this guidance that it says "*failure may not be covered by insurance*".

I think this report is the most useful evidence I've got to consider. And it ties in with NHBC when it said the wall appeared to be supporting the land to the side of the property rather

than the structural stability of the house. The warranty requires a defect to have caused physical damage. But the details in the building inspection shows there's no sign of physical damage to the home. So I don't think NHBC acted unreasonably or unfairly when it declined to deal with the claim.

Based on the wording NHBC said it would reconsider the claim if evidence that the retaining wall is a common part was produced. I think that's reasonable.

I note solicitors on behalf of Mr and Mrs B have said later changes in regulations should apply. But I can't see that follows as it wouldn't be fair to apply rules that weren't in operation when the property was built and the warranty was applied. I've noted above the details from the expert inspection provide the important evidential facts.

my final decision

I don't uphold this complaint.

I make no award against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 26 March 2019.

John Quinlan
ombudsman