

Complaint

Miss O and Mr S are unhappy with the standard of repairs authorised by National House-Building Council (NHBC) following a claim made on a building warranty.

Miss O and Mr S are represented by the management company of the property, who I'll refer to as H.

Background

H manages a property which was completed in 2011. The property consists of nine flats and is covered by a ten-year warranty provided by NHBC.

In 2016, one of the residents, Miss R, made a claim to NHBC under section 3 of the building warranty. The area of concern relates to four external rendered pillars, which were capped by coping stones. Miss R said it appeared the render had been coming away from below the coping stones. There were also concerns about mould and damp in one of the flats.

NHBC sent a surveyor to the property to assess the claim. Following an initial inspection the surveyor recommended the claim be rejected, as he said the cost of the repairs didn't meet the Minimum Claim Value (MCV) of the policy.

H appointed its own surveyor who visited the property and refuted some of the findings made by NHBC's surveyor. Amongst other things, he said the first report didn't mention that the coping stones had been fitted without an overhang. He said this meant that water was tracking behind the render due to the deficient coping stones. He also had concerns about the effectiveness of the render applied.

NHBC sent a second surveyor to assess the property, and in September 2017 it said it would accept the claim. It proposed a schedule of works which included in summary:

- Removing the render on all four bays down to the top of the first set of balcony doors
- Preparing the brickwork to receive new render
- Rerender the areas
- Remove the coping stones and fit correctly, replacing with new stones if it is not possible to fit correctly using the existing ones
- Repairs and decoration to the affected flat

NHBC asked the developer to carry out the repairs. There were some delays in applying the new render due to the cold weather and repairs were completed around April 2018.

H asked its surveyor to review the repairs. The surveyor said the coping stones had not been properly fitted. He also said the render had been patch applied, but there was still

some defective render remaining, and the render colour was inconsistent with the rest of the building.

NHBC sent another surveyor to inspect the repairs who agreed with H's surveyor. NHBC then contacted the developer to query why the repairs hadn't been done in line with what had been agreed. It asked whether the developer would undertake the remaining works to leave a satisfactory finish to the render and replace the coping stones. The developer replied to say that the new position of the coping stones was performing, so it strongly believed no further staining would occur. NHBC presented this position to H and said no further work would be undertaken to replace the coping stones.

H disagreed with the developers' comments. It said the repairs didn't meet NHBC's standards. It felt the repairs were done in a way that cut costs. And it had concerns about the repainting which it said would leave a mismatch with the side bay reliefs to the pillars. H referred the complaint to our service.

Our investigator looked at everything and recommended the complaint be upheld. He found that the repairs carried out by the developer didn't meet NHBC's own requirements. He said that the overhangs ranged from 25mm to 33mm instead of the 40mm stated in the requirements. And he said that not enough time had passed to make a safe conclusion that the coping stones were now performing. He said the onus was on NHBC to implement a long-lasting and effective repair of the coping stones.

Our investigator didn't think the render paintwork had been done properly either. He found there was a colour mismatch and recommended NHBC paint the colour uniformly. In addition he said NHBC needed to repaint the side bays to match the render on the pillars. And he said NHBC needed to address the issue of water damage in one of the flats which was caused by the defective coping stones allowing water to leak through the roof.

NHBC accepted part of our investigator's findings. It agreed to refund reasonable costs incurred by H in progressing the claim, subject to H providing evidence of these costs. And it agreed to carry out the remedial works on the flat affected by the water damage.

But NHBC didn't accept our investigators recommendation to replace the coping stones or in regard to the render being painted in a matching colour consistently. It said the requirements for the overhang to be 40 mm were not in place at the time of construction so it couldn't enforce the request to replace the coping stones. It also said the repair was guaranteed for six years, so if the coping stones failed during this time the liability would fall on the developer to put things right.

NHBC felt the colour matching on the render was acceptable under the terms of the policy. And it didn't think the repainting of the side bays fell under this claim as they were a natural break in the property.

The complaint has now been passed to me to decide the outstanding issues.

My findings

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'll be upholding this complaint and for broadly the same reasons as our investigator. I'll explain why.

