

## The complaint

Mrs M complains about the decision by National House-Building Council (NHBC) to turn down her building warranty claim.

## What happened

Mrs M owns a rental property. In March 2020, the flat roof of that property started leaking. Mrs M contacted NHBC in April 2020 to make a claim, but was told it couldn't look at the damage due to Covid-19 lockdown restrictions, and so the matter would need to be placed on hold.

Mrs M and her husband arranged for their own contractor to carry out repairs. This cost around £15,000. Mrs M wanted NHBC to reimburse her for this.

NHBC considered the claim under section three of the policy. However, it turned it down as it didn't think Mrs M had shown that she had a valid claim. Mrs M didn't agree, and so she brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought the available evidence wasn't enough to support that the claim was payable.

I issued a provisional decision on 19 March 2021. Here's what I said:

*"Under section three of the warranty, it explains that NHBC will cover the full cost of putting right any physical damage caused by a defect in certain parts of the property (which includes roof coverings).*

*Mrs M told NHBC that there was water ingress from the flat roof. She had arranged for a contractor to attend, but the work hadn't yet started. NHBC advised Mrs M that it wanted to investigate first. As Mrs M had a quote and some photos, it was agreed that she would send these to NHBC. The contractor would also email details of the issue.*

*The following day, NHBC advised Mrs M that it had looked at the photos and videos provided, but wanted to investigate further to assess the damage and possible causes. However, due to Covid-19 lockdown restrictions, this would need to be placed on hold until it was safe for the visit to go ahead. NHBC also said that if it found the claim to be valid, it would need to see if the roof was covered by a manufacturer's guarantee. It said that Mrs M may wish to speak to the developer about this directly.*

*Mrs M's husband responded to NHBC. He said the contractor had put together his team for the job, to start work the following Monday. And Mr M had decided to instruct the contractor to go ahead. He said he was concerned about the delay (with NHBC's investigation) and wanted to avoid further water damage to the property.*

*I think Mrs M was in a difficult position here. She did notify NHBC of the problem, as she was required to do under the policy. It wasn't NHBC's fault that it couldn't arrange an immediate inspection. However, Mrs M had a responsibility to her tenant to keep the*

property in good order. And she understandably wanted to prevent further damage/leaks from happening.

*I've looked at the available evidence, and it's apparent the roof was holding water. The contractor explained that under the surface of the roof, there were pockets in which water travelled. He said that 20% of the roof was covered with water because the outlet to the gutters was 20mm above the roof's surface, and that this could indicate a collapse of the subsurface which meant the fibreglass layer needed to be replaced and the damaged subsurface replaced. He also said the edges of the roof surfaces and walls were finished with tar which stuck out from the wall, thereby creating gaps for water.*

*Based on the contractor's description, it does seem as though the roof wasn't constructed/installed as it ought to have been, and therefore it's likely there was a defect with the roof covering. Although NHBC says the issue may have been caused by wear and tear, that seems unlikely given the property was only built around eight years earlier. My understanding is that modern flat roofs ought to last around 20 years.*

*Though I don't think the available evidence is enough to support that there was physical damage to the roof itself. Whilst the contractor thought there may be a collapse of the subsurface, we don't know for certain that this was the case.*

*However, there was some internal damage as a result of the water leaking through the roof. The contractor said that one ceiling was affected, and I've seen a photo of some water staining to that ceiling. So there was some physical damage caused by the defect with the roof. Whilst NHBC is only required to put right the physical damage under the warranty, the roof would have still needed to be repaired in order to stop the water leaks and provide a lasting repair.*

*NHBC questions why a localised repair wasn't done, but I think the contractor has provided sufficient explanation as to why this couldn't be done.*

*Taking all of this into account, I think there's enough evidence available to conclude that the issue is covered by the warranty.*

*However, NHBC has pointed out that the roof may have been covered by a manufacturer or installer's guarantee.*

*I think Mrs M ought to have contacted the developer to find out if an installation guarantee had been provided, in order to mitigate her losses. I don't think a manufacturer's guarantee would be relevant here. I say that because, based on Mrs M's contractor's evidence, it appears the problem arose with the way the roof was installed rather than manufactured.*

*Consequently, I think it would be appropriate in the first instance for Mrs M to contact the developer and establish if an installation guarantee was provided. If so, she should find out whether she can now make a claim under the guarantee, even though repairs have been completed. If she can still make a claim, then the cost of the repairs should be covered under the guarantee.*

*If an installation guarantee does exist but won't respond because repairs have taken place, then I don't intend to require NHBC to pay the claim (given that Mrs M's decision to go ahead with the repairs will have prevented a possible claim being made under the guarantee).*

*However, if no installation guarantee exists, then I intend to require NHBC to reimburse Mrs M for the repairs, as I'm satisfied the available evidence supports that there was likely a defect which was causing damage, and the cost of putting that right was more than the minimum claims value.*

*Mrs M should therefore contact the developer, and then provide the relevant information about any installation guarantee as set out above in response to this provisional decision."*

I invited both parties to provide any further comments/evidence before I reached a final decision.

