

## **The complaint**

Mr and Mrs I have complained about their building warranty provider National House-Building Council (NHBC) because it has declined their claim made when they found water droplets in their loft.

## **What happened**

Mr and Mrs I found water droplets in their loft and were worried there was a leak. As their property was covered by a warranty they contacted NHBC. It sent a surveyor out to assess the problem. The surveyor found the droplets were caused by condensation. The surveyor was satisfied the roof had been built in-line with NHBC standards.

Subsequently Mr and Mrs I obtained a report from a surveyor. Their surveyor said the roof had been built without counter battens. He said this was not in-line with the relevant British Standards. He said the roof should be stripped and reinstated.

NHBC considered both surveyors' reports. It declined the claim – noting that cover in years three to ten of the warranty requires there to be physical damage caused by a defect. It said that here there was no damage. Further that the lack of cross battening, in any event, had not caused the condensation in question here, and nor had cross battening been required at the time the property was built. NHBC noted that Mr and Mrs I had also complained about it releasing their home for sale when there was a defect in the build – it clarified that it checks properties prior to completing to ensure its own risks in respect of the warranty are satisfied.

Mr and Mrs I remained unhappy, they complained to the Financial Ombudsman Service. Our Investigator felt NHBC had acted fairly and reasonably. So she didn't uphold the complaint. At Mr and Mrs I's request, the complaint was referred for an Ombudsman's 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.

NHBC isn't an insurer in the conventional sense. And not everything it does falls under our remit for consideration. For example, we can't usually get involved with what NHBC does during the build process when considering whether or not to implement the warranty. And, as NHBC has explained, the fact of the warranty doesn't mean the house is being held out as 'defect free'. Rather the warranty offers certain cover where certain things are found to be defective or go wrong in the first ten-years after completion.

Mr and Mrs I's claim arose about seven years after their property was built. In years three to ten of the warranty there is cover for physical damage caused by defects. Rather than there being cover for a defect itself. But the cover is limited. So it isn't the case that any damage which is caused by a defect in years three to ten will be covered. Only if damage is caused by defects in certain parts of the home, as defined by and listed in the warranty, will the cover apply. The first issue to consider then is if there is physical damage.

Condensation is not, in itself, physical damage. Although its effects may cause physical damage. Mr and Mrs I's surveyor notes that, in the long term, rot will occur. But there isn't any sign of rot currently. NHBC's surveyor noted signs of moisture droplets having fallen on to the boarding. But that doesn't seem to have damaged the boarding. Rather that it should dry naturally, with the condensation itself evaporating at different times of the year.

Even if it was accepted that there was physical damage currently occurring in the loft, for the effects of condensation to be covered, they would have to be being caused by a defect in one of the listed areas of the property.

The defect Mr and Mrs I, and their surveyor, has said is present, and which NHBC has considered a complaint about, is with the roof covering. In essence the way roof tiles and felt have been laid with the omission of counter battening. One of the listed parts is "roof coverings". So, if there is a defect in the way the tiles and felt were laid, without counter battens, which is causing physical damage, then the warranty would offer cover.

There has been much debate about what amounts to a defect. With Mr and Mrs I, and their surveyor, seeking to rely on British Standards and manufacturer installation details to show counter battening should have been installed. Whilst NHBC says the property has to be built in-line with its requirements – and those applicable when this house was built did not include installation of counter battening.

Having reviewed everything I'm satisfied that NHBC has set out a reasonable position in this respect. NHBC is not in overall control of how this house was built, or to what standard. Its interest was in respect of the warranty. And the warranty gives a specific meaning to the term "defect" – that is where its build requirements are breached. Whatever other standards may have existed or exist now, NHBC's requirements when Mr and Mrs I's house was built did not say counter battening had to be installed. So the omission of counter battens in the roof of Mr and Mrs I's home is not a defect as defined by the policy.

The presence of a defect (as defined by the policy) is at the heart of the cover available in years three to ten of the warranty. If there is no defect, a defect can't reasonably be said to be causing physical damage. Having considered everything, I'm satisfied that NHBC's decline of the claim was fair and reasonable.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I and Mr I to accept or reject my decision before 14 May 2024.

Fiona Robinson  
**Ombudsman**