

The complaint

Mr and Mrs D complain that National House-Building Council ('NHBC') turned down a claim made under their building warranty.

What happened

In February 2020, Mr and Mrs D went to their holiday home. They saw a small watermark above the fireplace in the living room, and decided to monitor it. However, because of travel restrictions imposed as a result of Covid-19 from March 2020, they couldn't travel back to their property until July 2020. By that time, the water mark had increased. Mr and Mrs D made a claim to NHBC.

NHBC said the warranty had expired on 29 June 2020, and so Mr and Mrs D were too late to make a claim. Unhappy with this, Mr and Mrs D brought a complaint to this service and arranged for their own contractor to carry out the repairs.

Our investigator recommended the complaint be upheld. He thought it had been unfair for NHBC to refuse to deal with the claim, given that Mr and Mrs D had been prevented from visiting their property and therefore making a claim when the damage got worse. As Mr and Mrs D had paid for the repairs, he recommended NHBC reimburse them the £4,980 they'd paid.

NHBC didn't agree with our investigator's recommendations, and so the matter has been passed to me for a 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.

The policy says:

"If you notice any matter that you think may require attention, you must do the following:

- 1) Contact NHBC...and notify us as soon as possible within the relevant notification period of the matter concerned."*

The notification period started on 30 June 2012 and ended on 29 June 2020. Though it's not in dispute that Mr and Mrs D notified NHBC of their claim in the month after the notification period had ended.

Mr and Mrs D explain that, whilst they'd noticed the water stain in February 2020, it was only around 5cm in diameter at the time. They put this down to a misplaced roof tile. Given that they intended to return to the property a few weeks later, they decided to monitor it because if it were a minor problem, they'd put it right themselves.

However, Mr and Mrs D couldn't return to the property as planned, because of travel restrictions imposed by the government. Those restrictions were only lifted on 10 July 2020.

Mr and Mrs D returned to the property soon after and noticed the stain had increased to around 20cm in diameter. It was at this point that they notified NHBC and made a claim.

I find Mr and Mrs D's explanation to be plausible. They were regular visitors to the property, and weren't alarmed by such a small water stain when they noticed it in February 2020. Given that there wasn't an obvious sign of water ingress that would cause more damage in their absence, it doesn't seem unreasonable for them to have decided to monitor the situation on their planned return a few weeks later. Mr and Mrs D couldn't have foreseen that travel restrictions would be put in place by the government, which would prevent them from returning to the property for five months.

I recognise this is a balanced case, because Mr and Mrs D could have told NHBC before the warranty expired that they'd noticed some water ingress and were prevented from returning to the property to check on the damage. However, I accept their explanation that they thought it was only a minor issue at the time and had no reason to think they'd need to make a claim.

Given the increase in size to the watermark between February and July 2020, I think it's more likely than not, that if Mr and Mrs D had been able to visit their property in this time, they would have made a claim under their warranty before it expired on 29 June 2020.

Taking into consideration the unusual circumstances, I agree with our investigator that it was unfair for NHBC to refuse to deal with the claim because of the late notification.

Turning now to whether the claim itself is valid. The policy says that NHBC will pay the cost of putting right physical damage caused by a defect.

Mr and Mrs D's contractor has already carried out the repairs. The contractor has explained that two defective chimneys needed to be replaced because they were constructed from shuttering plywood, and the plywood was completely rotten so that only lathe and render was holding up the chimneys. He also said there was no lead detail to stop the ingress of water from the top. And that the flaunching of the chimneys was cracked allowing water ingress.

We provided this evidence to NHBC and it hasn't argued that the description given by the contractor was not a defect. So, I think it's reasonable to accept that there was a defect, and therefore Mr and Mrs D have a valid claim.

I understand some other nearby properties (presumably built by the same developer) had the same problem with the chimneys, and that NHBC settled some of those claims. NHBC says it cash settled those claims and the cost was lower than the amount Mr and Mrs D paid to their contractor.

If NHBC hadn't refused to consider Mr and Mrs D's claim due to the late notification, then it could have inspected the damage itself and chosen how to settle the claim. However, as Mr and Mrs D were left with no option other than to arrange the repairs themselves, I think NHBC should reimburse them for the full cost of this.

My final decision

My final decision is that I uphold this complaint. I require National House-Building Council to pay Mr and Mrs D £4,980. It should also add interest at the rate of 8% simple per annum from the date they paid the invoice/s to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to

accept or reject my decision before 28 May 2021.

Chantelle Hurn-Ryan
Ombudsman