

## **The complaint**

Mr E and Mrs R complain that National House Building Council (NHBC) have unfairly refused to cover staining to the front bay window area of their property under a Buildmark policy. They've also said NHBC's attempts to repair a previous defect were poor and unsuccessful, causing further staining to the same area.

As Mr E has led this complaint with our service, I'll refer to him throughout. All references to NHBC include its representatives on the claim.

## **What happened**

As the history of this complaint spans several years and is known by both parties, I've only provided a brief summary of what's happened below. In September 2017 NHBC accepted a claim for water ingress. A schedule was drawn which included repairs to a cavity tray, roof canopy up-stand and drainage outlet, all completed in 2017. NHBC included the cleaning of external staining to the front bay window area (stone mullions) within the schedule, and this took place in August 2018.

Mr E said the staining worsened so he complained to NHBC. He said the previous cleaning hadn't worked and its defective repair led to further and new staining. Mr E also said NHBC was obligated to ensure the staining issue was resolved entirely due to the guarantee it had provided in December 2017 following its repair works.

Our investigator didn't uphold this complaint. The policy terms excluded cover for the staining to an external finish, and he agreed NHBC had fairly applied this exclusion in the circumstances. He also said there was insufficient evidence to show the staining was caused by the original defect or subsequent repair – and as NHBC had said, it was instead more likely caused as a result of weathering over time.

The investigator also said NHBC hadn't needed to carry out cleaning works under the policy at all, but it still had done so. Mr E didn't agree with our investigator, saying the discolouration was caused by the lack of a cavity tray above the window in question not having been installed when the property was built. He also said other window lintels and stone mullions on the property do not show similar staining – and reiterated that NHBC had provided a guarantee.

Our investigator replied, saying the guarantee applied to the repair of the insured defect, and not the areas of staining. And he said he was persuaded the staining fell under the exclusion of the policy. Mr E said he felt there was a fundamental issue with the repair and that NHBC had dismissed his concern without a physical assessment or inspection. As parties disagreed, this case has been passed to me for a final decision.

## **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.

Having done so, I've reached the same conclusions on this complaint as our investigator. The claim accepted in September 2017 was for damage by way of water ingress due to a defect, namely a failed cavity tray, and missing sealant to the roof canopy up-stand and at the drainage outlet. Mr E has pointed to the location of the staining and suggested the defect with the cavity tray fault was the cause.

The claim in 2017 was accepted under section 3 of the policy. This provides cover for damage caused by a defect to certain parts of the home. Importantly, the following are specifically excluded:

- *“Cosmetic damage, such as minor cracking, spalling or mortar erosion to brickwork which does not impair the structural stability or weather tightness of the home or which only affects decorations*
- *Any change in the colour or texture of, or any staining to, any external finish”*

I agree with our investigator's conclusion that the stone work around the window, particularly any staining to its surface, could be reasonably be described as an external finish. So I think NHBC acted fairly in saying the staining to the stone mullions was excluded.

Furthermore, I think the staining can also fairly be described as cosmetic damage that does not impair the structural stability or weather tightness of the home, so I think cover can also fairly be excluded for this reason. This is supported by the opinions given by NHBC, and Mr E hasn't provided any expert evidence to show otherwise.

Mr E insists that NHBC said all necessary works would be completed in a manner that returned the bay window to its original cosmetic state. I've not seen any evidence to show NHBC expressly promised to do this, and in fact, this runs contrary to the terms of the policy that say cosmetic damage isn't covered. So even if I was persuaded NHBC had promised this – which I'm not – I wouldn't expect NHBC to be going above and beyond its terms.

Mr E claims NHBC's repair was substandard. NHBC carried out tests following the repairs to the defects and maintains that this repair was completed properly, particularly seeing as there is no evidence of further water ingress. Mr E hasn't provided any expert evidence to support what he's said, so I'm not persuaded there's sufficient evidence to fairly say NHBC's repair was substandard.

I say this as I've carefully reviewed the reports provided and seen nothing to suggest a link between the staining and the defect described above. It follows I find NHBC's comments more persuasive, and I'm satisfied it's more likely the staining isn't linked to the defect NHBC agreed to repair in 2017 or its subsequent repairs.

Mr E has asked why NHBC agreed to carry out the cleaning if it wasn't covered under the policy, and why it asked him to wait to see if the staining cleared up. He insists that he could have contacted a local builder to complete the work earlier, for less cost. But I've been given no opinions or quotes to support this, so it doesn't change my mind.

Mr E says NHBC is obliged to address the staining because of the certificate of guarantee it provided in December 2017. What I am able to consider within this case is limited to NHBC's actions as the insurer under the Buildmark policy. Because I don't consider the staining to be covered under the policy, this isn't something I can consider further.

Overall, based on everything I've seen on this complaint, I think NHBC has acted fairly when declining to cover the staining in line with the policy terms. For this reason, if Mr E feels

further expert investigation or opinion is necessary, I'd expect him to arrange this himself for NHBC's review.

**My final decision**

For the reasons detailed above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs R to accept or reject my decision before 8 December 2020.

Jack Baldry  
**Ombudsman**