

The complaint

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

What happened

Mr H made a claim on his building warranty when he noticed rust showing through the render of his property.

NHBC declined his claim on the basis that the policy covered him for physical damage, and it didn't consider the rust to be physical damage.

Mr H then pointed out that the rust was causing the render to crack too. But NHBC maintained its decision to decline the claim. It said the cracking was a result of Mr H not maintaining the property, which the policy excluded cover for.

Unhappy, Mr H brought his complaint to us. One of our investigators didn't recommend it be upheld. They thought NHBC's decline of Mr H's claim was ultimately fair.

Mr H disagreed and asked for an ombudsman's decision.

I issued a provisional decision which said I was thinking of upholding the complaint. The reasons I gave were:

- It seems widely accept by both parties that the rusting is caused by beading used in the construction of Mr H's house. This is further supported by the relevant guidelines recommending these beads to be either stainless steel or PVC – both of which are incapable of rusting. The relevant technical requirements require rendering to be 'detailed to ensure appropriate weather tightness and durability'. And based on what I've seen, I'm not persuaded this had been achieved. Had it been, it's unlikely Mr H's render would be rusting and cracking.*
- The first dispute centres first around whether the damage is physical. And I'm persuaded it is. Mr H's policy doesn't define physical damage, and so any damage that relates to a physical part of the property could arguably be considered physical damage. I appreciate NHBC has said it considers physical damage to be 'that which is clearly visible and impairs performance as well as being more than purely cosmetic', but this isn't in Mr H's policy. And I'm satisfied the claim meets that definition regardless. Rust can be considered damaging in itself and can progress and cause further deterioration. This looks likely to be the case here following the cracking to the render, so I'm satisfied it's reasonable to consider it to be physical damage.*
- The second dispute surrounds the maintenance of the property. NHBC suggest Mr H hasn't done enough in this respect to stop the rust, and that it's progression to cause cracks in the render is a result of that lack of maintenance. It's said this because when the claim was presented, there was no mention of cracking. But I'm not persuaded this is fair. The rust should not have occurred in the first place, and as set out above I do consider the rust to be physical damage in itself. Had the rust not*

occurred, I think it's likely the cracking wouldn't have either. What's more, as the rusting is being caused by an internal bead, covered by render, it isn't clearly visible, or accessible. This issue is therefore likely to keep occurring. And even if possible, I don't find it reasonable to require Mr H to have to keep his render rust free, if the cause of the rust is due to the technical requirements not being followed in the first instance. I think this goes beyond reasonable maintenance. So, I don't find it reasonable that NHBC rely on the gradually operating clause to decline Mr H's claim.

Based on the above points, I said I was thinking of requiring NHBC to reconsider Mr H's claim in line with the remaining terms of the policy without relying on the gradual deterioration clause and on the basis that the rusting was physical damage.

Both Mr H and NHBC accepted my provisional decision.

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, as both parties agreed with my provisional decision, I see no reason to depart from its reasoning or conclusion.

My final decision

For the reasons set out above, I uphold this complaint and require National House-Building Council to:

- Reconsider Mr H's claim on the basis that the rusting is physical damage, in line with the remaining terms and conditions of the policy without relying on the gradual deterioration clause.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 September 2022.

Joe Thornley
Ombudsman