

The complaint

Mr H is unhappy a claim he tried to make under his building warranty has been declined by National House-Building Council (NHBC).

What happened

Mr H has a ten-year building warranty for his home with NHBC. In March 2021 he reported issues with his render to NHBC.

An inspection of the render was carried out by a contractor on behalf of NHBC. When NHBC were unable obtain further information from the contractor, a further inspection was carried out by an NHBC claim investigator. The claim was subsequently declined by NHBC.

NHBC said thermal shrinkage had caused the render cracking, and discolouration was staining, and they aren't covered under the policy. NHBC accepted render had de-bonded in a small area, but the cost to repair was less than the minimum claim value (MCV) under the policy, so NHBC declined the claim.

Mr H arranged for his own inspection of the render, and he obtained a quote for replacing the render which was significantly higher than NHBC said repairs would cost – and above the policy MCV.

However, NHBC didn't accept the works quoted for were covered by the policy, so the claim decision was maintained. But, NHBC accepted there had been delays and offered £100 compensation.

Mr H remained unhappy with NHBC's position and approached this service.

Our investigator looked into things but she didn't uphold the complaint. She said some of the cracking to the render was thermal shrinkage, and there was staining, which is excluded under the policy. She also said some render damage which would've been covered fell below the policy MCV, so she said it wasn't unfair for NHBC to decline that part of the claim on that basis either.

The investigator recognised Mr H had provided his own report and quote for repairs, but she found NHBC's more persuasive. She noted that Mr H's quote was for full render replacement, whereas the policy only covered the damaged area, so she didn't think NHBC was unfair in saying the repair costs didn't reach the applicable MCV. Therefore, the investigator didn't recommend NHBC do anything further.

Mr H didn't agree and asked for a final decision from an ombudsman.

I issued a provisional decision. Whilst I reached the same overall outcome as our investigator, there were some additional reasons. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

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’m issuing a provisional decision. Whilst I’ve reached the same overall outcome as our investigator, there are some additional reasons for this. So, I’m issuing a provisional decision, to give both parties an opportunity to comment on my initial findings, before I reach my final decision.

The complaint timescales

NHBC issued a final response on 8 September 2021. In this they said the repair costs for damage fell below the MCV, and the remaining render cracking was excluded under the policy. NHBC said if Mr H obtained his own report then he should submit it to them for consideration. NHBC accepted there had been delays early in the claim and offered £100 compensation.

NHBC gave six months from the date of that final response for Mr H to approach this service. And NHBC said that if Mr H didn’t approach us within this timescale, they wouldn’t give this service permission to consider the complaint. Mr H didn’t approach us until 22 April 2022, so outside of the six months of that final response letter.

NHBC issued a second final response on 24 November 2021. In this they said they had previously declined the claim and noted Mr H had provided his own report since then. And having considered that, there wasn’t anything to demonstrate the quote provided was reasonable to cover the works which would be covered under the policy terms. Again, this gave six months for Mr H to bring the complaint to this service. Mr H approached us within six months of the date of this final response letter.

Our investigator said they’d be considering both complaint final responses as part of this complaint. She said this is because the second response was sent prior to the first expiring, and there wasn’t anything withdrawing it and it had new referral rights. She said she’d be considering everything as part of this complaint.

NHBC didn’t object to this, so it appears that NHBC has agreed with the investigator and to our consideration of the full complaint. Therefore, as it appears NHBC no longer objects, I’m also considering both final responses here in my provisional decision.

The policy cover

Mr H has a ten-year building warranty with NHBC. The policy is split into separate parts and which section applies depends on when the claim is made within the ten-year period. The policy started in June 2013 and Mr H made a claim in March 2021. So, the relevant section of the policy which applies here is Section 3. This says that:

“What NHBC will do

- 1) *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, or its garage or other permanent outbuildings:*

.....

e) external cladding, curtain walling, external render and external vertical tile hanging;”

Damage is defined as:

“Physical damage to a Home caused by a Defect.”

And Defect is defined as:

“The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means.”

This means that for a claim to be valid, there needs to be Damage, caused by a Defect (as defined), to a specific covered area, and that the repairs cost more than £1,200 Indexed. All these criteria need to be met in order for a claim to be covered. A Defect or Damage in isolation isn't covered. And the policy provides cover for repairing the Damage caused by the Defect.

The claim

Mr H reported cracking and discolouration to the render on his home in March 2021. NHBC arranged for a contractor to inspect the render. They completed an inspection in July 2021 and reported the findings back to NHBC.