NHBC responded and made the following points:

- There was no evidence of water leaking into the property, and the subsequent photos show a faint stain to the ceiling. It thinks this level of damage didn't support that an immediate repair was needed.
- The repairs being carried out has prejudiced its ability to provide a full assessment of the matter.
- It still thinks a localised repair could have been done.
- If I remain of the opinion the costs should be covered, then this should be the amount NHBC would have had to pay, had it undertaken the work itself.

Mrs M responded and provided an email from a landlord which says they don't know who completed the works to the roof of the property.

### **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.

Mrs M's tenants reported water entering the property when it rained, which is how Mrs M found out about the problems with the roof. Her contractor has provided a photo of water staining to the ceiling, so I'm satisfied this shows there was water damage to the property.

I appreciate NHBC's point that there wasn't a significant level of damage to the property itself at that point. However, there were significant problems found with the roof by Mrs M's contractor. So I can understand why she didn't want to delay having the repairs done, so that further water didn't enter the property and cause more damage.

I don't agree with NHBC that the repairs being carried out has prejudiced it. I'm satisfied the contractor who carried out the repairs has provided a detailed explanation about the problems with the roof.

NHBC still thinks a localised repair could have been done. It noted the contractor said that he couldn't patch the roof and his reasons for that, but it thinks all the problems he identified with the roof weren't necessarily causing the water ingress to the property.

I've looked again at what the contractor said. He listed a number of problems with the roof to explain why it was in a bad condition. I accept that some issues with the roof weren't contributing to the water ingress (such as the traces of impressed bucket, and the crushed surface), but I don't think those issues prevented him from carrying out a localised repair. The contractor explained that any work done to the roof should guarantee water tightness, and then set out why that wouldn't be the case with a patch repair. I think it was for those

reasons that a localised repair couldn't be done. If a localised repair couldn't ensure water-tightness, I don't think it could be said to be effective and long-lasting.

NHBC says that because Mrs M went ahead with the repairs, it was denied the opportunity to arrange this itself. It thinks any amount payable should be the amount NHBC would have had to pay, had it undertaken the work itself.

The policy says:

*"We will either pay for the items...or, at our option, arrange for the necessary work to be carried out at our expense."*

NHBC was given the opportunity to assess the damage and therefore arrange for the repairs itself. It wasn't able to do so, which I appreciate was through no fault of its own. However, I've already explained why I think it was reasonable for Mrs M to go ahead with the repairs herself, rather than wait for NHBC. If those circumstances (beyond both NHBC and Mrs M's control) hadn't existed, I think Mrs M would have been happy for NHBC to arrange the repairs and wouldn't have insisted on a cash settlement.

So in these particular circumstances, I think it would be appropriate for NHBC to reimburse Mrs M the amount she paid, rather than the amount NHBC would have paid (which we don't know would have been less) had it arranged the repairs itself.

In my provisional decision, I asked Mrs M to contact the developer and establish if an installation guarantee was provided for the roof. I said I would only require NHBC to pay the claim if Mrs M could show that no installation guarantee existed that she could have claimed under.

Mrs M has provided an email from a company which says it doesn't know who completed the works to the roof. She hasn't explained who that company is, other than to say they're a landlord - though it's apparent it wasn't the developer who built the property.

We therefore gave NHBC the opportunity to contact the developer instead. It did so, and the developer responded to say there was no warranty on the roof. Though it said that if there had been, it thought Mrs M would have invalidated it by arranging the repairs.

As I said in my provisional decision, if there had been an installation warranty on the roof and Mrs M had invalidated it by arranging the repairs herself, I wouldn't have required NHBC to pay the claim. But there is no installation warranty. I therefore remain of the opinion that it would be appropriate, in the particular (and unusual) circumstances of this case for NHBC to reimburse Mrs M for the repairs.

### **My final decision**

My final decision is that I uphold this complaint. I require National House-Building Council to reimburse Mrs M for the repairs, in line with the remaining policy terms. Interest should be added at the rate of 8% simple per annum from the date the invoice was paid to the date of settlement\*.

\* If NHBC considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 June 2021.

Chantelle Hurn-Ryan  
**Ombudsman**