

The complaint

Mr F and Ms W complain National House-Building Council (NHBC) hasn't treated them fairly after they made a claim on their building warranty policy.

What happened

Mr F and Ms W bought a new-build apartment in 2016. Their property is covered by a ten-year building warranty policy.

In January 2019, Mr F and Ms W made a claim for loose coping stones. The coping stones are a common part of the building, and there are ten apartments in the building that share responsibility for the common parts.

During the last eight years of the policy, *i.e.* years 3-10, section 3 covers physical damage if caused by the builder's failure to comply with NHBC requirements when building certain parts of the property.

NHBC accepted the issue with the coping stones was covered under section 3. However, NHBC declined the claim on the basis the minimum claim value ('MCV') hadn't been met. The policy terms explain how the MCV is calculated, and for Mr F and Ms W's claim, the MCV is £1,600.

Because the area damaged, *i.e.* the coping stones, is a common part of the building, each of the ten leaseholders have to claim for their share of the repair costs under their own building warranty policy. This means the repair costs needs to exceed the collective MCV of £16,000, *i.e.* 10 x £1,600. NHBC estimated the repair costs to be £13,217. In other words, Mr F and Ms W's claim for their share (£1,322) didn't exceed their individual £1,600 MCV.

The managing agent went on to commission its own survey. To summarise, the report noted the following:

- The coping stones are loose and pose a health and safety risk. The cement bedding and the mortar joints are heavily eroded, cracked, and damaged. Previous repairs have been undertaken using mastic sealant, which isn't suitable. All of the coping stones should be removed, cleaned, chemically refixed and repointed. A mastic sealed expansion joint also showed signs of cracking and failure.
- No drip detailing has been installed to the copings, which should be installed where appropriate.
- The lead flashing is allowing moisture to disperse under the coping stones and into the cavity, saturating the masonry.
- There are large areas of damp/saturated brickwork. Further investigation is required to determine the cause around the guttering and downpipe.

- Movement has occurred to the masonry brick banding below the coping stones, which is most apparent at chimney level and eaves level due to the aggressive stepped cracking. Previous repairs have been carried out using mastic sealant. Appropriate repairs should be undertaken to the masonry where affected.
- Both chimney stacks are showing signs of potential structural movement, with a prominent lean visible. This has caused cracking to the mortar joints below the chimney stacks. The chimney stacks need to be taken down and rebuilt.

The report also estimated the following repair costs, which didn't include professional fees or VAT:

- Welfare facilities (two weeks): £300.
- Scaffolding (two weeks): £11,300.
- Coping stones: £3,000.
- Brickwork: £1,250.
- Chimney stacks: £4,000.
- General repairs: £500.
- Total: £20,350.

In response to the report, NHBC made the following observations:

- The MCV applies to each item claimed for. NHBC's cost assessment for the loose copings to the three gables didn't meet the collective MCV. The costs included removal, re-bedding, and mechanically fixing all the copings.
- The loose corbel brickwork and the two leaning chimneys are separate issues. They would need to be assessed as two new claims with their own collective MCV of £16,000.
- Resealing of cracked expansion joint sealant wouldn't be considered 'damage', and nor would damp brickwork below the downpipe and guttering. Those issues should be dealt with as part of the maintenance repairs.
- The saturated brickwork could be related to drainage issues from the main roof into the guttering, however, damage caused by defective above ground drainage isn't covered by the policy.

Mr F and Ms W went on to make a complaint. They were unhappy with NHBC's response, so they referred their complaint to our service. I'll summarise the points they made when contacting us:

- The £16,000 MCV is too high. They have also asked NHBC where in the policy terms it's specified that each defect is a separate claim subject to its own MCV, but NHBC has failed to answer their question.
- NHBC's publicity material – which is designed to give peace of mind to buyers of new homes – makes exaggerated and overstated claims, which in some cases are false and misleading.
- Communication from NHBC has been very poor. Although Mr F and Ms W are the policyholders, NHBC would only deal with the managing agent. NHBC knew the managing agent wasn't communicating with the apartment owners in a timely manner.

- The owners of another apartment in the building have made a claim for internal water damage to their apartment, caused by defective flashing. NHBC has accepted the claim and offered a cash settlement. Mr F and Ms W say NHBC isn't offering to complete the repairs, and the cash settlement offer isn't enough for the quotes received. They say NHBC requires all ten leaseholders to accept the cash settlement, so they have a right to complain about the offer.

One of our investigators considered the complaint, but she didn't think it should be upheld. Because Mr F and Ms W disagreed, their complaint was passed to me to decide.

I issued a provisional decision, explaining I intended to uphold the complaint. In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've carefully considered Mr F and Ms W's submissions. However, it isn't my role to comment on every point raised. It's for me to determine the crux of their complaint, and to address the issues I consider relevant to its outcome. Where I've not directly commented on points, this isn't intended as a discourtesy. But rather, it's a reflection of the informal nature of our service, its remit, and my role in it.

Has NHBC applied its policy terms fairly?

