

## The complaint

Mr S complains that National House-Building Council (NHBC) unfairly declined a claim he made on his building warranty policy.

## What happened

Mr S' new-build home is covered by a ten-year building warranty policy. In year three, he made a claim for roof defects. The defects were allowing birds to enter between the roof coverings and the underlay membrane.

Mr S says the defects present a water ingress issue, and he's noted there's staining on the underlay membrane from bird excrement. The bird noises are also keeping him awake at night.

Because the issue was identified during years' three to ten of the cover, sections 3 and 4 of the policy apply.

Section 3 covers physical damage if it has been caused by the builder's failure to meet the NHBC requirements when building certain parts of the home (including the roof). NHBC observed such defects with the roof coverings. However, it didn't find evidence of bird entry or water ingress in the loft space.

NHBC pointed to the following section 3 exclusion and declined the claim: "*Damage to the roof covering (including any underlays, fixings, mortar and weatherproofing details) unless the damage results in water getting into your home.*"

Section 4 provides cover if there's an immediate danger to physical health or safety because the builder failed to comply with certain building regulations. However, NHBC didn't consider a bird infestation to be an immediate danger.

One of our investigators considered Mr S' complaint, but she didn't think the claim had been unfairly declined. Mr S remained unhappy, so his 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 watched a video provided by Mr S, I can understand his upset given the noise of the birds, and his concern given the excrement staining. However, his claim is subject to the policy terms and exclusions.

Section 3 covers physical damage if it has been caused by the builder's failure to meet the NHBC requirements. However, section 3 excludes damage to roof coverings, including underlays, unless that damage results in water ingress.

Having reviewed the reports, photos and video provided, the only physical damage I've seen is the poor installation of the roof coverings, and the underlay membrane staining from bird excrement. I haven't seen any evidence of water ingress.

Mr S has provided an email from a builder which states: "*rain is penetrating in*". However, the builder's email doesn't explain how or where rainwater is entering. I accept birds have found entry points, but in my view, it doesn't necessarily follow that rainwater is able to enter at those points. I also consider it likely that, if rainwater had been entering, there would be signs of water damage after three years. Therefore, *overall*, I'm not persuaded by the builder's comments.

So, because the only physical damage I've seen is damage that isn't covered by the policy, I'm satisfied NHBC fairly declined the roof defects under section 3.

In respect of section 4, whilst I accept the birds and their excrement may present a health risk in the long-term, no evidence has been provided which shows there's an immediate danger to the health of the occupants. So, I'm not persuaded that the roof defects were unfairly declined under section 4.

### **My final decision**

I'm sorry to disappoint Mr S, but for the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 April 2022.

Vince Martin  
**Ombudsman**