As NHBC were unable to obtain additional information they needed from the contractor that carried out the inspection, they arranged for a further inspection to be carried out by their claim investigator in August 2021.

NHBC subsequently declined the claim. They said that there were only small areas of de-bonded render and the cost to repair the Damage fell below the MCV. They said the remaining cracking was shrinkage related, and there was staining, both of which are excluded under the policy:

“What NHBC will not do or be liable for

...

3) Anything relating to:

a) Shrinkage, thermal movement or movement of different types of material;

b) Cosmetic damage such as mortar erosion to brickwork, which does not impair the structural stability or weather tightness of your Home or which only affects decorations

....

g) any change in the colour or texture of, or any staining to, any external finish”

I've seen the report completed by NHBC's claim investigator. They carried out a comprehensive inspection of the render. They concluded that the majority of the cracks were caused by thermal shrinkage, some of which had been filled previously. And the discolouration was staining. I find their report comprehensive and persuasive. Therefore, I don't think NHBC acted unfairly by declining these parts of the render claim based on their claim investigator findings.

The claim investigator did identify one area where the render had de-bonded. And that was considered to be Damage, caused by a Defect (as defined) - and not caught by the policy exclusion outlined.

However, the MCV at the time of the claim was £1,629. But to repair the Damage caused by the Defect (as defined) in this specific area was only £830.36, so well below the MCV applicable. On this basis, NHBC declined that part of the claim too.

I'm persuaded, based on the report, that the conclusions reached were reasonable, and the report only highlighted one area where there was de-bonded render. As this is the only Damage that would be covered, but for repairs not reaching the MCV, and the shrinkage cracking and discolouration were excluded, I don't think the position NHBC reached at that time was unreasonable.

Mr H's report

Mr H subsequently arranged for his own inspection of the render to be carried out by a builder. In summary, they said:

- There was excessive bleed through the render*
- There was movement not related to thermal movement*
- De-bonding was identified in one area*
- A rub test resulted in discolouration*
- Pitting appeared when a jet wash was applied to the render*
- Cracks at some areas was likely due to no meshing in the render*
- There will likely be de-bonding over the next three years which will cause the complete render failure due to freeze thaw*
- The only solution is stripping all the render and re-applying*

Mr H's contractor quoted £24,024.70 to carry out repair works – so significantly higher than the cost of repairs determined by NHBC (£830.36).

NHBC didn't accept the findings of the report. They said the methodology of testing wasn't accepted (jet washing the render). They also said the property is eight years old and would have suffered from some natural deterioration and discolouration, and would require routine maintenance. They maintained the cracks were due to thermal shrinkage and added:

"The cracking noted to the property is related to thermal shrinkage. There is no thermal movement as this would have caused a step in the render finish, the render was perfectly flat."

They went on to say:

"Shrinkage can cause both vertical and horizontal cracking; thermal movement is also not limited to vertical cracking. Please note NHBC cracking in the home guidance: "Shrinkage cracks in masonry walls are usually vertical or horizontal, often running along the wall near the ceiling or near the floor."

Having considered Mr H's report and NHBC's, I find NHBC's more persuasive. I say this because Mr H's builder has concluded movement wasn't related to thermal movement, but not what has actually caused it – beyond saying not what NHBC has concluded.

I also don't think Mr H's report supports the render is de-bonding beyond the areas NHBC has identified either, instead it's a broader assessment without the specifics of NHBC's report.

Mr H's report also said there was no meshing in particular areas of the render, but NHBC has explained that isn't a mandatory requirement which needed to be carried out. And a Defect is defined as a breach of mandatory NHBC requirements, so if it wasn't a mandatory requirement it follows that the absence of it wasn't a breach or consequently a Defect.

In addition, NHBC calculated the cost of repairing the area of render damage under the policy at a cost of £830.36 – and this was below the £1,629 MCV. Mr H's quote is significantly more (over £24,000). But Mr H's includes 200sq/m of render replacement i.e. a complete replacement of all render. Whereas NHBC's only calculated for 0.5sq/m, which is the de-bonded area identified – so significantly different.

As I outlined above, the policy covers Damage caused by a Defect (as defined). So, it only covers repairing the Damage actually present – in this case one small area of de-bonded render. Whilst all the render could be defective, in the absence of Damage, the policy doesn't provide cover for resolving Defects alone where this is no Damage. So, I can't conclude that Mr H's quote is more persuasive in the cost of repairing the Damage caused by a Defect – which is what the policy covers.

