

The complaint

C complains that National House-Building Council (“NHBC”) have unfairly declined a claim under its Buildmark policy.

Any reference to C or NHBC includes that of respective representatives or agents.

What happened

The background of this complaint is well known to both parties, so I’ve summarised events.

- C represents several flat owners at a single property built in 2008. C holds an NHBC Buildmark policy which provides ten years of cover after it is built. C made a claim under Section 3 of the policy – which covers damage arising from defects occurring between years three and ten. C reported water ingress affecting three flats to NHBC, saying this ingress damaged furniture and fittings inside the homes, as well as impacting their ability to efficiently heat the homes.
- NHBC considered the claim and declined it. It said the water ingress was caused by the frames of the respective window and doors – and this isn’t covered by the policy.
- C disagreed and complained. C said they had spent around £10,000 on works upon NHBC’s advice which hadn’t resolved the problem, and they had instructed a surveyor to investigate at their own cost. C also complained about the handling of the claim. NHBC didn’t change its position but agreed its level of communication fell short of expectation and apologised.
- Our investigator said the policy covered “defects” and defined these within an exhaustive list. As window and door frames weren’t listed, the claim wasn’t covered. While he agreed NHBC’s communication could’ve been better, he didn’t think this impacted the claim. So, he didn’t uphold the complaint.
- C disagreed, saying that the damage in question hadn’t been limited to the windows and doors (and included a lack of weather detail to weatherboarding and framing, a lack of damp-proof courses amongst other issues) and highlighted the relevant building regulations to support this. C also said it was irrelevant whether the windows and doors were classed as a particular type of wall as NHBC standards required the design to comply with building regulations – which in this case it didn’t.
- NHBC didn’t dispute defects present that had caused the water ingress, but said the defect in question wasn’t included within the exhaustive list of cover. NHBC said its claims investigator had given their opinion on cause of damage which the surveyor had agreed with. And it questioned what evidence there was to show weather proof detailing may contribute towards water ingress. Following some back and forth, NHBC reiterated the water ingress had been caused by poor maintenance of the woodwork to the windows and doors with evidence of rot. It also said any consideration to weathering fell outside of the scope of this service.
- Having reviewed the relevant reports again the investigator was persuaded, on balance, that the water ingress was caused by the window and door frames. And he said he’d considered whether the windows and doors formed an “integral part of the

external load-bearing wall” as this may be covered. But having done so, he didn’t believe they were as these could be removed from the property without compromising the structural integrity of the building structure.

- C disagreed, saying it didn’t agree the water ingress was only occurring via windows and doors, saying there was water leaking through a second-floor flat ceiling so the windows and doors could not be the cause. It agreed the windows and doors in question did not form part of a load bearing wall. C said a non-load bearing façade or “curtain wall” *must* be covered under the warranty. And C said the joints between the elements of the curtain wall may be where the leaks have occurred - between window sills and spandrel panels (which it says are not windows). C also listed a number of reasons it thinks the build did not meet the correct building standards. C also suggested NHBC may have selectively tested and defined building elements to avoid paying a valid claim.
- C provided further commentary in January 2021. Within this it made various points, concluding the cause of water ingress was due to defective building elements, other than windows and doors. It said damage to other building elements was caused by the long-standing, continued water ingress. And NHBC had failed in its duty of care to ensure that their warranted building complies with their own standards.
- So, the complaint has been passed to me for an ombudsman’s final decision.

What I’ve decided – and why

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

Having done so, I’m not upholding this complaint. I’ll explain why.

C has made a claim under Section 3 of the NHBC Buildmark policy. 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”*

The policy defines the words damage and defect.

Damage

*Physical damage to the **Home** caused by a **Defect**.*

Defect

*A breach of any mandatory **NHBC Requirement** by the **Builder** or anyone employed by him or acting for him. Failure to follow the guidance supporting the **NHBC Requirements** does not in itself amount to a **Defect**, as there may be other ways that the required performance can be achieved.*

This means, the policy will only cover physical damage resulting from a defect (as defined) within a part of the house that is included within the exhaustive list above.

Given the nature of this case and NHBC's objections, I've started by looking at whether any of the damage in question is caused by a defect within any of the listed parts of the property. And if it doesn't, then the claim will not succeed whether or not there's a "defect".

C has agreed that the problems that have occurred with the window and door frames do not fall within the scope of a load-bearing wall or retaining wall necessary for the structural stability of the property. I also agree with this, so I see no reason to go over this topic again.

But C has said that the external walls of the property should be considered a "curtain wall". And in turn these should be considered as non load-bearing partition walls for the purposes of the policy. C has said to not do so would mean the external façade of their building (and many others) would be without cover under this Buildmark warranty.

So, I've asked myself whether the external façade of this property should be considered a non load-bearing partition wall. And having done so, I'm not persuaded it should be. While it's clear it isn't load-bearing, I don't agree it's reasonable to consider it as a "partition". I say this as it is an external wall that separates the property and the outside. Partition isn't defined within the policy, and I'm not persuaded an everyday use of the word would extend to meaning an external wall.

For these reasons, I'm satisfied any damage that is caused by the window and door frames is not covered under this policy. In terms of any wider issues C has about the Buildmark policy's scope, this is simply not within the scope of this service to determine what it should cover.

While I understand C has raised a number of concerns about the curtain walling and panels between them – I can't see any of these points fall under any of the listed items covered by the policy. So, it doesn't change anything, even if I were to agree the building standards weren't met.

C has also said that leaks may have occurred the joints between the elements of the "curtain wall" and has specified this is between the window sill and spandrel panels. Again, even if it was proved the damage originated from the spandrel panels alone, I don't see this falls within any area mentioned in the exhaustive list above. Nor have I been given enough to persuade me that any of the reported ceiling damage was caused by a defect in any of the areas within the same list.

C has also said NHBC has failed in its duty of care to ensure that their warranted building complies with their own standards. But these considerations are all outside of the scope of the claim I'm considering. And so, any complaint about NHBC's alleged negligence in inspecting the design and build of their property would not fall within the scope of this decision or this service. So, these points don't change my mind.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 9 August 2021.

Jack Baldry
Ombudsman