As NHBC has accepted our investigators recommendation in regard to reimbursing the reasonable costs incurred by H, and the remedial works for the affected flat, I won't be

commenting on them further in my decision. NHBC and H have also agreed that the repainting of the side bays falls outside of the scope of this particular claim.

What's left for me to determine is whether it was fair for NHBC to decline further repairs to the coping stones in line with the terms and conditions of the warranty. I'll also be considering whether it needs to do anything further in regard to the painting of the render for a consistent match.

Miss O and Mr S claimed under a policy provided by NHBC. The policy covers problems with a newly constructed home that can be linked to a breach by the builder of one or more of NHBC's technical requirements (published in NHBC's Standards). And the value of this claim needs to exceed the MCV of the policy. NHBC's own technical requirements are not the same as the building regulations, so it will be the technical requirements on which I base my decision. In this case, I've referred to NHBC's standards for 2011 – the year the property was completed.

I've considered the policy document that relates to Miss O and Mr S's policy. The policy terms in Section 3, (which covers years 3 to 10 after the property is completed) state what NHBC will pay for:

“the full cost, if it is more than £1000 indexed, of putting right any Damage in any of the following parts of the house...” And it defines *Damage* as *“Physical damage to a home caused by a defect”*.

The policy goes on to define a *defect* as *“The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder.”* It also states, *“Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means.”*

NHBC has said there was no requirement for the coping stones to overhang by a specified distance in its building standards. It says the standards relating to the 40mm overhang of the coping stones relate to frost damage only. But I don't agree. I've read the standards and they state *“...copings and the like should be weathered and throated unless adequate alternative provision is made to protect the brickwork from saturation, frost damage, and staining”*. In the next section it states, *“Good brickwork detailing can limit persistent wetting of brickwork and reduce the risk of frost attack. For example: ...Copings should have a generous overhang, throatings of at least 40mm clear of the wall...”* So I think the standards are clear in this instance that coping stones need to be throated – meaning they have a continuous groove or drip to prevent water running back towards the wall – and are at least 40mm clear of the wall to limit persistent wetting of the brickwork and the damage this could cause.

I've next thought about whether the repairs done by the developer were such that it could reasonably claim to have achieved performance by other means to meet these requirements.

I've considered the photographs and reports provided from after the developers repairs. These show that grooves have now been cut into the underside of the coping stones in order to create an overhang. The developers view is that this would not allow rain water to track into the join between the coping stones and the render. Therefore it says the performance required by the NHBC requirement has been achieved.

NHBC's own surveyor said the developer's repairs were inadequate and not in line with what was agreed. And H's surveyor said the same thing. They say the coping stones haven't been suitably throated and the overhang is irregular across the four pillars. Based on what I can see from the photographs I agree the overhang is irregular across the four pillars and

doesn't meet the 40mm throating requirements. There are also patches of render which aren't uniform and differ in colour.

When asked about this, NHBC hasn't been able to demonstrate that suitable throating has been done. I also haven't seen enough evidence from the developer to safely conclude the repairs are performing. I agree with our investigators comments that not enough time has passed to demonstrate the repair as effective and long-lasting. So I don't think the repairs have been carried out in line with the original scope of works.

Having carefully considered both parties comments, I am not persuaded by NHBC's change in position at this late stage of the claim. It saw two expert reports, which both agreed the coping stones needed to be replaced. But it seems to have been influenced by the developer's comments which suggest the required performance has been achieved by other means. I'm not persuaded that it has. So I'm going to require it to put things right by following the recommendations of the surveyors and replacing the coping stones with larger ones to create a sufficient overhang and throating.

It follows that replacing the coping stones will lead to some re-rendering of the property too. And I think it would be fair and reasonable for NHBC to ensure the finished paintwork on all the render matches in line with the original scope of works proposed in September 2017.

My final decision

My final decision is that I uphold this complaint.

I require National House-Building Council to:

- Replace the coping stones with larger coping stones with the sufficient overhang and throating, in line with the 2011 requirements;
- Arrange for the render to be painted in one uniform colour with the view to match this consistently

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O and Mr S to accept or reject my decision before 3 January 2020.

Dan Prevett
Ombudsman