

## The complaint

Mr and Mrs C complain about National House-Building Council's proposals to rectify damage to their home under their Buildmark policy.

## What happened

Mr and Mrs C made a claim under their Buildmark policy in June 2018, due to external and internal cracks, and issues with the doors and windows of their home.

A site inspection was arranged for September 2018 and NHBC produced an investigation report dated December 2018 which explained why it wasn't accepting the claim. It said *"shrinkage or movement between different types of materials is not covered by the policy"* and that although there was evidence of external cracks, there was *"no evidence that the structural integrity of the walls have been compromised"*. NHBC concluded that the cracks were cosmetic only and not indicative of a defect.

Mr and Mrs C were unhappy with this and challenged NHBC's decision. NHBC agreed to take another look and accepted the claim based on the findings of its further investigation report dated March 2019. This said there was a lack of movement joints, which had contributed to the full height crack to the rendered end wall of the property and other smaller cracks elsewhere. So it agreed to settle the claim by paying Mr and Mrs C £13,348.03 based on the Schedule of Works the claims investigator had put together.

Mr and Mrs C weren't happy with this offer as the remedial works only comprised cutting back the render, repairing the cracks, re-rendering the affected areas and masking any colour difference between the old and new render. They said this didn't include the installation of movement joints which had been identified as the defect in the construction of the property. Mr and Mrs C referred their complaint to this service.

Our investigator considered all the evidence and thought NHBC's proposal was fair, so didn't recommend that the complaint should be upheld. As Mr and Mrs C disagreed with our investigator's opinion, the complaint has now come to me to decide.

## 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 decided not to uphold this complaint. I know Mr and Mrs C will be disappointed as this wasn't the answer they were hoping for, but I'll explain why I've made this decision.

Mr and Mrs C made their claim under Section 3 of their Buildmark policy, which covers years 3-10 following completion of a newly-built structure. The policy says NHBC will pay for *"the full cost of putting right any actual physical Damage caused by a Defect in any of the following parts of the house"*.

*“Damage”* is defined in the policy as *“Physical damage to the Home caused by a Defect”* and *“Defect”* is defined as *“A breach of any mandatory NHBC Requirement by the Builder”*.

I’m satisfied from the Investigation Report dated March 2019, which supersedes the report dated December 2018, that a defect as defined in the policy was identified. This is because NHBC accepts in the latter report that *“the cracking to the background blockwork itself is due to a lack of movement joint”* which is in breach of NHBC’s Performance Standard Chapter 6.1; D3. This says external cavity and solid walls must be designed to support and transfer loads to foundations safely and without undue movement, taking into account movement joints. It further states that *“Vertical movement joints should be provided at 6m spacing for concrete blockwork”* and in this case the gable wall was 9m long without any movement joints. So while the parties ultimately agree that there is a defect and the claim is valid under the policy, it’s the remedial action necessary to put right the defect that’s in dispute here.

Mr and Mrs C had lived at the property since 2008, so made the claim towards the end of the tenth year after construction. This is relevant because NHBC’s initial Engineering Claim Report refers to the homeowner being aware of the crack on the gable wall at the time of moving in, but says *“it’s more prominent now”* and that the homeowner *“wanted to check it out before the warranty expired”*.

I think the timing of the claim is important here. NHBC says the remedial action it’s recommended, of cutting back the render and repairing the cracks in the blockwork before re-rendering, would be adequate because, given the age of the property, further shrinkage cracking was unlikely to occur. I think NHBC’s offer would’ve been different had Mr and Mrs C complained about the large external crack in the render earlier. And I think that offer would likely have involved addressing the lack of movement joints because this may then have prevented further movement.

However, the addition of movement joints isn’t something NHBC has offered here, and it’s explained why. NHBC said its claims team had also offered Mr and Mrs C a Certificate of Repair for any completed works, which would cover them for six years from the date of completion of the remedial work.

I’ve thought carefully about NHBC’s proposals and I’ve also considered carefully everything Mr and Mrs C have said about why they think movement joints should now be installed. The main factor I need to determine here is whether NHBC’s proposal would result in an effective and lasting repair. And from the evidence I’ve seen, I think it will.

The Consultant’s Report dated May 2019 which Mr and Mrs C have provided only shows what we already know, that there’s an insured defect which needs to be put right. But the policy doesn’t say the defect itself needs to be remedied – it says the damage caused by the defect will be rectified. And although the report says *“further deterioration will occur if these cracks were left in their current state”* I’m not persuaded that this means movement joints need to be installed, because NHBC’s offer of remedial work wouldn’t result in the cracks being left in their current state – but rather being repaired at blockwork level.

Mr and Mrs C have also provided a Render Specialist’s Report dated March 2020, but while the report comments on the defect – the lack of movement joints – it doesn’t say that the installation of movement joints is the only way forward. It suggests stitching of the main crack with helical steel bars, which is similar to the proposal put forward by NHBC (masonry reinforcement crack stitch repairs in the blockwork). I’m satisfied from looking at all the relevant evidence that this course of action would strengthen and repair the structural issues with the property.

I'm also persuaded by NHBC's comments in respect of the reports provided by Mr and Mrs C. These include assurances that as long as good quality repairs are carried out (including masonry reinforcement) the wall should be able to accommodate any thermal movements without the need for a movement joint. And NHBC has confirmed that its advice would've been different at construction stage because, due to the passage of time, the majority of the movement has now taken place and it's unlikely that further movement would occur following good quality repairs.

I've found NHBC's comments compelling because they're more detailed and comprehensive than the reports provided by Mr and Mrs C, which don't confirm the need for a movement joint at this stage. The repairs haven't yet taken place, so NHBC's offer of a six-year guarantee in relation to the remedial work should offer Mr and Mrs C some reassurance that the repairs will be effective. If they aren't, Mr and Mrs C will be able to raise this with NHBC at a later stage and NHBC will have to put things right.

I'm also satisfied NHBC plans to address any colour difference in the render, as it's agreed to use a type of paint that will mask any differences in colour. I want to reassure Mr and Mrs C that I've read all their submissions and considered them in detail, but in light of my decision, I'm afraid I also won't be requiring NHBC to pay for Mr and Mrs C's consultation costs for the same reasons our investigator has highlighted – as the policy doesn't cover these unless reasonably incurred and with NHBC's prior consent.

I'm sorry to disappoint Mr and Mrs C, but I'm satisfied NHBC's proposal is fair and reasonable in the circumstances of this case and so I won't be requiring it to change its current offer.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 18 April 2021.

Ifrah Malik  
**Ombudsman**