

The complaint

Mr P complains as a resident and on behalf of P, a residential management company together with Mr F, Mr L, Ms L and Mr M, other residents of a block of apartments, that National House-Building Council (NHBC) won't pay a claim under its building warranty for a defective roof to the block. When I refer to "P" I mean P and all the residents of the block.

What happened

The roof in question is a flat roof that covers the whole block. It consists of two parts, the main roof and five sections of roof, raised above the rest of the roof variously referred to as podium roofs or tower roofs. The roof was the subject of a claim first made in May 2017. This was under section 3 of the warranty (years 3-10). The roof was leaking and it was identified in expert reports that the insulation and ventilation were faulty, causing condensation to develop on the underside of the roof. This in turn caused delamination of the plywood decking to the roof. NHBC accepted the claim. It was agreed that it would pay a cash settlement to P so that it could use its own contractors. To calculate the sum due, NHBC put the work out to tender and as result made a cash settlement offer which reflected the lowest tender. P and the residents all accepted the offer and went ahead and instructed its own contractors to carry out the work.

In November 2019 P's expert (Mr K) carried out a survey of just the tower roofs and said that the same problems were occurring on those. He had carried out a similar survey in February 2017 in respect of the original claim. P made another claim to NHBC. This time it turned it down. It said that the ventilation and insulation and the plywood decking did not come under the parts of the property covered under section three of the warranty. Specifically it said that it was not part of the load bearing parts of the roof nor part of the roof coverings. This was despite it having previously accepted a claim in respect of an identical defect. So that the work could be continuous P instructed the contractors to carry out the necessary work to the five tower roofs.

On referral to this service after some correspondence with NHBC, our investigator accepted that the ventilation and insulation were not covered, but said that the plywood roof decking was covered as part of the roof coverings. She put this to P and it was agreed that the cost of the ventilation and insulation would be removed from the settlement figure. As a result P said the settlement that should be paid is £54,547.50, plus the cost of Mr K's report.

NHBC then advised that in the previous claim, the scope of works which accompanied the tender documents referred to "*4 raised sections of flat roof*". It said that it had paid for those sections to be repaired as part of the previous cash settlement which had been accepted in full by the residents. It noted that there were in fact five such sections and NHBC put forward an offer to cash settle the fifth section of £5,000, since it said Mr K had estimated that to be the cost. In fact Mr K later confirmed that the cost per podium roof was £12,700 plus VAT (presumably before the cost of ventilation and insulation was removed).

This new evidence was put to P. Mr P explained that though the scope of work included "raised sections" of roof he didn't believe that this meant the tower roofs which are completely different roofs which stand 2m higher than the level of the main roof. He said that when the offer was made it didn't mention the tower roofs but simply referred to the "*removal*

of all roof coverings and all plywood deck". They wanted the full proposed payment made. On review by our investigator, she wasn't persuaded that the tower roofs were intended to be included in the previous settlement. She remained of the view that NHBC should pay the settlement she had previously proposed.

I issued a provisional decision. In It I said that although I thought the tower roofs were covered under the warranty, NHBC had paid a settlement to include those roofs as part of the first claim. It had though only paid in respect of four roofs, so it should pay the cost to P of the fifth such roof.

All parties accepted my provisional findings.

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 following were my provisional findings:

"the claim

NHBC has rejected the claim, even though it previously accepted and paid out for an identical claim concerning the main roof. P has made a claim under section 3 of the warranty, the relevant part of which says:

"We will pay you the full Cost, if it is more than £1,200 Indexed, of putting right any physical damage to your Home which is caused by a Defect in respect of any of the following parts of your house, bungalow, maisonette or flat...

f) load-bearing parts of the roof;

g) roof coverings; ..."

NHBC says that neither the ventilation, insulation nor the plywood decking are part of the above two elements of the roof. I'm inclined to agree that ventilation and insulation are not part of the load bearing parts nor are they part of the roof coverings. But I do think that plywood decking is part of the roof coverings. NHBC previously had no trouble agreeing this and it appears odd to me that it would pay out a substantial cash settlement if this were not the case. At the very least this is a matter of opinion and my view, in line with NHBC's original investigators is that the plywood decking formed part of the roof coverings.

There still has to be damage caused by a defect in respect of the roof coverings. NHBC has argued that the defect was in the ventilation/insulation and this caused the plywood to delaminate. So unless the plywood was defective in itself then the damage would still not be covered. For reasons I shall explain below, I shall refer to Mr K's report of February 2017. In it he said:

"The roof decking was found to be 18mm plywood decking fixed to the secondary rafters."

