

ARHM GOOD PRACTICE NOTE

DEFECTS IN BUILDINGS

All newly constructed properties benefit from a National House Building Council (NHBC) or alternative warranty provided by an insurer.

The warranty ensures qualifying defects will be rectified during the period of warranty.

ARHM Code of Practice

The code states that Managers should ensure their staff are aware of the terms of the defects and structural warranty offered to leaseholders in respect of new dwellings.

Whilst the warranty on a new dwelling is a contractual matter between the leaseholder purchasing the property and the developer, managers should be prepared to offer advice to leaseholders on the terms of that warranty, and the steps they should pursue if they wish to make a claim, and also to initiate claims under any common parts warranty.

Managers should use best endeavours to have defects to common parts of new schemes covered by warranty carried out by the developer or through the warranty scheme.

Except in exceptional circumstances and by agreement with leaseholders, managers should not use scheme funds to rectify defects that are covered by warranty or other insurances.

Care should also be taken not to invalidate any warranty or insurance.

Managers should be aware that the Sale of Goods Act 1979 may apply in relation to defects of items of equipment.

Arranging Cover

The developer will, for a fee per property, obtain an agreement for cover from the NHBC or another Insurer.

Once properties are complete the warranty period will commence.

This period will be the same for all dwellings in a complex, but commencement date may differ depending on the date of completion of the individual properties

Inspections by the Provider

Any warranty does not indicate that the property is free from defects and does not take the place of a survey by a prospective purchaser.

Supervision of the building by the warranty provider is minimal, as defects will normally be rectified by and at the expense of the developer.

NHBC Cover

Cover is issued separately to each individual property and to the communal areas on completion of the building works.

The period covered commences from the issue of the Warranty.

The developer is responsible for repairing qualifying defects during an initial two year period.

The NHBC or other provider will only become involved if the developer fails to repair those defects.

NHBC Structural Warranty Period

Claims against major damage caused by structural defects can be made in years three to ten.

Claims are made directly to the NHBC.

For refurbished property the periods the initial period is for 12 months, with claims for structural defects made in years two to six only.

Unoccupied Property

Under NHBC cover, should the property remain unoccupied for over 12 months from the date of issue of cover the first purchaser has benefit of the initial warranty period for 12 months from completion of purchase (this can be run over the structural period).

Scope of NHBC Cover

All details are found on the NHBC handbook given to all residents but as a guide;

- The initial period covers the individual property / communal area for any defects resulting from a breach of NHBC requirements. It does not include household appliances or lifts or some minor finishing defects.
- The structural period is limited to major damage caused by a defect in the structure. The element of the warranty is very restricted within the terms of "major damage" and "structure"
- Any items covered by the buildings insurance policy cannot be claimed although reimbursement of any excess will be considered for a valid claim.

Issue of documents

Residents should obtain a copy of the warranty document via their Solicitor on purchase. The registration number is vital if making a claim to the NHBC.

Residents should also receive a copy of the communal parts certificate if applicable.

Arbitration

In the case of a dispute between any party and the NHBC an independent arbitration service is available through the Centre for Effective Dispute Resolution

East West Insurance Company, formerly Zurich Municipal Insurance

Zurich Municipal operated a similar warranty to the NHBC which has since been transferred to East West Insurance Company Limited

Initial and structural periods are the same as the NHBC, and the "major structural" damage section for new build properties can be extended to 15 years on payment of an additional fee.

Latent Defects

These are defects that may not become apparent in the NHBC warranty period.

They are faults present when the property was constructed or refurbished but were hidden or not apparent at that time.

There is a period of legal liability for latent defects for all construction work for a minimum of 6 years and maybe longer dependent on the form of contract used for the construction.

If the initial or structural guarantee periods cannot be used it is possible that the developer may be liable under this section.

The developer's attitude to a claim may determine the requirement for legal action may be confirm the liability.

Claims – NHBC process

Managers should ensure site staff and other members of staff are aware of the NHBC or other warranties available to each scheme.

The manager should hold a copy of any communal parts warranty.

- For an initial defect within an individual property, the resident should report the problem in writing to the developer, keeping a copy for reference.
- If repairs are not undertaken a further notice should be sent to the developer giving a deadline for rectification of the defect.
- If the defect remains and has not been repaired to the residents' satisfaction, the resident should then submit a claim to NHBC.
- Managers should be able to provide the contact details for a claim under the warranty.

- In the case of an urgent defect which must be rectified without delay, the resident may choose to repair the item and settle any account with their own contractor, making all efforts to advise the developer of actions taken verbally and in writing. However, these works are not guaranteed to be reimbursed under the warranty.
- The action for a communal area defect is exactly the same as above, and the manager must write to the developer.
- In the case of an urgent communal defect the developer should be contacted verbally if possible but managers may decide if this is not practical to undertake the repair and recharge the cost accordingly. Such a repair would be a risk to the scheme funds and should only take place in an emergency.
- Where possible residents should be informed of any repairs taking place which may result in any expense to the scheme if it cannot be reclaimed from the developer.
- Managers are advised to agree a course of action with the developer in the case of an emergency.
- Under the terms of the building warranty, the developer must be given the opportunity to carry out repairs at their own expense. Any possible qualifying defects to the property should not be repaired until the developer has had an opportunity to rectify or inspect and agree to any work.

Further Details

Details and terms of warranties are available from:

National House Building Council www.nhbc.co.uk

Claims department 0800 035 6422

E Mail claims@nhbc.co.uk.

You can also submit a new claim with their dedicated webform on their website.

Registered Office Address

NHBC House, Davy Avenue, Milton Keynes,

Bucks, MK5 8FP

East West Insurance Company Limited

Any matters relating to the UK Building Guarantee portfolio (including but not limited to new or existing claims) should be directed to Armour Risk Management Limited using the following contact details:

Customer Support Team [03334 000 393](tel:03334000393)

Claims Team [03334 000 393](tel:03334000393)

Email buildingguarantee@armourrisk.com

Postal address

UK Building Guarantee Team
Armour Risk Management Ltd
20 Old Broad Street
London
EC2N 1DP

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