Therefore, with this in mind, I don't think NHBC acted unfairly by not accepting Mr H's report or quote or by declining Mr H's claim on the basis it has.

The original report from NHBC's appointed contractor

Since the complaint was progressed to the ombudsman final decision stage by our investigator, NHBC has again reviewed matters. This review took into account the original report that was completed in July 2021 by NHBC's appointed contractor.

Having done so, NHBC recognised that the original report identified a further area of de-bonded render which hadn't been included by their claim investigator during the second inspection in August 2021.

Due to this not being included by the claim investigator, but noted in the original report, NHBC has included this additional area of de-bonded render in the scope of works – along with the area already included by the claim investigator. However, having increased the scope of works to include repairing the additional de-bonded area, NHBC has provided evidence (in confidence) that the cost of repairs would still only total £1,022.87.

Therefore, even with this included in the scope of repairs, the repairs still don't reach the MCV of £1,629, and therefore there still isn't a valid claim under Section 3 of Mr H's policy.

I've seen the report and beyond the additional area of de-bonded render which has now been included, I'm unable to conclude NHBC's first contractor reached an entirely different position to NHBC's claim investigator.

With the above in mind, unless anything changes as a result of the responses to my provisional decision, I'm minded to conclude that NHBC hasn't acted unfairly by declining Mr H's claim.

The service

NHBC accepted there were some delays in the early parts of Mr H's claim and that's why they paid £100 compensation.

Having taken everything into account, even including the missed additional area of de-bonded render, this doesn't change the overall claim decision or position. So as nothing overall has changed, I'm not minded to direct NHBC to increase the level of compensation as I think the amount already paid for the delays is reasonable."

Therefore, I wasn't minded to uphold the complaint or to direct NHBC to do anything further.

The responses to my provisional decision

NHBC responded to the provisional decision and said they had no further comments to add.

Mr H responded but he didn't agree with the provisional decision. He said he is a senior engineer in the construction industry. He said regardless of the area of damage, all of the render needs to be removed and replaced as a patch repair can't be carried out. He says this is supported by his significantly more expensive quote for repairs. He says I have less of a technical understanding and have based my decision solely on one size quoted for repair against the other.

Mr H also said some areas of cracks may be due to poor detailing and thermal expansion, but NHBC should rectify them. He says that it is not possible for horizontal cracking and debonding to occur due to thermal expansion. Therefore, Mr H says this must be structural movement caused by defective workmanship, which hasn't been acknowledged.

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.

And I've thought carefully about the conclusions I came to in my provisional decision and the responses to it. Having done so, my final decision remains the same as my provisional decision.

Firstly, I should explain that the role of this service is to give an impartial independent view on what is fair and reasonable in all the circumstances of a case. We aren't technical experts in property construction or building methods. Instead we rely on the evidence provided by both parties. Where there is conflicting information or expert evidence, we consider which evidence is more persuasive, on balance, to reach an outcome which is fair and reasonable in all the circumstance. That's what I've done here.

I note Mr H says render can't be patch repaired, but NHBC says it can be and this is what they've based repair costs on. I've carried out my own research, and this hasn't led me to conclude patch repairs can't be completed. Therefore, I can't agree with Mr H's view that the damaged render in isolation can't be patch repaired, or re-rendering the entire property is what is required. Consequently, I don't think NHBC has acted unreasonably in only taking into account repairing the damage when establishing repair costs.

As I outlined in my provisional decision, Mr H's policy covers Damage caused by a Defect as defined. Therefore, it covers the specific limited areas of render Damage only. The policy doesn't cover areas which aren't damaged, or preventative works to stop something which may, or may not, happen in the future. And I'm satisfied that NHBC has considered the claim in line with the policy terms, and repairing the damage doesn't reach the MCV, therefore the claim isn't covered as outlined in my provisional decision.

I also note Mr H says that some areas of cracking may be due to poor detailing and thermal expansion, but he says NHBC should be rectifying them anyway. I outlined the policy terms in my provisional decision, and why I'm satisfied this wouldn't be covered. And my view of that remains the same, and for the same reasons.

I also note what Mr H has said about the cracks not being due to thermal expansion, but I also discussed this point in my provisional decision, and outlined why I was persuaded by what NHBC said here, whilst also taking into account Mr H's own report. And my view of this remains the same, and for the same reasons.

Whilst I appreciate it'll come as a disappointment to Mr H, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 March 2023.

Callum Milne
Ombudsman