He further said:

"The delamination of the plywood is due to the interstitial condensation but is likely to have occurred due to the wrong grade of plywood being used on the roof. Had EN 636-3 plywood been used I don't believe the plywood would have delaminated as readily.."

NHBC has suggested that it hasn't been shown what grade of plywood has been used, so it hasn't been shown that this was a breach of its technical requirements. However, taking into account its own experts previously accepting that the wrong grade of plywood was used and

Mr K's view that this was likely I think the plywood itself was defective. As Mr K said, had the right grade been used it might still have delaminated over time. Though this would not necessarily be within the ten year period of the warranty.

For those reasons I think the claim for the tower roofs is covered in the same way as the rest of the main roof.

has the claim already been settled?

NHBC has belatedly brought up the issue of whether the claim for the tower or podium roofs has already been settled. It believes it has, so that, apart from one of the tower roofs it has no further obligation to consider the claim.

P hasn't previously complained about the main settlement. Its complaint about that settlement concerned additional fees. So we haven't previously considered what it covered. For the first claim, NHBC decided that it would pay a cash settlement. This was as far as I can see for two reasons - firstly because P wanted a "warm roof" system installed rather than a "cold roof" system. I understand the latter system was in place before and NHBC said a similar system, with appropriate allowances for adequate ventilation, could be installed. The "warm roof" system, which P wanted was more costly and considered by NHBC as betterment. Secondly NHBC didn't want the ongoing responsibility of the flat roof.

The cash settlement was based on the scope of works drawn up by NHBC which in turn made reference to Mr K's original report. This scope was then used to prepare documents for sending the work out to tender. When the tenders came back, NHBC selected the lowest tender and added a 10% project management fee and £1,000 for health and safety issues, and put that to P as a cash settlement. P accepted this.

The terms of the cash settlement allowed for "removal of all roof coverings and all plywood deck..". In the tender documents, copies of which were sent to P it said:

"The works comprise of reconstruction of the flat roofs to the main building comprising of the main area of flat roof together with 4 raised sections of flat roof."

It also said:

*"This schedule is to be read in conjunction with:
Specialist report from [Mr K] 22-Feb-2017"*

Mr K's report detailed that what he called the podium roofs were suffering from the same problem as the main roof and recommended to:

"Strip existing roof coverings to podium roof and main flat roofs including membranes and plywood structural roof decking."

As the scope of works was in my view deemed to include that report, I think that the "raised sections" meant to refer to the tower roofs. The fifth tower roof was missed off, possibly because it is at a right angle to the other tower roofs.

So I do think that the cash settlement included a settlement for the tower roofs. The fact that P wasn't able to use the settlement to pay for the tower roofs to be done was likely because the contractors it selected couldn't do all the work for the settlement put forward. I've noted already that the "warm roof" system was likely to have a higher cost.

I think NHBC's liability is limited to paying for the fifth tower roof missed off the scope of works. The cost of doing this, advised by Mr K, was £12,700 plus VAT. I know this includes

the ventilation and insulation, but as that was included for the rest of the roofs in the original scope I see no reason why NHBC shouldn't pay that whole sum. However that was the amount paid by P and doesn't necessarily reflect the proportion of the original cash settlement that refers to just one tower roof. In the absence of any reasoned calculation of that I propose at present to require NHBC to pay £12,700 plus VAT. If it, or P wants to provide me with a calculation of the cost of that roof as a proportion of the settlement I will consider it in my final decision. To any payment NHBC must add 8% simple interest from the date the contractors' invoice was paid until reimbursement.

I won't award the fee paid to Mr K for his second report. It is essentially a repeat of his conclusions in his first report and I can't see that it was necessary."

As all parties have accepted my provisional findings, I shall make no further comments. Those findings are now final and form part of this final decision.

My final decision

I require NHBC to pay a cash settlement to P of £12,700 plus VAT, together with 8% simple interest* from the date the contractors' invoice was paid until reimbursement.

*National House-Building Council is required by HM Revenue and Customs to deduct tax from any interest paid. Should P and Mr F, Mr L, Ms L and Mr M request it, it should provide them with a certificate showing how much tax has been taken off so that, if appropriate, they can reclaim it.

Under the rules of the Financial Ombudsman Service, I'm required to ask P and Mr F, Mr L, Ms L and Mr M to accept or reject my decision before 20 September 2021.

Ray Lawley
Ombudsman