

## **The complaint**

Mrs S has complained about National House-Building Council's (NHBC's) decision to decline a claim she made under her NHBC Buildmark warranty.

## **What happened**

The subject of this complaint is a building comprising six separate properties. In 2016 Mrs S, and the other leaseholders, made a claim through NHBC about a defect with their zinc roof. In 2018, repairs were carried out to the roof, communal hallway and the interior of Mrs S' flat.

In February 2020 Mrs S, via her representative who is the factor for the building, reported a further ingress of water to her flat – which they believed to be the result of defects to the roof. NHBC investigated the issues and declined to cover this claim. It said the damage has not been caused by a construction related defect, or its previous repairs, but rather by a puncture to the roof at the site of previous repairs carried out by the resident's own contractor.

Mrs S and the factor dispute this. They say the only repairs carried out to the roof have been completed by the original builder or NHBC's remedial works contractors. So, they say NHBC are responsible for any damage caused by faulty or inadequate repairs. They also say NHBC ought to have replaced the roof in its entirety in 2018, rather than completing localised repairs. To resolve the complaint, they want NHBC to cover Mrs S' claim for the damage to her flat, and to repair or replace the roof.

One of our investigators considered Mrs S' complaint, but she didn't think it should be upheld. She explained that the investigations completed by NHBC had shown this instance of water ingress was being caused by a nail which had punctured the roof – in an area which NHBC had not previously repaired. She said this meant there was no valid claim under Mrs S' Buildmark warranty and no poor workmanship had been demonstrated as a result of the previous repairs by NHBC.

Mrs S didn't accept our investigator's opinion. So, because no agreement has been reached, the complaint has 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.

Having done so, I've decided not to uphold it. I'll explain why.

### *What the policy covers*

NHBC's Buildmark policy provides cover for major problems with newly built or converted properties where there has been a breach of its technical requirements. The policy is bought by the builder and passed on to the consumer when they purchase the property. The cover provided by the policy is split into five sections.

Section 3 of the policy is the relevant section in this complaint. This section states that NHBC will pay for:

*“The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuilding, or its Common Parts:”*

It then goes on to list the various specified parts which are covered, one of which is roof coverings.

Within the policy booklet there is also specific emphasis on the words “Damage” and “Defect” and individual definitions for each:

*“Damage*

*Physical damage to the Home caused by a Defect*

*Defect*

*A breach of any mandatory NHBC Requirement by the Builder or anyone employed by him or acting for the Builder. Failure to follow the guidance supporting the NHBC Requirements does not in itself amount to a Defect, as there may be other ways that the required performance can be achieved.”*

So, the warranty doesn't guarantee a property will be free from defects. Rather, it covers repairing any damage which has been caused by a defect (as defined) to one, or more, of the specified parts of the home or common parts. And it's also worth noting that while not specifically stated in the terms of the warranty, our service would expect any repairs carried out by NHBC to be lasting and effective.

In this case, there is damage in the form of water ingress to Mrs S' home. This damage is due to an issue with the roof covering, which is a specified part of the home or common parts covered under section 3. So, under the terms of the policy, this claim would be covered if it could be established that the damage was as a result of a defect (as defined). Or, alternatively, NHBC could reasonably be held responsible for the damage if it could be shown to be as a result of poor or failed repairs which the builder, NHBC, or its agents carried out.

#### *The previous claim*

Mrs S thinks the whole roof should've been replaced during the repairs carried out in 2018. But, as explained, the policy only covers damage caused by a defect. A defect on its own isn't sufficient under Section 3 for a valid claim. So, a roof replacement would not be covered unless it was necessary to deliver a lasting and effective repair to the damage.

I've seen comments, from the previous factor, suggesting that NHBC previously repaired the wrong portion of the roof, and that this instance of water ingress is linked to the same defect from 2016. However, from the other available evidence, I can see that the damage caused to the building in 2016 was in the communal hallway, along with the bathroom, hallway and bedroom of Mrs S' flat. In 2018, NHBC carried out a repair to the portion of the roof which was causing this damage, by replacing some of the zinc sheeting in that specific area. It also opened up and resealed the raised rolled joints across the roof. The damage reported in this claim, several years after NHBC's repairs were completed, is to a separate area of Mrs S' flat – the lounge – and has been shown not be due to water entering through the joints. So, the repairs completed by NHBC in 2018 appear to have been lasting and effective given no further instances of water ingress have occurred in the areas it repaired.

### This claim

NHBC's position is that the damage in this claim has not been caused by a defect, or as a result of previous repairs it was involved in. This is based on water testing and a thermographic survey it conducted, which concluded that the damage to Mrs S' flat was being caused by a nail which had punctured the roof and been repaired using gaffer tape.

NHBC has provided comments from the original builder taken during the previous claim. These state that the builder inspected the roof and noted several patch repairs which he says weren't completed by his firm. He stated that he, or his firm, hadn't carried out any repairs or alterations to the roof. NHBC has also provided photos of the repair works its remedial works contractor carried out to resolve the claim in 2018. These show that the area of roof which was replaced is separate to where the nail and patch repair are.

Mrs S, via the current factor, has stated that no repairs have been carried out to the roof, except by NHBC or its agents. But I've seen emails from 2017, from the previous factor, confirming that he instructed repairs to the roof on multiple occasions prior to NHBC's initial claims investigation report. NHBC's initial site report confirms the same and shows that one of the previous repairs, completed before NHBC accessed the roof, appears to have included the use of tape covered by sealant – which is consistent with the repair technique used over the nail.

In cases like this, where the evidence is incomplete or contradictory, I'll reach a finding on the balance of probabilities. That is, what do I consider to be more likely, based on the evidence available.

Based on the evidence provided, I'm satisfied, on balance, that the cause of this instance of water ingress is the nail, rather than a breach of NHBC's technical requirements by the builder during construction. This means that there is no defect, as defined, and thus no valid claim under section 3 of the warranty.

I've also considered Mrs S', and the factor's, suggestions that the nail was part of the original construction of the roof – which they maintain was poor and defective from the outset. But given the roof was completed in 2010, and this particular instance of water ingress only materialised in early 2020, I find that unlikely. I think it's more likely that the nail was introduced later, such as during repairs which took place between 2016 and 2018.

NHBC only carried out repairs to specific sections of the roof – which are separate to where the nail is. And the resident's contractor carried out multiple separate repairs, over at least three occasions, one of which appears consistent with the technique used over the nail. So, taking all of this into account, I find it more likely than not that the damage reported in this case was caused by the resident's repairs, rather than NHBC's.

To summarise, the damage to Mrs S' flat has been caused by a nail which has pierced the roof. This means there is no cover under section 3 because the damage hasn't been caused by a defect. And based on the available evidence, on balance, I don't consider it likely that NHBC or its agents are responsible for the nail piercing the roof. So, while I appreciate my decision will come as a disappointment for Mrs S, it follows that I don't think NHBC is responsible for putting right the issues with her property.

### **My final decision**

For the reasons set out above, I've decided not to uphold Mrs S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 2 March 2022.

Adam Golding  
**Ombudsman**