Mr F and Ms W believe the collective MCV for a common parts claim is too high. However, in respect of building warranty policies, it's not unusual for each leaseholder to have their own MCV, or their own excess to pay, in relation to their common parts claim for their share of the repair costs. Importantly, I find Mr F and Ms W's policy terms to be clear in respect of each leaseholder having their own MCV for their own common parts claim.

Nonetheless, I'm not persuaded NHBC has applied the policy terms fairly by separating the damage to the common parts into separate claims. The policy covers damage. So, in my view, where there's a single type of damage, or the damage results from a single type of defect, or the damage is linked, those issues ought reasonably to be dealt with under a single claim.

Mr F and Ms W's claim was initially for loose coping stones. NHBC based its assessment on photos provided by the managing agent. The managing agent went on to provide a report which highlighted three further issues: cracked brickwork beneath the coping stones; two leaning chimney stacks; and water ingress into the cavity. I haven't seen that NHBC has commented on the water ingress into the cavity. But it concluded the brickwork and the chimney stacks would be two further claims.

I'm not persuaded NHBC has shown the coping stones, brickwork, and chimneys ought reasonably to be treated as three separate claims. NHBC hasn't shown there are three separate types of damage, or three separate causes, and notably, the coping stones, brickwork, and chimneys are all in the same area (on the gable walls) and seemingly suffering similar issues.

Mr F and Ms W recently provided an email from a contractor that highlights water damage to the timber structure due to issues with the gable wall and the coping stones. I've shared that email with NHBC, along with my observation that all the damage to the common parts appears to be related.

In response, NHBC didn't provide anything that supports the damage to the coping stones, brickwork, chimneys, and timber structure is unrelated. So, based on the information that has been presented to us, on balance, I'm persuaded it's reasonable to consider those issues to be related.

Therefore, it follows that I intend to decide NHBC should now reconsider the damage to the common parts and treat it as a single common parts claim (meaning only one collective MCV, of £16,000, would apply).

I can only make a direction in relation to Mr F and Ms W. However, it follows NHBC should move the other leaseholders' common parts claims forward on the same basis, to avoid similar complaints.

I also intend to award Mr F and Ms W £250 compensation. I've seen from their submissions that having to pursue this matter has caused a fair amount of inconvenience and upset.

Should NHBC be communicating with Mr F and Ms W directly?

Mr F and Ms W complain NHBC is only communicating with the managing agent. Whilst their claim is a common parts claim and the managing agent will need to be involved in respect of access and repairs, the managing agent isn't the policyholder. Where a policyholder has requested updates, or to be sent correspondence about their claim, NHBC ought to be accommodating the request. NHBC would need to bear this in mind going forward.

Has NHBC offered a fair settlement for the neighbour's demised claim?

With regards to NHBC's proposed settlement for the neighbour's demised claim, that's not something I can consider as part of Mr F and Ms W's complaint. I'll explain why.

Each leaseholder has their own building warranty policy. The policies cover damage, and the damage in question was limited to Mr F and Ms W's neighbour's property. So, although the defect that caused the demised damage was in a common part (i.e. the flashing), the claim was made solely under the neighbour's policy. The other leaseholders didn't need to make claims under their policies because the damaged apartment isn't their property, and unlike the common parts of the building, they have no responsibility for the damaged apartment.

Whilst the defective flashing will need to be put right to provide an effective and lasting repair to the damaged apartment, the claim remains a demised claim. This is because the damage is located in a demised property, not the common parts.

Mr F and Ms W's neighbour's demised claim is different to the scenario where there's also damage to the common parts. If there's also damage to the common parts (i.e. not just a defect), then individual claims need to be made under each leaseholder's policy for their share of the repair costs (like the claim for the coping stones, brickwork, chimneys, and water damaged structure).

Ultimately, if Mr F and Ms W's neighbours are unhappy with NHBC's proposed settlement for their demised claim, or if they are unhappy that NHBC requires the other leaseholders to accept the settlement, they need to make their own complaint about those issues."

Both parties accepted my provisional decision. However, Mr F and Ms W also noted I hadn't commented on their point about NHBC's marketing material, and they reiterated several points in relation to their neighbour's demised claim.

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.

Both parties accepted my provisional decision and no new points have been made. So, it follows that my final decision remains the same as my provisional decision, for the same reasons.

In relation to Mr F and Ms W's point about NHBC's marketing material, as I explained in my provisional decision, it isn't my role to comment on every point raised. But rather, it's for me to determine the crux of the complaint, and to address the issues I consider relevant to its outcome. Ultimately, it's not necessary for me to consider NHBC's marketing material in order to reach a fair and reasonable outcome in this case.

In relation to Mr F and Ms W's neighbour's demised claim, I can only reiterate what I said in my provisional decision. If Mr F and Ms W's neighbours are unhappy with NHBC's handling of their demised claim, they need to make their own complaint.

My final decision

For the reasons I've set out above, and in my provisional decision, I uphold this complaint. My provisional decision is National House-Building Council should:

- reconsider Mr F and Ms W's claim for their share of the repairs to the coping stones, brickwork, chimneys, and structure – treating the damage as a single common parts claim; and
- pay Mr F and Ms W £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms W to accept or reject my decision before 22 December 2022.

Vince Martin
Ombudsman