

The complaint

Mr and Mrs M complain about National House-Building Council's re-consideration of a claim made under their buildings warranty policy.

What happened

Mr and Mrs M have a National House-Building Council (NHBC) buildings warranty which covers a flat they own and rent out.

In 2017, they discovered an ingress of water via the balcony in their flat, which had caused damage to the room below. They made a claim to NHBC.

NHBC carried out an assessment and scoped work to repair the waterproof membrane in the balcony. However, the cost of the work they scoped out came to less than the minimum claim value (MCV) set out in the policy. This was £1,000 at the start of the policy – indexed from then on – and amounted to just over £1,500 at the time of the claim.

Mr M and Mrs M got a quote for the repairs from a local company, which came to more than £3,000. So, they questioned NHBC's costings.

There were some discussions at that point, but Mr and Mrs M effectively withdrew the claim after making alternative arrangements to carry out repairs – albeit not the repairs NHBC had considered necessary when they assessed the damage.

In 2019, Mr and Mrs M discovered a further ingress of water via the balcony and asked NHBC to re-consider their position on the earlier claim.

NHBC looked again at the claim, but maintained they'd made the right decision at the time. Mr and Mrs M weren't happy with this outcome and made a complaint to NHBC.

In response NHBC again maintained their position on the claim, so Mr and Mrs M brought their complaint to us. Our investigator looked into it and didn't think NHBC had done anything wrong.

Mr and Mrs M disagreed and asked for a final decision from an ombudsman.

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.

In essence, the issues in this case are quite simple. There's no dispute that the policy terms say NHBC will repair damage to the property caused by a defect in the building work only if the repairs cost more than the MCV.

The MCV is indexed – and again, there's no dispute that it stood at just over £1500 at the time of the claim.

Although Mr M has argued that the policy isn't clear that the cost of the repairs is the cost *to NHBC* of carrying out the repairs, I can't agree with him on this point. I think it's absolutely clear in the policy that NHBC will calculate the cost based on what it will cost them to have the repairs carried out, rather than the cost (or potential cost) to the customer if they commissioned the work themselves.

NHBC say their assessment showed what work was necessary - and they scoped this out correctly and costed it according to widely accepted trade guides on the cost of work.

There was some discussion about whether scaffolding might be required. It seems Mr and Mrs M had initially agreed to store materials inside the flat – which would have made a scaffold unnecessary – but later withdrew this offer.

Nonetheless, when NHBC added in the cost of scaffolding, their estimate for the cost *to them* of getting the repairs carried out was just under £1,400 – still below the MCV of over £1,500.

Mr and Mrs M thought this was unrealistic given the quote they obtained in 2017 – at over £3,000. They believe NHBC have missed some necessary work from their proposed scope. And they think the true cost – to NHBC – would and should be more than the MCV at the time.

Mr and Mrs M have obtained two further quotes for the repairs more recently (in 2019). These came to more than £3,500 and almost £5,000 respectively. Mr and Mrs M believe this shows that the original NHBC costings were considerably underestimated.

Mr M has suggested that some elements of the work set out in the estimates provided to him – for example, removal and reinstatement of the wood cladding to the balcony to enable the balcony pavers to be lifted, and re-fixing of the flashings – were not included in NHBC's scope. He believes these elements are necessary and would push the cost of the claim beyond the MCV.

I've looked carefully at the quotes provided by the three contractors engaged by Mr and Mrs M and at NHBC's original scope of works.

They go into varying degrees of detail about the work to be carried out – and I can see that some of the detail provided by the contractors to Mr and Mrs M was only set out after further enquiries were made as to exactly what work was intended.

So, I don't think NHBC leaving out the intimate detail in their scope of works necessarily invalidates it – or their costings. I can see that NHBC's scope includes 'reinstatement' of the balcony pavers. And I'm satisfied this would include any necessary work to put the balcony – including flashings, fittings etc. – back in the state it was in before works commenced.

It's important to say that insurers can often get work carried out at less cost than a private individual. They have a degree of purchasing power given the possibility of repeat work for the contractor, so that's not surprising. And it's not unusual that a policy will specify that costs will be calculated according to what the insurer would have to pay to get work carried out.

I think that accounts for some of the discrepancy between NHBC's costings and the quotes obtained by Mr and Mrs M.

Possibly more significantly though, I can see that the method of “repair” being suggested by the three contractors is different to that proposed by NHBC. This may also explain the fairly large differences between the three contractors’ quotes for the work.

I’ll explain what I mean in more detail.

NHBC clearly envisage lifting the balcony pavers and repairing the existing membrane, followed by reinstatement. They say all of this is to be done in accordance with the manufacturer’s recommendations.

The quote obtained by Mr and Mrs M in 2017 envisages – amongst other things - laying “a new *EDPM rubber bond system*”. So, a completely new waterproof layer, possibly of a different type to that already in place.

There are two quotes obtained by Mr and Mrs M in 2019. One suggests supplying and fixing a “*fleece liquid waterproofing*” (of a particular brand). This is a different system to the one previously in place.

The other estimate suggests cutting the existing pavers down and installing “50 mm cable stores to allow for drainage”. Again, the system proposed is very different to the one previously in place – and the scope includes cutting the existing pavers down. It’s unsurprising this would cost more than the straightforward repair costed by NHBC.

I think Mr and Mrs M would have a case if it were clear that the NHBC scope proposed works that weren’t adequate or sufficient to deal with the water ingress problem. But I don’t think there’s any suggestion of that. I’m satisfied that it’s more likely the various contractors are proposing works which amount to ‘upgrading’ of the waterproofing.

This of course isn’t a bad thing in itself - and Mr and Mrs M may choose to go for a top of the range system of waterproofing. But it’s important to remember that NHBC are offering an insurance policy which indemnifies the customer against any loss or damage. In other words, it offers to repair or replace what the customer already had – not to provide better or higher quality replacement or repair.

To varying degrees – and the variance explains the large differences between the contractors’ quotes themselves – I believe all three quotes obtained by Mr and Mrs M are for work which exceeds that which is necessary to reinstate the previously existing method of waterproofing. And I’m satisfied this explains much of the difference between the estimates provided and the cost calculated by NHBC.

So, I don’t think NHBC have acted unfairly or unreasonably in their re-assessment of Mr and Mrs M’s 2017 claim – and/or in their decision not to accept the claim now.

I should also point out – for the sake of completeness – that when Mr and Mrs M withdrew their claim in 2017, they carried out repairs that they considered effective to prevent further water ingress and which seem to have in fact been effective for around two years.

Given that the repairs carried out were not the repairs NHBC was suggesting were necessary to address the issue (as set out in NHBC’s cope of works), I’m satisfied that any subsequent damage to Mr and Mrs M’s property isn’t NHBC’s responsibility and isn’t covered under the policy – which requires policyholders to take any reasonable steps to prevent or mitigate damage to their property.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 July 2020.

Neil Marshall
Ombudsman