

The homeowner, builder and insurer – were remedial works guaranteed?

James contracted a builder to build his new house. Toward the end of the construction, James raised several defects with the builder. The remediation work James felt was required was either not completed or not to his satisfaction. James lodged a claim against the builder with an insurer that had guaranteed the builder's work.

The insurance company, who was the FDRS scheme member, declined the claim on an exclusion clause in the contract, that said that disputes between the builder and the owner were excluded from cover. James then brought his complaint against the insurance company to FDRS. After attempting mediation, the complaint went to one of FDRS's specialist adjudicators.

The adjudicator considered whether the exclusion clause in the contract had been correctly applied. Notably, the clause would not apply if the issue in dispute fell within circumstances "specifically covered" under the guarantee. The adjudicator interpreted "specifically covered" circumstances to be those which fall within the 'coverage' section of the guarantee. Finding that the defects fell within the coverage of the guarantee, the adjudicator determined that the insurance company had incorrectly applied the exclusion clause in the contract.

The adjudicator determined that the insurer had misinterpreted the circumstances in which a claim could be considered within the guarantee. It was difficult to contemplate circumstances in which any claim could be made to the scheme member by a customer which would not be a contractual dispute, which made the exclusion largely ineffectual. The adjudicator found that James's claim was not excluded from consideration, and directed the insurer to investigate.