

complaint

Mr E and Miss P complain that National House-Building Council (“NHBC”) won’t accept their Buildmark building warranty claim for dampness near the windows in their new-build flat.

background

Mr E and Miss P moved into their newly built flat in November 2015. It came with a 10-year NHBC *Buildmark* building warranty. In April 2018, Mr E and Miss P reported to NHBC that there were patches of dampness near the windows in their newly built flat.

NHBC appointed a claims inspector to visit the property, inspect the damage and report on whether it was covered by the warranty. He noted the dampness but reported that this was being caused by condensation, the effects of which were excluded from cover under the warranty so he didn’t recommend that Mr E and Miss P’s claim was accepted.

Unhappy with NHBC’s decision, Mr E and Miss P complained to NHBC. It issued its final response letter in October 2018. It referred to its claims inspector’s report and said that condensation wasn’t covered by the warranty unless it was the result of the builder failing to meet NHBC requirements. It said that it hadn’t identified any such failure by the builder so it was satisfied that its claim decision had been correctly made.

NHBC also said that whilst the issue had been considered under Section 3 of the *Buildmark* warranty, it noted that a very similar issue had been reported by Mr E and Miss P previously and considered under the Resolution Service provided by Section 2 (the builder’s liability period) of the warranty. It noted that the beads of condensation forming then were also considered to be condensation and, as such (under the warranty terms) needed to first be referred back to the builder to consider. NHBC said if any additional information came to light it would happily review its decision.

In January 2019 Mr E and Miss P instructed an expert to report on the issues they were having with their windows. He concluded that the mould appearing on the internal window reveals was being drawn in through the ends of the external sill that hadn’t been sealed to the brickwork where the top of the sill met the bottom of the window frame. He concluded that the only way to cure the issue was to remove the affected windows and seal the ends of the sill to the brickwork to prevent moisture ingress.

Mr E and Miss P sent this new information to NHBC. It reviewed the report and told them that it remained unable to consider their claim further because the warranty didn’t provide cover for windows and doors including any issues with installation. It said that the window and door manufacturer that installed the windows would most likely have provided a separate guarantee which the builder should have a record of. It suggested they contact the builder to obtain a copy of any certificate that had been issued to see if it was still valid.

Unhappy with NHBC’s decision, Mr E and Miss P complained to this service. Our investigator looked into their complaint but, taking into account the terms and conditions for the warranty, didn’t think NHBC had unreasonably or unfairly declined to accept their claim.

Mr E and Miss P disagreed with our investigator’s findings and raised a number of new matters not previously referred to NHBC. These included issues with sound insulation, the mis-sale of the warranty, that NHBC regulations hadn’t been complied with, issues with fire safety and insulation. Our investigator looked at what Mr E and Miss P had said but noted

that it appeared they hadn't raised them as a complaint with NHBC first so it'd not yet had a chance to consider them. Our investigator said that we were only able to look at the issues they had told us about in their complaint.

Mr E and Miss P replied to say they had mentioned the additional matters only to show that the building had been poorly constructed. They asked for their complaint to be referred for an ombudsman's decision.

Recently Mr E and Miss P have sent further documents to this service which they say they would like us to consider. These relate to issues from December 2015 to September 2018 which were referred to the builder in the main and were dealt with in part by a Resolution Report produced under Section 2 of the Buildmark warranty.

my findings

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

The warranty provided by NHBC isn't just an insurance product. Part of the warranty provides for NHBC to mediate between the policyholder and the contractor with a view to defects being rectified. Only when NHBC goes beyond that mediation, and/or in years three to ten of the cover when it takes on a claim for new damage, does it act as an insurer.

That is important for the purposes of this complaint because I can only consider complaints about insurance activity. So, anything that NHBC has done in its role as mediator is beyond my scope of review.

With this complaint I can only look at what Mr E and Miss P complained to NHBC about in September 2018 and which it considered in its final response letter of October 2018. Whilst I've noted the recent information Mr E and Miss P have sent this service, it all relates to issues reported to the builder in the first two years of the warranty except for the visit (by the builder) in June 2018 in respect of the condensation that had been reported. And I can see that it wasn't until after this date that Mr E and Miss P contacted NHBC and it then sent out its claims inspector and accepted the claim under Section 3 of the *Buildmark* policy.

So, whilst I appreciate it will come as a disappointment to Mr E and Miss P I'm unable to look at this information, I can't do so for two reasons. The first is that it refers to issues before NHBC could be said to be acting as insurer and the second is, that it didn't form part of the complaint made to NHBC in the Autumn of 2018.

I have to decide if NHBC has unfairly or unreasonably declined to accept Mr E and Miss P's claim for dampness around their windows. I don't think it has. I'll explain why. For NHBC to accept the claim under Section 3 it must be shown that there is physical damage to the home that was caused by a defect in a part of the property listed in the policy document. As the warranty states, it doesn't provide protection against every event or circumstance, only the things outlined within it. For example, the warranty also doesn't provide cover for windows and doors – only to double or triple glazed window or door panes (not the frame, sill etc.). And damage caused by the effects of condensation isn't covered unless it's the result of the builder failing to meet NHBC requirements; I can't see that any failure of NHBC requirements has been identified.

So, the only part of a window and door that is covered by Section 3 is the glazing part. And I can see from the expert report Mr E and Miss P obtained that there are no identified issues with the glazing. The issue is with the sealant around the sills.

So, I don't think that NHBC has unfairly or unreasonably declined Mr E and Miss P's claim. Having considered the terms of the warranty, I can't see that it covers the issue they have reported. That is not to say I doubt the existence of an issue. Clearly there is evidence about what is letting the moisture into the home to cause the condensation. Unfortunately for Mr E and Miss P the issue isn't covered by the warranty.

After our investigator issued his findings, Mr E and Miss P replied setting out other issues they have had with their home. They subsequently said they did so to illustrate the problems they have had with the quality of the build and the fact NHBC didn't hold certain documents regarding the construction. They also said the original contractor – by which I assume they meant the window contractor – has now ceased trading and that they'd had problems with sound insulation in their flat. And they said the warranty had been mis-sold.

I can see they raised a sound insulation issue within the first two years of the warranty (during the builder's liability period). I can't see that this issue has been raised under Section 3 or that it formed part of Mr E and Miss P's complaint to NHBC in September 2018. So, I can't look at it for them here. They would need to raise it with NHBC first. As they would any mis-sale complaint or complaint about fire safety, neither of which formed part of their complaint to NHBC in September 2018 or to this service in April 2019.

Mr E and Miss P also said that there were issues with all the flats in their block and that there was no documentation available to show that building regulations had been complied with. They said that NHBC had provided building control for the block and they referred to Section 4 of the warranty, Part N – *glazing in relation to impact, opening and cleaning (Wales only)*.

Unfortunately, that section of the warranty doesn't cover the moisture issue Mr E and Miss P are complaining about. And even if it did, their property would need to be located in Wales for them to benefit from it. And if any common parts of the block are affected, then all the property owners need to join a complaint about them.

I don't doubt that the issues Mr E and Miss P have experienced with their home have been stressful and upsetting for them. But I can't reasonably make NHBC responsible here for issues that aren't covered by the warranty or which it hasn't yet had an opportunity to investigate for itself. It follows that I can't fairly uphold Mr E and Miss P's complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Miss P to accept or reject my decision before 17 September 2020.

Claire Woollerson
ombudsman