

NHBC versus collateral warranties/third party rights



To the uninitiated, there seems to be a lot of confusion in the marketplace as to whether or not an employer should be procuring NHBC cover or collateral warranties on a development that includes residential buildings (this may well come from whether or not the employer is talking to an insurer or a lawyer on this point). This blog attempts to unlock this confusion by providing a 'compare and contrast' of the two.

Firstly, we need to distinguish between the two types of protection. They are different and they do different things and are there for different reasons. The NHBC warranty is an insurance backed structural warranty. According to its website, the NHBC provides warranty schemes covering around 80% of new homes. The NHBC refers to its warranty as a 'comprehensive risk management package' (and whether or not this is the case will be looked at in due course). It provides certain levels of cover for 10 years (although you can pay extra for an additional 2 years protection if you wish). Often the 12 years protection is insisted upon by funders but whether it is in fact worth it is debatable.

The purpose behind NHBC warranties and collateral warranties/third party rights:

NHBC cover is for homeowners. The aim was to raise standards of housebuilding in the industry. NHBC (or equivalent) protection is almost always a necessity now for mortgage providers to consent to lending.

Collateral warranties and third party rights exist in order to provide protection to any other interested third party (that isn't a mortgagee). Provided the documents are 'properly' drafted and the underlying appointments/building contract is robust, the level of protection afforded via collateral warranties and third party rights is much more comprehensive than the NHBC.



What does a NHBC warranty do?

The NHBC sets minimum standards for builders. In order for a house to be registered with NHBC, the builder needs to be registered and needs to pay a membership fee (in fact, NHBC membership has been the subject of controversy and has led to an investigation as to whether the Monopolies and Mergers Commission considered there to be a monopoly situation). The NHBC provides tiered warranty protection: for the first 2 years of completion of the premises, the builder is responsible for coming on site to remedy defects (the 'builder warranty period'). Years 3-10 of the warranty protection provides more limited cover and this protection is provided by NHBC directly (the 'NHBC warranty period').

What does a collateral warranty/third party rights notice do:

A collateral warranty is a contract that is 'collateral' to the underlying building contract/appointment (the primary contract) which has been entered into. It confirms that the services/works referred to in the primary contract have been carried in accordance with the requirements of that contract. This means that the beneficiary of the collateral warranty can also make a claim (subject to drafting in the warranty) for any breach of the primary contract.

Third party rights offer the same level of protection as collateral warranties but the benefit is usually conferred by way of a notice from the employer, rather than a separately negotiated collateral warranty (thus saving on lawyers' fees in dealing with the administration of getting these documents agreed and signed!).

It also means that provided you have a well drafted primary contract, warranty and/or third party rights schedule, the protection offered under a warranty/third party rights notice is generally more extensive than a NHBC warranty.

Spoiler alert: in order to maximise your construction protection on your developments, you should not be using one or other forms of protection. The NHBC warranty has its considerable uses and so do collateral warranties/third party rights.

How we can help

From developers, investors and contractors to high net worth individuals, our construction lawyers provide a wealth of expertise and ensure construction contracts are well drafted and watertight. We can also assist with construction disputes. To find out more, please contact our [construction team](#).