

The complaint

Mr H's complaint is about National House-Building Council (NHBC)'s decision to turn down a claim made under his building warranty.

All references to NHBC include its appointed agents.

What happened

Mr H lives in a property covered by a ten-year Buildmark policy provided by NHBC. The start and end dates of the policy fall between 2015 and 2025.

In January 2020, Mr H notified NHBC of an issue with water ingress from a bay window. NHBC investigated the issue and concluded the damage was consistent with the failure of the cavity tray to perform above the bay window. NHBC concluded the cost of the repairs wouldn't exceed the Minimum Claim Value (MCV) of £1650 set out in the policy terms, so in February 2020 it turned down the claim.

In January 2021 Mr H contacted NHBC and said his contractor was of the opinion the issue concerned the bay window roof and not the cavity trays. NHBC reviewed the claim and updated the schedule of works to include repairs to the bay window roof structure. But it concluded that the cost of repairs still fell below the MCV of the policy. So it maintained its position to turn down the claim.

Mr H complained to NHBC about its decision to turn down the claim. He was unhappy it hadn't sent anyone out a second time to reinspect the issue.

In February 2021 NHBC provided its final response. It didn't dispute that physical damage had occurred due to the ingress of water. NHBC explained that it had calculated the cost of repairs using an industry standard guide (including VAT). NHBC confirmed that as the repair costs still didn't meet the MCV, it was unable to offer further assistance with the claim. It suggested Mr H should therefore look to mitigate further damage as it wouldn't be responsible for it.

Mr H didn't agree and referred the complaint to our service. In summary he said:

- He was concerned the problem had been misdiagnosed as several contractors thought the problem was most likely with the actual roof of the bay window.
- He was unhappy with the proposed scope of works as he says the repairs would only be a temporary fix. And he says that a permanent fix such as replacing the bay window shell would exceed the MCV of the policy.
- He was concerned that the bay window leaking is part of a larger issue around water ingress in the cavity of the wall. He thinks NHBC needs to do more to investigate this.

Our investigator looked at everything and recommended the complaint shouldn't be upheld. They concluded that NHBC had turned down the claim fairly and that the circumstances meant that it didn't satisfy the criteria for claiming under the policy.

Mr H doesn't agree. In addition to the points previously raised he added:

- Water is now getting into his house in multiple places, but only the bay window has been considered by NHBC.
- The outside brickwork is saturated which in turn means the mortar is starting to crumble.
- The cavity tray may need fixing, but this is only part of a bigger problem. He said that during a storm over the last year he had a significant amount of water come in through the ceiling of the bay window.
- He was unhappy with the time it took NHBC to respond to the claim and that it continued to use an old email address after he'd updated it.
- There are further issues with the property which have led to damp problems and the flooring has required a further screed as a result.

The complaint has now been passed 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.

I do appreciate this must be a frustrating time for Mr H. The evidence I've seen indicates there are potentially further issues with water ingress which require investigation. So I understand why he is keen to get the matter resolved. It may help to explain what aspects of Mr H's complaint I am able to consider here.

Mr H has said the property has further issues along the wall which are contributing to the water ingress and which NHBC haven't costed for. I've not been provided with any evidence or reports to decide if these issues are valid claims under the policy, or if they breach NHBC's technical requirements. NHBC has confirmed a subsequent claim has been set up concerning 'wet brickwork'. So any issues Mr H has concerning that claim would need to be considered as a separate matter to my decision.

What I will determine is whether NHBC has acted fairly or not in declining the claim for water ingress from the bay window under its policy terms and with the evidence available. I'll consider the evidence provided by both parties about the condition of the bay window and against the terms and conditions of the policy. And I'll see if NHBC has assessed the claim fairly, whilst treating Mr H fairly and reasonably too.

Mr H claimed under a building warranties policy provided by NHBC. The policy covers problems with a newly constructed home that can be linked to a breach by the builder of one or more of NHBC's technical requirements. And the value of this claim needs to exceed the MCV of the policy.

I've considered the policy document that relates to Mr H's property. The policy terms in Section 3, (which covers years 3 to 10 after the property is completed and in which this claim falls) state what NHBC will pay for:

"This section applies if there is physical damage to **your home** because the **builder** failed to **build** the following parts of **your home** to comply with the **NHBC requirements**:"

The term goes on to list examples such as "*foundations, walls...external render...roofs*".

“We will take responsibility for having the work done to put right the physical damage to **your home**, if the cost to **us** is above the **minimum claim value**.”

The policy goes on to define the “minimum claim value” as “...£1,500 from 1st April 2016 and is increased by £50 on 1st April each subsequent year.”. This mean the minimum claim value applicable to Mr H’s claim was £1,650.

I’ve next considered the evidence provided by Mr H and NHBC to see if the above criteria have been satisfied. And in order to uphold this complaint, I need to be satisfied that a) the defects identified have caused physical damage to the property and b) that the cost of the repairs to NHBC exceeded the MCV of the policy.

The first part of this test isn’t in dispute – as both parties agree that the identified defect has caused physical damage. NHBC’s investigator reached this conclusion and said that to repair the damage the cavity tray should be repaired to the external wall to prevent further water ingress. They added that internally the bay ceiling should be stain blocked and redecorated. And upon review of the claim the investigator added what they deemed to be suitable repairs to the bay window roof.

Whilst Mr H has disputed the scope of repairs required he hasn’t provided an alternative contractor opinion or report, or anything that would lead me to believe that the investigators conclusions are unreasonable, or that the repairs proposed would fail to provide an effective and lasting repair.

Having reviewed the scope of repairs, I am satisfied that NHBC has demonstrated that a localised repair to the bay window (including extending the repairs to the bay window roof) comes to £1075.12, compared to the £1,650 MCV. So, the repairs don’t meet the requirement for the claim to succeed.

I’ve considered the overall timeline of this claim and the difficulties Mr H says he’s had in dealing with NHBC. I can see that the claim was turned down around a month after Mr H raised the issue, so he was aware of NHBC’s position at an early stage. From the correspondence I’ve seen, it appears the issue surrounding Mr H’s email address has now been fixed. So whilst I acknowledge this would have been an inconvenience, I don’t find it has directly impacted on the outcome of the claim or the time taken to investigate it.

I’m sorry to disappoint Mr H, but for the reasons above, I don’t uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint about National House-Building Council.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 13 October 2021.

Dan Prevett
Ombudsman